

Date: 4 April 2011  
Your Ref:  
Our Ref: RFI 543

# Bolton Council

**Chief Executive Department**

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Dear Mr Barry Moss (Senior)

## **Freedom of Information Request in respect of personal details of the Chief Executive, Mr Sean Harriss – Review**

I refer to the above and to your email on 7<sup>th</sup> March 2011 in which you requested an internal review of Bolton Borough Council's handling of your FOIA request.

I would inform you that I have carried out the review jointly with the Co-ordinator/Advisor for the Association of the Greater Manchester Authorities in respect of FOIA. I would give you below considerations in respect of the appeal.

## **Background**

You made the current request on 10<sup>th</sup> February 2011 via the [whatdotheyknow.com](http://whatdotheyknow.com) website.

Your request was as follows:-

1. How many times has a telephone call from a member of public who has asked to speak to Sean Harriss been put through to him personally?
2. If records are kept, how many times since becoming Chief Executive has telephone calls not been put through?
3. Copies of any policy whereby the public have access to the Chief Executive of Bolton Council Mr Sean Harriss via telephone.
4. Any other detail or policies of public access to the Chief Executive of Bolton Council.
5. Copies of details of the Chief Executive Mr Sean Harriss's salary.
6. Copies of the details of the Chief Executive Mr Sean Harriss's expenses for 2008 to date.
7. Copies of details of Sean Harriss's salary prior to becoming Chief Executive of Bolton Council, this information should be available from his job application details.

The questions above [except 7] were answered by either indicating that Bolton Council did not hold the information or were it did, to give a link to where the information could be found.

One question remained outstanding and this is the question numbered 7 and this has been refused under Section 40 (Personal Data) of the FOIA and the subject of your appeal.

## **Could the information already be in the public domain?**

As part of this review checks have been made to see what is available via Oldham MBC's website [i.e. Sean Harriss's former employer] and information released by them under FOIA. However, Sean Harriss's details of salary were not included in any disclosures made. Therefore, the information in question is not in the public domain.

## **Personal Data Section 40**

The request is made under FOIA and personal data can be exempt from disclosure.

Personal data are defined in the Data Protection Act 1998 [DPA], at section 1(1), as follows:-

“data which relate to a living individual who can be identified:-

from those data; or

from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller ....”

The information requested **is** personal data.

Section 40 of the FOIA sets out an exemption from the right to know if the information requested is personal information, protected by the DPA. The section has a fairly complex structure and refers in detail to DPA provisions and concepts.

The exemption is an absolute exemption (except in some limited circumstances). This means that if the information falls within the exemption, there is no need to consider an additional public interest test.

Section 40(2) together with the condition in Section 40(3)(a)(i) (or 40(3)(b)) provides an absolute exemption if disclosure of the personal data would breach any of the Data Protection Principles.

There are 8 Data Protection Principles, however for the purposes of disclosure under FOIA, it is usually only the first principle – that data should be processed fairly and lawfully – that is likely to be relevant.

In order to process both fairly and lawfully, part of this requirement can be satisfied by a legitimising condition contained in Schedule 2 of the Act.

There are 6 legitimising conditions in Schedule 2, but only Condition 1 which is consent or Condition 6 which is legitimate interest is relevant to disclosure under this FOIA request.

## **Schedule 2 Condition 1 – that the data subject has given consent**

Although information about the salary [within 5K bandings] in respect of Chief Executive's is available under the Accounts and Audit Regulations and also under the data sets that Councils have recently disclosed, the information requested is past information and was not subject to the Regulations or the current “code” on the salaries. Therefore, the way to satisfy this Schedule 2 condition would be by consent and this has not been given.

It is considered that this information has not been included in the public domain in the past and although disclosed on an application form, to Bolton MBC is confidential and personal information. Therefore, Bolton Council cannot satisfy this condition and to release without satisfying this condition would breach the DPA.

## **Schedule 2 Conditions 6 – Legitimate Interest**

Condition 6 - (i) requires that the processing is necessary for the purpose 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. As disclosure under FOIA is considered disclosure to the public at large, the Council needs to balance the legitimate public interest in disclosure against the interests of the individual whose data it is. The Council does not have a legitimate interest and therefore cannot satisfy this condition; therefore disclosure would breach Principle 1 of the DPA.

## **Conclusion**

I would confirm that I am upholding the exemption in this appeal and will not be disclosing the information outstanding. Should you wish to appeal this further, you may do so and you can apply to the following:-

The Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AS

Yours sincerely

A handwritten signature in blue ink, appearing to read 'A. R. Eastwood'.

Alan R Eastwood  
Director of Chief Executive's Department  
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