

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2014

Public Authority: Goring Parish Council
Address: Old Jubilee Fire Station
Red Cross Road
Goring
Reading
RG8 9HG

Decision (including any steps ordered)

1. The complainant has requested correspondence between Goring Parish Council ("the Council") and its external auditor since 26 June 2013.
2. The Commissioner's decision is that the Council has breached section 17(1) of the FOIA in respect of its redaction of information from an email dated 8 October 2013 15:30. This email contains of the applicant's personal data and is therefore exempt from disclosure under the FOIA by virtue of section 40(1).
3. The Commissioner has also decided that the Council incorrectly relied on section 40(2) in respect of the redacted information in the email dated 19 August 2013 12:34. The Commissioner considers that the redacted information is the applicant's personal data and therefore it is exempt from disclosure under the FOIA by virtue of section 40(1).
4. The redacted information in the two emails dated 16 September 2013 10:31 and 8 October 2013 15:07 is the personal data of a third party. The Commissioner has decided that the Council was correct to apply section 40(2) of the FOIA to the information which it had redacted. The Commissioner does not require any further action to be taken in respect of these emails.

Request and response

5. On 13 October 2013 the complainant asked Goring Parish Council for the following information:

"All correspondence with the Council's external auditor since 26 June 2013."

6. The Council responded on 7 November 2013. Its letter stated that:

"Regarding your request for copies of our correspondence with the external auditor I would remind you that the auditor is currently reviewing the concerns you have raised and as an independent authority the auditor's decision will be binding. The auditor as you appreciate is appointed by the government and given that the auditor has not found any reason to complain about any delays or said the Council has overlooked any items it would seem unnecessary to provide you with this information at this time."

7. On 20 November 2013 the complainant wrote to the Council to complain about its response to his information request. He complained that the Council's response does not comply with the requirements of the Freedom of Information Act ("the FOIA") and asked that the response is reviewed.
8. The Council acknowledged the complainant's request for an internal review on 20 November 2013 and on 21 November it informed him that his request of 13 October was considered to be vexatious.
9. On 18 December 2013 the Council completed its internal review and wrote to the complainant. The Council provided the complainant with all of the correspondence he seeks together with a schedule of that correspondence. The schedule identified three pieces of correspondence which had been redacted in reliance of section 40 of the FOIA – where the redacted information concerns the personal data of a third party.

Scope of the case

10. The complainant initially contacted the Commissioner on 19 December 2013 to complain about the way his request for information had been handled. The complainant was concerned about the time taken by the Council to respond to his request and also with the Council's initial reliance on section 14 of the FOIA which was dropped at the time of its internal review.
11. The Commissioner issued a decision notice on 26 March 2014 – reference FS50521506, which dealt with the issues raised by the complainant in his email of 19 December.

12. On 29 January 2014 the complainant wrote again to the Commissioner. The complainant identified three issues relating to the Council's response of 18 December which were of concern to him:
 1. "One item was part redacted without a reason being cited (the email from Goring Parish Council, 8 October 2013)
 2. The reason cited for redactions was Section 40 (personal data). This being the council's business correspondence concerning audit, it is difficult to see how there could be any personal data to redact. The legitimacy of these redactions needs to be confirmed.
 3. The question of section 22 of the FOIA was raised. That section allows exemption for information intended for future publication. But correspondence sought was not, by any stretch of the imagination, intended for future publication."
13. The Commissioner decided to focus his investigation on items 1 and 2 of the complainant's second complaint and it is items 1 and 2 which are dealt with in this decision notice.
14. The Commissioner did not investigate item 3. He chose not to investigate whether the Council was correct in applying section 22 of the FOIA because the Council had decided to disclose all the information falling within the scope of the request, having determined that the public interest test favoured disclosure at the time of the its internal review.

Reasons for decision

Emails dated 8 October 2013 15:30 and 19 August 2013 12:34

15. The complainant drew the Commissioner's attention to the fact that the Council had redacted the final sentence of the 8 October 2013 email before disclosing it to him and had done so without citing a valid exemption provided by the FOIA.
16. The Commissioner has seen an unredacted copy of this email. The email is part of a chain of emails which passed to and from the Council and its auditor. During the course of this communication the complainant is mentioned by name. The 8 October 2013 email does not mention the complainant by name but does relate to his former position within the Council. That information, together with other information contained in the email chain, is sufficient for the Commissioner to conclude that the redacted information constitutes the complainant's own personal data. In the Commissioner's opinion the redacted information satisfies the

definition of personal data provided by section 1(1) of the Data Protection Act 1998:

“Personal data means data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”

17. Section 40(1) of FOIA provides an exemption to disclosure if the requested information is personal data and the applicant is the data subject.
18. The Commissioner considers that the Council was correct to redact the information at the last sentence of this email. It should however have cited section 40(1) as its reason for making that redaction.
19. Section 40(1) is an absolute exemption to disclosure of information under the FOIA.
20. The Commissioner’s decision in respect of the email dated 8 October is that the Council was entitled to redact the complainant’s personal data from the email but should have advised him of the reasons why the redacted information was exempt from disclosure under the FOIA. Having done this, the Council should have invited the complainant to make a subject access request under section 7(1) of the Data Protection Act.
21. The consequence of the Council’s failure to cite an appropriate exemption in respect of the redacted sentence in the email of 8 October is that the Council has breached section 17 of the FOIA.
22. Section 17(1) states:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies
23. The Commissioner has also seen an unredacted copy of the email dated 19 August. The Commissioner has noted that the redacted information in this email relates to the complainant and is therefore exempt from disclosure under the FOIA by virtue of section 40(1). The Commissioner's decision in respect of this email is that the Council is entitled to redact the complainant's personal data it, but should have invited the complainant to make a subject access request under section 7(1) of the Data Protection Act.

Emails dated 16 September 2013 10:31 and 8 October 2013 15:07

24. The Commissioner has seen unredacted copies of these emails.
25. The Commissioner is satisfied that the redacted information in these emails meets the definition of personal data provided by section 1(1) of the Data Protection Act. The redacted personal data does not relate to the complainant; here it concerns a third party.
26. The council has relied on section 40(2) of the FOIA to withhold the redacted information. Section 40(2) provides an exemption from disclosure for information which is the personal data of any third party and where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 ("the DPA") or section 10 of that Act.
27. It is the Commissioner's task to consider whether disclosure of the redacted information would breach any of the data protection principles contained in Schedule 1 of the DPA. He considers that the first data protection principle is the one most relevant in this case.

The first data protection principle

28. The first data protection principle has two components:
- 1. Personal data must be processed fairly and lawfully, and
 - 2. Personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.
29. The redacted information relates to a Council employee. The Commissioner agrees with the Council that this information, whilst relevant to his employment, is primarily of a personal nature.

30. The Commissioner considers that the redacted information is of a type which would normally be confidential between the employee and his employer as it relates to the individual and not specifically to his role within the Council.
31. The Commissioner also considers that the confidential nature of the personal data would give rise to the employee having a reasonable expectation that his personal data would be kept confidential and that disclosure would be unwarranted.
32. In the Commissioner's opinion disclosure of the employee's personal data under the FOIA would be unfair and would contravene the first data protection principle. The Commissioner has therefore decided that the Council was correct to apply section 40(2) to the redacted information contained in these emails.
33. Because disclosure of the redacted information would be unfair to the Council's employee, it is not necessary for the Commissioner to consider whether disclosure would meet one of the conditions for processing in Schedule 2 of the Data Protection Act.

Right of appeal

34. 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

35. 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.
36. 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

Andrew White
Group Manager
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