

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 November 2015

**Public Authority:** Portsmouth City Council  
**Address:** Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2BQ

#### **Decision (including any steps ordered)**

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1. The complainant requested the transcript of an exit interview carried out with a named former employee of Portsmouth City Council (the Council). The Council refused this request under the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the Council cited section 40(2) correctly and so it was not obliged to disclose the requested information.

#### **Request and response**

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3. On 7 July 2015 the complainant wrote to the Council and requested information in the following terms:  

*"a transcript of [named former Council employee's] exit interview."*
4. The Council responded on 17 July 2015. It refused the request under the exemption provided by section 40(2) (personal information) of the FOIA.
5. The complainant responded on the same date and requested an internal review. The Council responded with the outcome of the review on 20 August 2015. The conclusion of this was that the refusal of the request under section 40(2) was upheld.

## Scope of the case

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6. The complainant contacted the Commissioner initially on 5 August 2015 to complain about the refusal of her information request. At this stage the complainant was advised that the Council should be allowed 40 working days to complete the internal review.
7. Following the completion of the internal review, the complainant contacted the ICO again and indicated that she did not agree with the refusal of her request under section 40(2).

## Reasons for decision

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### Section 40

8. The Council cited the exemption provided by section 40(2) of the FOIA. This section provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption involves two stages; first, whether the information in question constitutes personal data and, secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.
9. As to whether this information does constitute personal data, the definition of this is given in section 1(1) of the Data Protection Act 1998 (DPA):  
  
*"personal data' means data which relate to a living individual who can be identified-*
  - (a) *from those data, or*
  - (b) *from those data or other information which is in the possession of, or is likely to come into the possession of, the data controller".*
10. The request in this case specifies information by reference to the name of another individual. It is, therefore, clear that the named individual would be identifiable from that information. Having viewed the content of the requested information, the Commissioner believes it to also be clear that the content relates to that individual. The requested information does, therefore, constitute personal data in accordance with the definition given in section 1(1) of the DPA. The next step is to

consider whether disclosure of that personal data would be in breach of any of the data protection principles.

11. The Commissioner has focussed here on the first data protection principle, which requires that personal data be processed fairly and lawfully, and in particular on whether disclosure would be, in general, fair to the data subject. In forming a conclusion on this point the Commissioner has taken into account the reasonable expectations of the data subject, what consequences disclosure may have on them and whether there is any legitimate public interest in the disclosure of this information.
12. On the issue of the expectations of the data subject, the nature of the information suggests that the data subject would have expected that it would not be disclosed into the public domain. In general, the Commissioner's view is that an individual would reasonably expect that a record of an interview in which they provide detail as to their reasons for leaving employment with an organisation would remain confidential. In this case, the Commissioner notes that the form that constitutes the withheld information is marked "*Confidential*" and also that a Portsmouth City Council policy on exit interviews published online<sup>1</sup> states that "*confidentiality should be assured*". Due to the nature of an exit interview and due to the assurance of confidentiality it appears likely would have been given, the Commissioner believes that the data subject in this case would hold a strong and reasonable expectation that the record of their exit interview would not be disclosed into the public domain.
13. On the issue of the consequences of disclosure, it follows from the preceding paragraph that disclosure contrary to that expectation would be distressing to the data subject given the intrusion into what they are likely to have believed would be a confidential process.
14. As to whether there is any legitimate public interest in the disclosure of the information in question, whilst section 40(2) is not a qualified exemption according to section 2 of the FOIA, it is necessary for there to be a public interest element for disclosure to comply with the first data protection principle. The issue here is whether any legitimate public interest that does exist outweighs the factors against disclosure covered above.

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<sup>1</sup> <https://www.portsmouth.gov.uk/ext/documents-external/edu-earlyyrs-retaining-staff-guide.pdf>

15. Whilst the Commissioner does not question the legitimacy of the reasons the complainant has for requesting this information, the question here concerns the *public* interest, rather than any private interests of the complainant. The Commissioner does not believe that disclosure of the information in question here is necessary for any legitimate public interest; this consists of the record of reasons given by a single individual for voluntarily leaving their employment. Whilst that employment was with a public body, the Commissioner does not regard that fact alone as indicating a legitimate public interest in disclosure of this information.
16. On the basis that the data subject would hold a strong and reasonable expectation that this personal data would not be disclosed, and that disclosure despite that expectation would result in distress, combined with the absence of legitimate public interest in disclosure, the Commissioner finds that disclosure would be unfair and in breach of the first data protection principle.
17. The Commissioner's overall conclusion is, therefore, that the exemption provided by section 40(2) of the FOIA is engaged and the Council was not obliged to disclose this information.

### **Other matters**

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18. When requesting an internal review, the complainant also asked to access any information within the exit interview transcript that related to her. That request amounted to a subject access request made under section 7 of the DPA. In response to this the Council stated that the complainant was not entitled to the transcript under the DPA. The refusal of that subject access request has been considered separately and the complainant will be contacted about this in due course.

## Right of appeal

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19. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

20. 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.
21. 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 .....**

**Ben Tomes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**