

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2017

Public Authority: Hickling Parish Council
Address: 20 Station Road
Ormesby St Margaret
Norfolk
NR29 3NH

Decision (including any steps ordered)

1. The complainant has requested a copy of an unredacted letter which was read out at a meeting of Hickling Parish Council. Hickling Parish Council has disclosed this letter to the complainant together with a second related letter. Notwithstanding this disclosure, the Council determined that the names, addresses and signatures of the eight signatories should be withheld in reliance on section 40(2) of the FOIA.
2. The Commissioner's decision is that Hickling Parish Council has correctly applied section 40(2) to the information it has withheld from the complainant.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 14 June 2016, the complainant wrote to Hickling Parish Council and requested information in the following terms:

"Following the meeting last night, I request a copy of the letter read out at the meeting last night from eight parishioners."
5. On 8 July 2016, the Council provided the complainant with a redacted copy of the letter she had requested. The Council informed the complainant that personal data had been redacted in accordance with the Data Protection Act and with the Council's policy in place before the May 2015 election.

6. Having received the Council's response, the complainant immediately wrote to the Council to ask it to conduct an internal review. The complainant stated, "I believe that I am entitled to the names of those eight signatories and would like a review of this decision".
7. Having conducted an internal review, the Council provided the complainant with its final decision in this matter on 9 August 2016. The Council advised the complainant that it had contacted the signatories of two letters – one dated 2 May 2016 and the second dated 18 May 2016, and all had confirmed that they have not given permission for their personal data to be released. Consequently the Council determined that the complainant's request should be refused. The Council cited section 40(2) as the exemption it is relying on and it argued that disclosure of the signatories' names would contravene the first data protection principle.
8. The Council's review document made reference to a confidential annex in respect of the reasonable expectations of the data subjects and of the consequences that might arise following disclosure.

Scope of the case

9. The complainant contacted the Commissioner on 22 August 2016 to complain about the way her request for information had been handled.
10. The Commissioner has investigated whether the Council has properly applied section 40(2) of the FOIA in respect of its withholding of the named, addresses and signatures of the signatories of the letter dated 2 May 2016.
11. In this notice reference is made to a letter which was sent to the Council by the same signatories on 18 May 2016. The Commissioner must make clear that this letter is not within the scope of the complainant's request. She has been obliged to refer to this letter because both letters concern the same issues, were sent by the same persons and the Council is also relying on section 40(2) to withhold the same information considered in this notice.

Background information

12. The letter requested by the complainant was sent to Hickling Parish Council on 2 May 2016. It was signed by eight parishioners.
13. The Council received a second letter, signed by the same eight parishioners on 18 May 2016. This letter contained clarification of the questions contained in the first letter.

14. Copies of both letters have been disclosed to the complainant, albeit with the names and addresses of the signatories redacted. The Council has also posted the redacted letters on its website together with its responses.
15. The two letters relate to a long-running legal dispute between the Parish Council and the Hickling Playing Field and Recreational Ground charity ("HPFRG") which is now settled. In the Council's characterisation the dispute has been 'bitter'.

Reasons for decision

Section 40 – personal information

16. Section 40(2) of the FOIA provides that information is exempt from disclosure if it 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.

Is the information personal data?

17. The first step for the Commissioner to determine is whether the withheld information constitutes personal data.
18. Personal Data is defined by section 1 of the Data Protection Act 1998 ("the DPA"). If the information is not personal data then the Council will not be able to rely on section 40.
19. Section 1 of the DPA defines personal data as:

"...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 intention of the data controller or any other person in respect of the individual."

20. The Council has provided the Commissioner with unredacted copies of the two letters. The letter of 2 May is type-written and bears the hand-written names, addresses and signature of eight persons. The letter of 18 May is again type-written and bears the type-written names of the same eight persons.

21. The Commissioner agrees with the Council that the names, addresses and signatures in the 2 May letter constitute the personal data of the individuals who sent that letter to the Council.
22. The Council has also provided the Commissioner with its rationale to support of its application of section 40(2).
23. It asserts that disclosure of the withheld personal data would breach the first data protection principle, on the grounds that none of the conditions of Schedule 2 of the Data Protection Act 1998 can be met.
24. The Commissioner agrees with the Council that the first data protection principle is relevant to this case. The first principle requires consideration of whether disclosure of the withheld names and addresses would be fair to the data subjects – the eight signatories, and whether at least one of the conditions in Schedule 2 can be met.
25. The question of fairness requires the Commissioner to consider the reasonable expectations of the data subjects in respect of what would happen to their personal data, and whether such a disclosure would result in any unnecessary and/or unjustified damage or distress.
26. The Commissioner recognises that there is a balance to be struck in respect of the legitimate expectations of the data subjects and the necessary legitimate interests of the public.
27. The Council's position is founded on its assertion that the two letters were sent by the data subjects in their private capacity as parishioners and not in the context of any public role which they may or may not have. In the Council's opinion the two letters constitute private correspondence, albeit sent in the name of eight parishioners.
28. Whilst the signatories would have an expectation that the contents of their letters would potentially made public - as has happened in this case, they would not expect their names and addresses to be disclosed. This is supported by the Council having an agreed policy which includes a clause that parishioners are not referred to by name when correspondence is read out at one of its public meetings. In consequence of this policy it is likely that each of the data subjects would have the expectation that their personal data would not be disclosed by virtue of this information request.
29. The Commissioner asked the Council whether it knows how the letters came to be written and signed by these eight signatories rather than being written by individual parishioners. This question was asked in view of the complainant's belief that the letters were written by person's acting as "Guardians of Hickling", purporting to act for the Village and with the motive of embarrassing former members of the Council.

30. The Council advised the Commissioner that the Council had changed its composition at the last election, with ten out of eleven councillors being newly elected. The newly constituted Council subsequently undertook to review the paperwork it holds which relates to the now settled dispute with the HPFRG. The purpose of this review was to determine what information could be made public. This, in the Council's words, turned out to be 'a big job'.
31. The Council informed the Commissioner that it had received a number of requests for information from interested individuals about its dispute, including the two letters of 2 and 18 May from the eight signatories.
32. In the Council's opinion the letters were not sent by a 'pressure group': The Council believes that the eight signatories chose to send their letter collectively to show that it was not one individual 'picking a fight'.
33. The Council has referred the Commissioner to her decision in case FS50086626¹. In case FS50086626 the Commissioner upheld Gloucester County Council's decision to withhold details of the signatories to a petition.
34. Additionally, the Council advised the Commissioner that it has asked each of the eight signatories whether they would consent to the disclosure of their personal data. The Council informed the Commissioner that each of the signatories had refused their consent for reasons of personal safety and well-being. To support this position, the Council provided the Commissioner with confidential information considered during its internal review of the complainant's request. This information asserts the possibility that the release of the signatories personal data would likely lead to harassment and unwarranted distress.
35. In addition to believing that disclosure of the withheld information would be unfair to the data subjects, the Council argues that there is no condition in Schedule 2 of the Data Protection Act which would allow their personal data to be disclosed under this request. However, the Council concedes that condition 6 of this schedule would be the most appropriate to consider.
36. Condition 6 of Schedule 2 of the Data Protection Act allows disclosure of personal data if:

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2007/395164/FS_50086626.pdf

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."

37. Here, the Council argues that disclosure is not necessary to meet any perceived legitimate interest pursued by the complainant or any other third party. It strongly asserts that the disclosure of the signatories names, addresses and signatures would not provide any additional relevant information to the public

The Commissioner's decision

38. The Council and the complainant have provided the Commissioner with information relevant to the Council's dispute with the HPFRG and the disquiet in the village which this dispute generated. Whilst informative, this background information is not persuasive in respect of the Commissioner's decision.
39. The primary concern of the Commissioner is whether disclosure of the eight signatories' personal data would be fair.
40. The Commissioner has decided that disclosure of this personal data would not be fair to the signatories: She accepts that they would not have any expectation that their personal data be disclosed to the public. Therefore the first data protection principle is not met.
41. It is not necessary for the Commissioner to go on to consider whether condition 6 of Schedule 2 of the Data Protection Act is engaged. Nevertheless, the Commissioner has no difficulty in finding that this condition is not met: Whilst the complainant may have the belief that disclosure of the signatories personal data would be provide fairness to her in the context of the Council's now-settled dispute, the Commissioner can find no necessary legitimate interest which would merit disclosure of the signatories' personal data.
42. It is not sufficient for the complainant to want to know the identities of the signatories for her personal satisfaction, nor is disclosure necessary to satisfy the complainant's belief that the signatories were politically motivated. Their motivation is clear from the contents of the disclosed letter.
43. The Commissioner is obliged to have regard to the signatories' refusal for the Council to disclose their personal data. She must also have regard to the Council's credible fears that disclosure may result in harassment of those signatories in the future, particularly where the Commissioner can see no legitimate purpose which disclosure of this personal data would serve.

44. The Commissioner's decision is that the Hickling Parish Council has correctly applied section 40(2) of the Freedom of Information Act to the information it has withheld from the complainant.

Right of appeal

45. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

46. 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.
47. 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
Information Commissioner's Office
Wycliffe House
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