

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2026

Public Authority: Colwich Parish Council

Address: clerk@colwichparishcouncil.gov.uk

Decision (including any steps ordered)

1. The complainant has requested information about staff salaries above a specified amount. Colwich Parish Council ("the Council") relied on section 40(5B) of FOIA (third party personal information) to refuse to confirm or deny that the information is held.
2. The Commissioner's decision is that the Council has correctly relied on section 40(5B) of FOIA to refuse to confirm or deny that the information is held.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 5 June 2025, the complainant wrote to the Council and requested information in the following terms:

"Therefore from the above I presume that anyone with a remuneration of over £50000 should be published with a listing of their responsibilities?

Also the highest paid should be quoted as a ratio against the median.

Please treat this as a freedom of information (FOI) request that can be published so that others do not have to ask the same?"
5. The Council responded on 5 July 2025. It stated that it could neither confirm nor deny if the information is held under section 40 of FOIA.
6. Following an internal review the Council wrote to the complainant on 11 August 2025. It maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 13 August 2025 to complain about the way their request for information had been handled, and specifically that the Council is not entitled to withhold information under section 40 of FOIA.
8. The scope of this case and of the following analysis is whether the Council is entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny that the requested information is held.

Reasons for decision

Section 40 – Personal information

9. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny that particular information is held. It will apply where the mere act of confirming or denying would itself reveal the personal data of an individual other than the requester and that revelation would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
10. The first step for the Commissioner is to determine whether just confirming or denying that the information is held would reveal personal data as defined by the Data Protection Act 2018 ('DPA'). If it would not, section 40(5B) of FOIA cannot be relied upon.
11. Secondly, and only if the Commissioner is satisfied that confirming or denying would reveal personal data, he must establish whether that revelation would breach any of the DP principles.

Would confirmation or denial reveal personal data?

12. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".
13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
14. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or

more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

15. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
16. The Council has explained that the request asks for information about any employee who receives a salary of £50,000 or more. Should the Council confirm or deny that information is held, it would reveal whether or not any officer receives a salary of £50,000 or more. The Council has explained that, as a small local authority with only seven members of staff, any confirmation or denial could reasonably be linked to identifiable senior officers.
17. In the circumstances of this case, and having considered the nature of the request, the Commissioner is satisfied that providing a confirmation or a denial that the information is held would reveal personal data. This is because confirming or denying that information is held would reveal whether an identifiable individual, or a very small number of identifiable individuals, receives a salary above the specified amount.
18. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
19. The fact that confirming or denying that information is held would reveal the personal data of an identifiable living individual does not automatically prevent the public authority from doing so. The second element of the test is to determine whether confirming or denying that the information is held would contravene any of the DP principles.
20. The most relevant DP principle in this case is principle (a).

Would confirming or denying that the information is held contravene principle (a)?

21. Article 5(1)(a) of the UK GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".
22. In the case of an FOIA request, the personal data is processed when the confirmation or the denial is provided. This means that confirmation or denial can only be provided where it would be lawful, fair and transparent to do so.
23. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

24. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”¹.

25. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether confirming or denying that the information is held is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

26. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

27. In considering any legitimate interest(s) in confirming or denying that the information is held, the Commissioner recognises that such

¹ Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the confirming or denying that the information is held of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

28. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
29. In this case, the Commissioner accepts that there is a legitimate interest in transparency about the expenditure of public money, and specifically staff salaries of £50,000 or more.

Is confirming or denying that the information is held necessary?

30. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make confirming or denying that the information is held unnecessary. Confirming or denying that the information is held must therefore be the least intrusive means of achieving the legitimate aim in question.
31. In this case, the Commissioner considers that the legitimate interest can only be met through confirming or denying whether the information is held.
32. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

33. It is necessary to balance the legitimate interests in confirming or denying that the information is held against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of confirming or denying that the information is held. For example, if the data subject would not reasonably expect that the public would be told that such information was or was not held, or if confirming or denying that the information is held would cause unjustified harm, their interests or rights are likely to override any legitimate interests in confirming or denying that the information is held.
34. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that confirming or denying that the information is held may cause;

- whether the information that would be revealed by a confirmation or a denial is already in the public domain;
 - whether the information that would be revealed by a confirmation or a denial is already known to some individuals;
 - whether the individual expressed concern about the possible confirmation or denial that the information is held; and
 - the reasonable expectations of the individual.
35. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that the public authority would not reveal whether such information is or is not held. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they would have provided their personal data (if indeed any was provided).
36. It is also important to consider whether confirming or denying that the information is held would be likely to result in unwarranted damage or distress to that individual.

Analysis and conclusion

37. In this case, the Council has argued that it is a small public authority of seven employees, who are more likely to be known to the community than those of a larger public authority. Confirmation or denial that information is held would reveal information about income that can be directly attributed to individuals, and this would cause distress to them.
38. The Commissioner's [guidance](#) for requests for personal data about employees explains "there is a legitimate public interest in knowing how public money is apportioned across an organisation, which includes salaries at lower levels. Therefore, for more junior staff, you might disclose the advertised salary range for these posts in bands of £5000."
39. However, it also states, "...when considering the legitimate interests test for salary information which is not routinely published, you should consider how much significant information you are disclosing about an individual's personal financial circumstances..."
40. In the circumstances of this case, the Commissioner recognises that the public authority is a Parish Council, which represents the first tier of local government. As such, its employees are likely to be highly visible and known within their community, and the disclosure of personal information about them, such as whether or not they receive a salary of

£50,000 or more, would represent a greater level of intrusion into their private lives.

41. It is also relevant for the Commissioner to observe that, whilst individuals may hold senior posts within the Parish Council, this does not mean that they will hold the same expectations of privacy as senior staff within larger local authorities, such as Borough and County Councils.
42. The Commissioner is aware that the [Local Government Transparency Code 2015](#) stipulates (in paragraph 48) that a local authority will publish the number of employees whose remuneration in a year is at least £50,000. However, that Code also explains that this is subject to it being compliant with data protection law (paragraph 15).
43. The Commissioner also understands that the Council publishes its total annual staff costs within its [accounts](#). The Commissioner considers that this addresses some of the legitimate interest in this case by confirming how much the Council spends on staffing.
44. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so confirming or denying that the information is held would not be lawful.
45. Given the above conclusion that confirming or denying that the information is held would be unlawful, the Commissioner considers that he does not need to go on to consider whether confirming or denying that the information is held would also be fair or transparent.

Right of appeal

46. 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)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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