

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Dated 27 September 2006

**Public Authority:** Leeds City Council  
**Address:** Civic Hall  
Calverley Street  
Leeds  
West Yorkshire  
LS1 1UR

### Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has dealt with the Complainant's request in accordance with Part I of the Act in respect of the exemption applied but not fully in relation to the Refusal Notice provided.

#### 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

#### 2. The Complaint

2.1 The complainant has advised that on 18 March 2005 the following information was requested from the public authority in accordance with section 1 of the Act.

2.2. *"If the cost of allowing me to take my pension with no additional benefits (VER [Voluntary Early Retirement]) would cost the Authority £80,000, I would assess*

*the cost of allowing the PO5/6 grades who were given VER recently and are now leaving the department to be in the order of £1 million (estimated) unless VER is not subject to the same restrictions, or my understanding of the figures quoted is incorrect. If however my estimate is anywhere near correct then this is grossly unfair as I did ask to be considered for VER at the time that it was first considered. Again, if the figures are correct then this can hardly be construed as 'best value'. Further it is also unfair with regard to Leeds Council Tax payers who have to pay for part of this.*

*I would like to receive the most accurate figures/costs in both the above instances. I believe that this information would be available under the provisions of the Freedom of Information Act. I would therefore be grateful if you could confirm the costs of my taking retirement on the benefits which I have accrued and the costs of VER and the costs associated with the PO5/6 posts."*

- 2.3 In correspondence with the Commissioner, the complainant clarified that he wanted a breakdown of the costs relating to each individual who had been granted VER as opposed to an overall figure:
- a. The age of each of the five people at the time that they were given VER.
  - b. The length of service with Leeds City Council of each of the five people who were given VER.
  - c. The pay scale and the point on the pay scale at the time that each of the five people were given VER.
  - d. The amount or number of 'added years' given to each of the five people to 'top up' their pensions under VER.
  - e. The costs and savings to the Authority in each individual case of giving VER to each of the five managers.
  - f. The costs and savings to the Authority of giving VER to me at the time that VER was awarded to the five people above."
- 2.4 The Commissioner is satisfied that both the complainant and public authority understand the request to be for the information listed above in points a - f.
- 2.5 The public authority refused the request, stating that to comply with the request would enable the complainant to identify individuals from the information. This would breach the first data protection principle; therefore the public authority applied the section 40(2) exemption.
- 2.6 In later correspondence with the Information Commissioner's Office the public authority also cited the exemption in section 44 of the Act. However, as this was not communicated directly to the complainant in the initial Refusal Notice and the Commissioner agrees with the application of section 40(2), no further consideration will be given to section 44 within this Decision Notice.

### **3. Relevant Statutory Obligations under the Act**

**Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

## **Section 40 – Personal Information**

Section 40 states:

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if –
  - (a) it constitutes personal data which do not fall within subsection (1), and
  - (b) either the first or the second condition below is satisfied.
- (3) The first condition is –
  - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –
    - (i) any of the data protection principles, or
    - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
  - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

As part of the review of the application of this exemption, the Commissioner has taken into account the Data Protection Principles (the “Principles”) listed in Schedule 1 of the Data Protection Act 1998 (the “DPA”). The most relevant of these to this case is the First Principle, which states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- a) at least one of the conditions in Schedule 2 is met, and
- b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

## **4. Review of the case**

- 4.1 The complainant asked the Commissioner in a letter dated 31 October 2005 to review the application of the section 40(2) exemption to the information that he requested.

- 4.2 The public authority's refusal of the request was contained within an email to the complainant of 1 April 2005. The exemption relied upon is cited but no details of an internal complaints procedure or the applicant's right to complain to the Commissioner under section 50 of the Act were included.
- 4.3 Initially, it appeared to the Commissioner that the complainant had not exhausted the internal review procedure of the public authority and was therefore directed to do so. The complainant returned to the Commissioner with confirmation and supporting documentation to show that the review procedure had in fact been exhausted.
- 4.4 The conclusion of the internal review was contained within a letter dated 22 September 2005 from the public authority to the complainant and enclosed some more general information in an attempt to assist the complainant whilst not providing the actual information requested. The decision to withhold the information under section 40(2) of the Act was upheld.
- 4.5 The Commissioner wrote to the public authority on 20 February 2006 to request comments in relation to the complaint received. The public authority responded on 13 March 2006.
- 4.6 The public authority conceded within this letter that it had not provided as much detail as it perhaps should have done with regard to the application of the section 40(2) exemption.
- 4.7 The justification given for the refusal to supply the information requested was that, if it was provided, the information could lead to the identification of the individuals to which it refers. Whilst no names were requested, the information comprises of personal details of individuals that the complainant has worked with and it would be reasonable to expect that he and other members of the public could identify the individuals from the information if it was provided.
- 4.8 The public authority believed that if the information was provided, it would, under section 40(2) of the Act contravene the first data protection principle requiring the public authority to process personal data fairly and lawfully. It did not consider that it could demonstrate that this processing would satisfy one of the schedule 2 conditions. It did provide aggregate figures from which average costs and savings could be calculated.
- 4.9 In investigating this matter, the Commissioner asked the public authority whether it has a disclosure policy in place that would perhaps permit the release of employment-related personal information of employees at a certain level and above. Such a policy may make it more likely that information relating to the figures for more senior positions would be released. The public authority confirmed that it does not have such a policy in place. The Commissioner is satisfied that the seniority of the individuals concerned would, in any event, not be a determining factor in this case.
- 4.10 In order to make an informed decision regarding the application of section 40(2) of the Act consideration was given to internal advice, the information requested,

the issues raised and submissions by both parties were considered.

## **5. The Commissioner's Decision**

5.1 The Commissioner's decision in relation to the section 17 aspect of this matter is that the public authority has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

### **Section 17 – Refusal Notice**

5.2 Section 17 stipulates the contents of a Refusal Notice. The notice should state that the information is exempt, specify the exemption and state (unless otherwise apparent) why the exemption applies. The public authority conceded that the Refusal Notice provided in this instance should have been more detailed.

5.3 Further, a Refusal Notice must contain particulars of any procedure provided for dealing with complaints and contain particulars of the right, conferred by section 50, to complain to the Information Commissioner. These details were omitted from the Notice provided to the complainant on 1 April 2005. The Commissioner therefore considers that the public authority breached section 17 of the Act.

### **Section 40 – Personal Data**

5.4 The Commissioner's decision in relation to the section 40 aspect of this matter is that the public authority has dealt with the Complainant's request in accordance with the requirements of Part I of the Act.

5.5 In considering the application of the section 40 exemption to this information, the Commissioner referred to the Awareness Guidance 1 produced by the ICO, a copy is attached to this Decision Notice. This guidance is not an annex to the Act but acts as a tool to aid interpretation and consideration of the exemption.

5.6 Given that the information sought in this instance is in relation to the employees of a public authority, the Commissioner also referred to the Data Protection Technical Guidance regarding access to information about public authorities' employees. This again is guidance produced by the ICO and not part of the Act itself. A copy of this is also attached.

5.7 The Commissioner has considered whether the requested information constitutes personal data and if so, whether its release would breach any of the Data Protection Principles.

5.8 The requested information constitutes personal details of individuals that could lead to their identification. It therefore does constitute personal data as it relates to identifiable natural persons. As a result, the information falls within the scope of the exemption provided by section 40. Having established this, it is necessary to consider whether any of the Data Protection Principles would be breached.

- 5.9 The Commissioner has found that the First Principle would be breached; it would neither be fair nor lawful to allow release of the individuals' details to the general public.
- 5.10 In the Commissioner's view, the releasing of personal information about people can amount to an infringement of personal privacy. In view of this, it is essential for individuals who find themselves the subject of data held by organisations to be protected against the improper processing (including disclosure) of that data. The Data Protection Principles provide this protection by both limiting the processing of such data to specific purposes and by ensuring that disclosure of personal data is appropriately restricted.
- 5.11 Whilst the information requested did not include the identities of the individuals that it concerned, those individuals could be identified from the data requested. This is particularly so given that the information requested relates to a small number of people and this could make it easier to identify the individuals. In view of this, the privacy rights of individuals whose data was released would be compromised by disclosure of the requested information.
- 5.12 Allowing a general right of access to this information would likely be contrary to the expectations of those whose details are contained within it and therefore unfair. It is not about their capacity as an employee, it is a private matter and the individuals concerned would expect the details of any redundancy payments made to them to remain confidential.
- 5.13 Further, in the Commissioner's view, were such information to be available to the public on-demand, this would be likely to adversely affect individuals' personal privacy. Article 8 of the European Convention on Human Rights ("ECHR"), the right to respect for private and family life would therefore be engaged. Article 8 ECHR provides that:
- Everyone has the right to respect for his private and family life, his home and his correspondence.
  - There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- 5.14 In this case, disclosure of the requested information (whether to the complainant or the general public) would be an unnecessary and disproportionate interference by a public authority in individuals' private lives as it cannot be justified by any of the reasons provided for in Article 8(2) ECHR and, as such, would be incompatible with that right. As a result, release of this information to the complainant or the general public would not only be unfair, but would also be unlawful as it would amount to a breach of section 6 of the Human Rights Act 1998, which provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right (in this case Article 8 ECHR).

## 6. Action Required

**Although the public authority did not send an adequate Refusal Notice to the complainant in response to the original request for information, the Commissioner does not require any remedial steps in this matter.**

**In view of the Commissioner's decision that the public authority was entitled to rely upon section 40 to withhold the requested information, he does not require any steps to be taken.**

## 7. Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the 27<sup>th</sup> day of September 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**