

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 April 2014

Public Authority: Winwick Parish Council
Address: c/o Democratic & Member Services
West Annexe
Town Hall
Warrington Borough Council
Sankey Street
Warrington WA1 1UH

Decision (including any steps ordered)

1. The complainant has requested information about grievance matters related to Winwick Parish Council ("WPC"). WPC refused to provide this information citing the exemption at section 40(2) (unfair disclosure of personal data) as its basis for doing so.
2. The Commissioner's decision is that WPC is entitled to rely on section 40(2) as a basis for withholding the requested information.
3. No steps are required.

Request and response

4. On 27 September 2013, the complainant requested information of the following description from WPC¹:

"It concerns the £10,692 that Winwick PC paid in compensation earlier this year.

The first question is: - Who was it that lodged the grievance.

¹ The request was made via Warrington Borough Council's website and was handled by an officer of Warrington Borough Council who has been acting as Interim Clerk to WPC.

The second question is:- What was the grievance".

5. WPC responded on 14 November 2013. It refused to provide the requested information citing section 40(2) as its basis for doing so.
6. WPC directed the complainant to the Information Commissioner if he was unhappy with its response. It, in effect, waived the option of conducting an internal review.
7. In correspondence with the Commissioner, the complainant agreed to focus solely on access to the second request, that is, what was the grievance. However, he argued that the name(s) of any individual(s) against whom the grievance in question was lodged should be included within the scope of that second request.

Scope of the case

8. The complainant initially contacted the Commissioner on 19 November 2013 to complain about the way his request for information had been handled. He raised particular concerns about the cost to the public purse that the grievance to which he referred had reportedly incurred. In correspondence with the Commissioner, as referred to above, he focussed on the second of his two requests.
9. The Commissioner has considered whether WPC is entitled to rely on section 40(2) as a basis for withholding the information described in the second of the two requests.

Reasons for decision

10. Section 40(2) of FOIA states that personal data (which is not the personal data of the requester) is exempt if its disclosure would breach any of the data protection principles contained within the Data Protection Act ("DPA"). The term "personal data" is defined specifically in the DPA.²

Does the requested information constitute third party personal data?

² <http://www.legislation.gov.uk/ukpga/1998/29/contents>

11. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance and considered the information in question.³ He has looked at whether the information relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.
12. Having read the withheld information the Commissioner is satisfied that living individuals can be identified from it. He is also satisfied that the information relates to those individuals and that it is biographically significant about them. The Commissioner is unable to expand on this analysis on the face of this notice without disclosing what the information says.

Would disclosure contravene any of the DPA data protection principles?

13. The data protection principle that is normally considered in relation to section 40 is 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.'

14. 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:
 - what the public authority may have told them about what would happen to their personal data;

3

http://www.ico.org.uk/for_organisations/data_protection/the_guide/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

- 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?
15. 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 legitimate interest in disclosure to the public.
16. 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.
17. It is a matter of public record that there has been a grievance procedure actioned at WPC. This is noted in a number of published minutes of Council meetings of WPC.⁴

⁴ <http://www.winwick-parishcouncil.co.uk/2013/04/10/january-2013-grievance-committee-minutes/>
<http://www.winwick-parishcouncil.co.uk/2014/01/13/minutes-of-a-meeting-held-on-22-october-2013/>

18. The matter has also been discussed in the local press.⁵
19. The information that has been withheld in this case relates to what can readily be characterised as a "Personnel matter". The expectation of confidentiality about such matters is high and, in the Commissioner's view, such an expectation is wholly reasonable.
20. The complainant has raised countervailing concerns about the amount of public money that has been spent arising from this grievance. He has also raised concerns about the conduct of individuals in public office. He believes that the local electorate has a right to know why such a comparatively large amount of public money has been spent and whether the actions of public officials have caused this amount of money to be spent.
21. In the Commissioner's view, these are also entirely reasonable and legitimate concerns.
22. However, he does not think that they are sufficiently compelling to warrant disclosure of the withheld information. This would undermine the legitimate interest allowing any party involved to keep personnel matters private.
23. In the Commissioner's view, any attempt at anonymising the withheld information such that one or more individuals' names were not disclosed would render the information meaningless. The complainant withdrew his interest in finding out the name of the person who raised the grievance. Given the small community of Winwick, the Commissioner thinks that it would not be possible to anonymise, for example, one party's name, without that party's identity being readily discerned from the remainder.

Section 40(2) - Conclusion

24. In light of the above, the Commissioner has concluded that it would be unfair and a breach of the first data protection principle to disclose the

<http://www.winwick-parishcouncil.co.uk/2014/01/13/minutes-of-a-meeting-held-on-23-july-2013/>

<http://www.winwick-parishcouncil.co.uk/2014/01/13/minutes-of-a-meeting-held-on-25-june-2013-2/>

5

http://www.warringtonguardian.co.uk/news/where_i_live/north_warrington/burtonwood_and_winwick/10589474.Kept_in_dark_by_parish_council/

requested information. He acknowledges the legitimate interest in understanding how and why unexpectedly large sums of public money are spent. However, he does not think that disclosure is warranted in this case to serve that legitimate interest because of the unfair outcome that would arise to individuals who can be identified in the withheld information. In reaching this view, he has given particular weight to the reasonable expectations that individuals have in keeping personnel matters private.

Right of appeal

25. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF