

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 January 2015

**Public Authority:** Powys County Council  
**Address:** County Hall  
Llandrindod Wells  
Powys  
LD1 5LG

#### Decision (including any steps ordered)

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1. The complainant requested information about amendments made to the minutes of a particular meeting of the Radnorshire Committee. Powys County Council ('the Council') provided the information requested, subject to some personal data being redacted under section 40(2). During its internal review, the Council disclosed some of the information it had originally redacted but maintained that the remaining personal data contained within the documents disclosed was exempt under section 40(2) of the FOIA. The Commissioner's decision is that the Council has correctly relied on section 40(2) of the FOIA to withhold/redact the remaining information held relevant to the request. The Commissioner does not require any steps to be taken.

#### Request and response

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2. On 31 May 2014, the complainant wrote to the Council and requested information in the following terms:

"Will you please provide all emails to and from the Clerk, [name redacted], referring to changing the minutes of 20-2-13, of the Radnorshire Committee as requested in the information request point No. 3 on 30/1/14 (Item 8.1. on

[http://www.powys.gov.uk/ag\\_2013-02-20rs1...](http://www.powys.gov.uk/ag_2013-02-20rs1...) refers)

(To avoid any duplication, this was also mentioned in <https://www.whatdotheyknow.com/request/c...>)"

3. The Council responded on 27 June 2014 and provided the information requested subject to some personal data being withheld under section 40(2) of the FOIA.
4. On 1 July 2014 the complainant requested an internal review of the Council's decision in relation to the information which had been redacted from the emails under section 40(2).
5. The Council provided the outcome of its internal review on 5 August 2014. It disclosed some of the information it had previously redacted under section 40(2) but maintained that the remaining information was exempt under section 40(2).

### **Scope of the case**

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6. The complainant contacted the Commissioner on 6 August 2014 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of this complaint to be whether the Council correctly applied section 40(2) to the remaining information held relevant to the request.

### **Reasons for decision**

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#### **Section 40 – the exemption for personal data**

8. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
9. The Council considers that the information requested constitutes the personal data of the individual(s) concerned and that disclosure would breach the first data protection principle.

#### **Is the requested information personal data?**

10. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:

- from that data,

- or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
11. In considering whether the information requested is “personal data”, the Commissioner has taken into account his own guidance on the issue<sup>1</sup>. The two main elements of personal data are that the information must ‘relate to’ a living person, and that person must be identifiable. Information will ‘relate to’ a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts them in any way.
12. The withheld information in this case comprises some of the names and contact details of individuals engaged in the requested emails. The Commissioner is satisfied that the withheld information falls within the definition of personal data as set out in the DPA because it ‘relates to’ identifiable living individuals.

### **Would disclosure breach one of the data protection principles?**

13. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:
- personal data shall be processed fairly and lawfully; and
  - personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

### **Would disclosure be fair?**

14. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Data\\_Protection/Detailed\\_specialist\\_guides/PERSONAL\\_DATA\\_FLOWCHART\\_V1\\_WITH\\_PREFACE001.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx)

against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

15. The Council provided some background about the subject matter relating to the request, namely emails exchanged regarding the recording of discussions relating to a byways closure issue at a meeting of the Radnorshire Committee on 20 February 2013. The Council decided in May 2013 to make a traffic order in relation to the two byways in question restricting access by certain forms of transport. The decision was subject to a number of legal challenges by a number of third parties, including the complainant. The Commissioner understands that litigation was ongoing at the time of the request and the complainant along with other parties was involved in a court case brought against the Council under section 56 of the Highways Act 1980.
16. One of the issues in dispute was the recording of decisions relating to the byways contained within the minutes of the Radnorshire Committee meeting on 20 February 2013. This issue was considered in the judgment dated 17 October 2013 made by Mr Justice Cranston in the High Court case [2013] EWHC 3144 (Admin)<sup>2</sup>. Paragraphs 53 and 54 of the judgment state that:

52. *"Inaccuracies in the committee reports/minutes*

53. *[Name redacted] did not pursue ground 11, in relation to inaccuracies in the way the responses to the consultees were presented to the committee (ground 11). Ground 12 involved a challenge that the traffic regulation orders as made were not the orders which the Radnorshire committee resolved to make. At the hearing there was considerable debate about whether the minutes accurately recorded what the committee decided. The Council's records unfortunately lack the clerk's initial drafts of the relevant motions. [Name redacted] was at the meeting and has given his account as to what he thought was decided. The picture was muddied because the committee discussed simultaneously the proposed orders alongside the proposals in the settlement negotiations.*

54. *Having considered the matter I have concluded that the minutes ultimately produced must be treated as accurate. They reflect*

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<sup>2</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2013/3144.html>

*what the reports proposed. Moreover, the February minutes were confirmed at the committee's March meeting. At the March meeting an inaccuracy in relation to another matter was identified but nothing was raised regarding the motions passed on the byways. That suggests to me that if the councillors had thought that the minutes in relation to the proposed orders were inaccurate they would have said so".*

17. The draft minutes of the Radnorshire Committee meeting were published on the Council's website. However, following discussion between Council officers and members, the part of the minutes dealing with the byways issue was subsequently amended. The revised draft minutes were then approved by the Committee at their next meeting on 20 March 2013.
18. In the Council's initial response to the request, it withheld all names and contact information, with the exception of the details of the clerk of the Radnorshire Committee since the clerk is part of the public meetings and his details were already known to the complainant. However, on internal review the Council decided to disclose the personal details of officers and members who had been involved in the process of drafting the minutes, with one exception. The Council considered that disclosure of information that would identify the officer who had suggested an amendment to the minutes could place the officer "at risk of unwarranted interference and prejudice to their legitimate interests and freedoms". In light of this, the Council continued to withhold the personal data of the officer concerned, together with a small amount of other third party personal data which could lead to the identification of the officer who had made the suggested amendment.
19. The Council accepts that the information relates to the officer's public role. However, it confirmed that although the officer concerned has a public facing role, he does not occupy a post which is considered to be a senior one within the Council. Further, in light of the contentious nature of the issue concerned ie amendments made to the minutes, the Council contends it has an obligation to ensure the wellbeing of its employees, and to protect them from stress, harassment and bullying. The Council's view is that disclosure of the identity of the officer who suggested the amendment would be likely to lead to that officer being targeted with continued communications about the subject matter, which could result in pressure and stress on the officer concerned.
20. As evidence of the consequences of disclosure, the Council advised that the complainant in this case has been a frequent correspondent with the Council, regarding the issue of byways. He has made "prolific use of emails, questioning, passing comment, opinion and on occasions aggressive opinions over the Council and its employees, and use of

information request regimes asking about the officers involvement in an external group". As further evidence of the volume of correspondence from the complainant the Council advised that in response to a subject access request under the Data Protection Act 1998 for his personal data the gathering of personal data amount to around 88cms of paper documents which had to be examined, redacted and copied.

21. The Council accepts that there is a strong public interest in the development of accurate public minutes of meetings, and even more so with the court case brought against the Council about the issue of two byways. To this end, the draft minutes are placed on the Council's web pages with the agenda for the next meeting. This provides the public with the opportunity to view those minutes to be discussed and ratified before the next meeting. The Council also acknowledges that there is a public interest in the decision making process of the Radnorshire Committee. The Council considers that the information it has disclosed relevant to the request in this case is sufficient to satisfy any legitimate interest of the public and this was taken into account in its internal review when additional information was disclosed. However, the Council does not consider there is any pressing social need to reveal the identity of the officer who suggested the amendment to the minutes in question to outweigh any risks to their interests and freedoms.
22. In general, the Commissioner considers that while senior officers would be likely to have a greater expectation that their personal data would be disclosed, more junior officials would have a greater expectation of privacy, with their names not being disclosed to the public at large. In this case, the Commissioner notes that the withheld information relates to junior members of staff. The Commissioner accepts, therefore that the individual concerned would have had no expectation that their details would be disclosed into the public domain.
23. The Commissioner notes that a number of names of more junior members of staff have already been disclosed in the information the Council provided in response to the request. However, based on the representations provided by the Council, the Commissioner accepts that disclosure of the remaining withheld information that could lead to the identity of the officer who suggested the amendments to the minutes would be likely to lead to that officer being targeted with continued communications about the subject matter.
24. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.

25. However, the Commissioner notes that redacted copies of the emails concerned have been disclosed under the FOIA and he considers that, to a large extent, any legitimate interests of the public have been satisfied through disclosure of that information. Taking account of all the circumstances of this case, the Commissioner is satisfied that disclosure of the remaining information would be unfair and unnecessary in the circumstances and any legitimate interest of the public does not outweigh the individual's expectations on how their personal data would be processed and any consequences of disclosure. Therefore the Commissioner is satisfied that the Council has correctly relied on section 40(2) of the FOIA to withhold/redact the information it has in this case.

## Right of appeal

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26. 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: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**