

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2012

Public Authority: Seaton Town Council
Address: Town Hall
Seaton
Devon EX12 2LD

Decision (including any steps ordered)

1. The complainant has requested information regarding the resignation of Seaton Town Council's former Town Clerk and other information held in minutes of a Personnel Committee meeting. Seaton Town Council provided some information but refused to provide the remainder citing the personal data exemption (section 40(2)) as its basis for doing so.
2. The Commissioner's decision is that Seaton Town Council is entitled to rely on the personal data exemption as its basis for withholding the remainder of the requested information.

Request and response

3. On 3 August 2011, the complainant wrote to Seaton Town Council ("STC") and requested information in the following terms:
"Under the [FOIA] I am requesting the follow information, which the Town Council must hold.
[1] What caused the former Town Clerk (name redacted) to resign, please supply a copy of his resignation letter?
[2] Why was (name redacted) suspended on full pay and what caused this action to be taken?
[3] What was the cost to the council to have two clerks on the payroll prior to (name redacted) resignation?
[4] The names of the Councillors who authorised this action to take place.
[5] How much is it costing to recruit a replacement Town Clerk?"
4. The Commissioner has numbered each request for ease of future reference.

5. STC responded on 19 September 2011. It refused to provide information it held caught by the scope of Requests 1 and 2 arguing that this was exempt under section 40(1) of the Freedom of Information Act ("FOIA"). This exemption applies where the information is personal data relating to the requester. It later corrected this following correspondence with the Commissioner and confirmed to the complainant that it was, in fact, seeking to rely on section 40(2). This exemption applies where the requested information is personal data relating to a third party and it would breach one of the data protection principles of the Data Protection Act ("DPA") to disclose it.
6. STC provided the complainant with information in response to Request 3. It also provided some information within the scope of Request 4 but argued that the remainder was confidential. It did not cite a specific provision of the FOIA as its basis for refusing to provide the remainder that it held within Request 4.
7. In response to Request 5, STC explained that there no recruiting costs were incurred and it provided more detail about this.
8. The complainant requested an internal review on 3 November 2011 regarding STC's response to Requests 1, 2 and 4. He also requested a copy of the full minutes of the 4 February 2011 meeting. He also made an observation based on the information provided in response to Request 3.
9. Following an internal review STC wrote to the complainant on 23 November 2011. It upheld its position with regard to Requests 1 and 2. It provided the names of Councillors who were present at the meeting referred to in its response to Request 4. It also commented on the complainant's observation regarding Request 3.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his requests for information had been handled.
11. After an exchange of correspondence between himself and both parties, the Commissioner has identified the following points as being within the scope of his investigation:
 - Was STC entitled to withhold information described in Requests 1, 2 and 4?
 - Was STC entitled to withhold the full minutes of 4 February 2011?

12. STC provided the Commissioner with a copy of the withheld information. This was minutes of its Personnel Committee meetings, an email exchange, the former Town Clerk's letter of resignation and a transcribed extract from a Compromise Agreement made between the former Town Clerk and STC.
13. The Commissioner notes that the minutes of the 4 February 2011 Personnel Committee meeting contain information which falls within the scope of the complainant's request 2. It also contains information which falls outside the scope of any of the complainant's requests of 3 August 2011. However, given that the complainant also requested the full minutes of the meeting (see above), the Commissioner has considered whether the complainant should be entitled to those minutes in full.

Reasons for decision

14. Section 40(2) of FOIA states that personal data is exempt if its disclosure would breach any of the data protection principles contained within the DPA. Section 40(2) can only apply to information that is personal data. This term is defined specifically in the DPA.¹
15. STC has argued that disclosure of the withheld information would be unfair and thus breach the first data protection principle which states that:

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

at least one of the conditions in Schedule 2 is met, and

in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'
16. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
 - The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:

¹ <http://www.legislation.gov.uk/ukpga/1998/29/contents>

- what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor, the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so, the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
17. Furthermore, notwithstanding the individual in question's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
18. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the individual in question, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

Requests 1, 2 and 4

19. In determining whether information is personal data, the Commissioner has referred to his own guidance and considered the information in question.² The Commissioner is satisfied that it is personal data. The

² http://www.ico.gov.uk/for_organisations/data_protection/the_guide/key_definitions.aspx

information relates to a living individual (the former Town Clerk). It is also biographically about that individual because it relates to his employment at STC.

20. Having concluded that the information is personal data, the Commissioner went on to consider whether disclosing that personal data would be fair. He also considered whether any of the conditions described in the relevant Schedules of the DPA would be met in order to allow disclosure.
21. STC argued that the former Town Clerk would have a reasonable expectation that all the withheld information would not be disclosed. It referred to the relevant terms of the Compromise Agreement in support of this view. It also argued that there was no legitimate interest in disclosure of the information to the public.
22. The Commissioner also notes that, according to STC's own website:

"The Town Clerk is akin to the chief executive of a principal authority in that he or she is the head of the council's administration. The Town Clerk is also the "proper officer" of the Council and, as such, is often at the forefront of the Council's contact with the general public".³
23. The complainant raised concerns about the cost to the public purse that had arisen from these matters. He referred to the former Town Clerk's period of paid leave for a period of two months prior to his resignation. In his absence on leave, another person also fulfilled the role of Town Clerk. In his view, this added weight to the public's legitimate interest in knowing the reason for the former Town Clerk's resignation.
24. The Commissioner has concluded that it would be unfair to disclose information that is otherwise protected by a Compromise Agreement between the former Town Clerk and STC. The former Town Clerk can reasonably expect that, where it has been agreed via a Compromise Agreement, further detail about the resignation would remain confidential. He recognises that it is also standard practice for the press and the public to be excluded from local Council meetings where personnel matters are discussed.
25. The Commissioner conducted brief research online to establish whether any information which remained withheld was in the public domain and, if it was, the source of any such disclosure. He found reference to the

³ http://www.seaton.gov.uk/Core/Seaton-Town-Council/Pages/Default_2.aspx

events in question in online versions of local newspapers. However, none of the reports contained the withheld information.

26. The Commissioner recognises that there can be a legitimate interest in understanding the reasons behind such agreements where a cost to the public purse has been incurred. However, he believes that there is a more compelling interest in protecting the privacy owed to individuals who sign such agreements, particularly where events are recent. In the particular circumstances of this case the Commissioner has seen no evidence in the withheld information to deviate from this general approach.
27. The Commissioner has therefore concluded that disclosure of the requested information that remains withheld would require the unfair disclosure of the former Town Clerk's personal data. He is satisfied that this information is exempt from disclosure under section 40(2) of the FOIA.

4 February 2011 minutes – other personal data

28. The Commissioner notes that the minutes of 4 February 2011 (requested in full by the complainant) also contain personal data relating to other individuals which is unconnected with issues central to the complainant's concerns. The Commissioner is satisfied that it would be outside reasonable expectations of those individuals to disclose personal data relating to them from these minutes. It is in the nature of matters covered in a Personnel Committee meeting that they relate to topics which are normally treated in confidence. The Commissioner is also satisfied that there is no legitimate interest in making this information publicly available that should be served by the disclosure of this other personal data. The Commissioner would observe that it is relatively innocuous information with no apparent connection to high profile or controversial events in the life of the Council. However, that the information is innocuous does not affect whether its disclosure would be unfair, given the circumstances in which the information was provided. The Commissioner is therefore satisfied that this information is also exempt from disclosure under section 40(2) of the FOIA.

Right of appeal

29. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alexander Ganotis
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