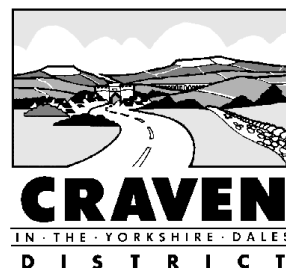


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Mr Nigel Ward
[request-336158-117cc75d@whatdotheyknow.com](#)

From: David Roper-Newman
Information Governance Officer
Telephone 01756706336
e-mail: droper-newman@cravenc.gov.uk
Our ref: IR 2016-011

5 July 2016

Dear Mr Ward,

As explained in my letter of 14 June 2016, your email of 7 June 2016 has been treated as a request for an internal review of the decision sent to you following your original request for information dated 23 May 2016.

The following describes the circumstances relating to your original and revised requests, the Council's decision, and the outcome of the internal review that has been undertaken.

The request for information

On 23 May 2016, you asked the Council for the following information.

For each of the financial years 2011/12, 2012/13, 2013/14, 2014/15 and 2015/16 until the date of your response:

- (1) which CDC Councillors have been the subject of recovery action, either in the form of demands sent by letter or email, or by court action. Please specify which type of recovery action, where applicable.
- (2) which CDC Councillors have been barred from participating in voting on budgetary decisions, contingent on Council Tax arrears of two months or more.

The Council's original decision

On 7 June you were informed that although the Council held the information that you had requested, as the information was not held centrally, to answer your request, would exceed the time and cost specified in the Regulations. On the same day, you sought an internal review of this decision, however on 9 June 2016, you said that you would reduce the scope of your request to the same time periods as the

requests for which the Council had provided a response to other requesters of the same information.

Therefore on 14 June, you were sent a further decision, which explained the following decision:

The authority declines, under on S40(2) of the FOIA, to provide individual names and any personal information linked to such individuals.

I can confirm that during the period you have listed 1 member received a final notice and we obtained a liability order against another member. The amounts being £324.00 (09/11/2015) and £229.00 (24/02/2016) made up of £164.00 and £65.00 costs. Additionally I can confirm that all outstanding Council Tax was subsequently paid without the need for further action.

The authority follows section 106 of the local government finance act and ensures only eligible members are allowed to vote. In the above cases the balances were paid in full and no member had to be excluded.

Your request for an internal review

On 7 June you requested an internal review of the earlier decision. In that request you stated the following:

Craven District Council is comprised (I hope I am right in stating) of thirty-one Councillors. To assert that checking thirty-one Council Tax records is so burdensome as to exceed the statutory limit is manifestly absurd - so absurd as to risk bringing the Council into disrepute. Let us not travel any further down that road for the present time.

The Council may not be aware that I have lodged identical FOIA requests with quite a number of Councils, all of whom (of those who have thus far responded) have - to their credit - been open and transparent.

I would urge Craven District Council to do the same

Conduct of Internal Reviews of decisions

This internal review has been conducted by me in accordance with the Code of Practice under Section 45 of the Freedom of Information Act ('the Act'). The Code of Practice requires public authorities to conduct a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint raised by the applicant.

The Information Commissioner's Office (ICO) is the regulator of matters relating to the Act, and has published guidance on the handling of requests for information and on the handling of complaints or requests for internal review. This guidance is published on the ICO's website:

<https://ico.org.uk/>

The internal review

You had requested an internal review on 7 June with regard to the decision sent to you on the same day, and the information that was sent to you on 14 June did not fully answer your original request.

As you have indicated that you were dissatisfied with the original decision, I have endeavoured to consider all the relevant issues.

I have carefully considered your original request, the decisions that were sent to you on 7 and 14 June 2016 and your responses, including the decision of the Upper Tier Tribunal (UTT) to which you drew our attention.

Issues arising

You referred us to the recent decision by the UTT, which referred to a previous decision by the First Tier Tribunal (EA/2014/0029), and in turn referred to an earlier Decision Notice by the ICO (FS50499885). These decisions are publicly available, so I am not going to reproduce them here.

The earlier decision sent to you on 7 June 2016 explained that the cost of answering your request would exceed the appropriate limit, and was therefore refused under Section 12 of the Act. This was because the information that you had requested for the period in question for the years since 2011 is not held centrally, and it would have required the Council to first check whether the information is held, identify which elected members were in position for each of the years in question, and then identify the properties for which they had been responsible for Council Tax throughout the period. Then it would have been necessary to identify whether any individuals had fallen into arrears, and if so, what if any action was taken. In your request, you referred to thirty-one elected members, although there are in fact currently thirty elected members.

Section 12 of the Act provides:

Exemption where cost of compliance exceeds appropriate limit.

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4).....

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 provide:

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in–

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

The Regulations also provide that the maximum cost to be incurred in answering an individual request is £450, which is equivalent to one person spending 18½ hours in the steps (a)–(d) above.

The UTT does not dissent from the acceptance by the ICO and the First Tier Tribunal that the information that has been requested falls to be treated as personal data in accordance with the Data Protection Act (DPA), and that the information regarding proceedings is treated as sensitive personal data as defined by Section 2 of the DPA.

Although the Council does publish certain information about elected members, as with other members of the local community, any debts owed to the Council are regarded as private matters, between the individual and the Council.

Elected members' behaviour is governed by the Council's Code of Conduct, which requires high standards of ethical behaviour when 'the member is acting, claims to be acting, or appears to be acting as a representative of the Council'. The Code of Conduct does not extend to elected members' private or family lives or activities when they are not acting, or appearing to act, as a representative of the Council. Behaviour outside of official duties, such as liability for council tax cannot be construed as acting as a representative of the Council. Craven District Council's Member Code of Conduct is based on the model code set out in the Localism Act.

Section 106 of the Local Government Finance Act requires individual elected members who are in arrears with council tax for at least two months if present at a Council budget-setting meeting, to declare that fact, and not vote on any budgetary issue at the meeting. This is monitored by the Council's Chief Finance Officer and the individual member commits a criminal offence if they fail to comply with Section 106. This is the only instance when such matters may be disclosed, although this disclosure will be made by the elected member him/herself in making the required declaration, rather than the Council.

Article 8 of the Human Rights Act states:

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Decision following Internal Review

- With regard to the decision given on 7 June 2016, I believe that it was reasonable to decline to provide the information that you requested on grounds of cost. The information was not held centrally, and it would have been necessary to conduct an extensive search of historical records as described in Section 12 reproduced above, and given the number of elected members, and the periods involved, these processes would be likely to have taken a lengthy time and exceeded the cost limit provided in the Regulations referred to above. Therefore I confirm the decision that was sent to you.
- However, you subsequently reduced the scope of your request, and the following deals with reduced request that you submitted on 9 June.
- The UTT decision only relates to the cases that arose in Bolton. There may be similar considerations in the cases dealt with by this Council, but they are not the same. However, I have taken account of the issues raised by the UTT when it reached its decision.
- Although the UTT does comment on the distinction between elected members' official roles and their private and personal lives, and it made reference to the obligations set out in Section 106 of the Local Government Finance Act, the UTT did not take account of the distinction provided by Section 27 (2) of the Localism Act and set out in the Council's Member Code of Conduct.

- There is no disagreement that the information that has been sought is personal data, or sensitive personal data within the meaning of Section 40 (2) of the Act, and falls within the meaning of Sections 1 and 2 of the DPA.
- The decision that was given by the Council following your request for information was consistent with the Council's interpretation of the Freedom of Information Act. The Act provides in Section 40 (2) that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the DPA.
- Disclosure of the detailed information requested would not only allow identification of the individuals, but also the amounts that they owed, and in one case, sensitive personal data by virtue of Section 2 (h) of the DPA, because the Council had instituted proceedings to recover the unpaid council tax.
- Disclosure of the requested information is not permitted by the Act, as it is exempted information in accordance with Section 40 (2). This is an absolute exemption. The ICO has also provided guidance on deciding 'fairness' and this point is considered in depth by the UTT at paragraph 33 of its decision.
- Additionally, Article 8 of the Human Rights Act recognises that individuals have a right of respect for their private and family life. Disclosure of the requested information would not respect their privacy and could have a detrimental impact on their role as an elected member. In addition, disclosure could interfere with the privacy of any other individual who might be jointly liable, or indeed reside at the same address as the elected member who was the subject of disclosure. Disclosure could interfere with their privacy and would therefore be contrary to Article 8 (2) of the Human Rights Act. I have also taken account of Section 44 of the Freedom of Information Act, which provides that information is exempt from disclosure by the public authority holding it, if it is prohibited by or under any enactment. I am of the view that Article 8 does have a limiting effect on what can be disclosed in this case, and that publication could have amounted to undue interference in the rights of individuals, notwithstanding the rights of others, and given that the existing legislation (the Local Government Finance Act) deals with disclosure in very specific circumstances, and provides sufficient protection for the public interest where an elected member might be asked to consider budgetary matters.
- Elected members of local authorities do not solely make decisions on financial matters, they also represent their wards and constituents or residents. They are elected to deal with a range of issues, not just budgetary issues, and in any event the controls in Section 106 of the Local Authority Finance Act, reinforced by a statutory criminal offence for non-compliance are there to ensure that elected members declare an interest at the appropriate time and in relation to particular council business.
- The Council's Code of Conduct, supported by the Localism Act, recognises that elected members are allowed to have a private life distinct from their

public role. This specific point was not recognised in paragraph 40 of the decision of the UTT.

- The DPA does permit personal data to be exempt if one of the conditions in the Second Schedule of the DPA can be held to apply. In the absence of the consent of the data subjects, the only condition that might apply is paragraph 6, in pursuance of the legitimate interests of the data controller or the interests of a third party. The Council is bound to act in accordance with the requirements of the Localism Act, and have regard to the provisions of the Council's Member Code of Conduct. I do acknowledge that a journalist may have a legitimate interest in requesting the information. However, it is my view that the appropriate level of transparency can be achieved by the provision in Section 106 of the Local Government Finance Act, if the elected member was faced with the need to attend a council meeting where budgetary matters were to be discussed. The provision of the Finance Act does not extend to other Council business, and this position is reinforced by the Council's Member Code of Conduct, which is itself supported by other legislation.
- In the event, there was no need to prevent any elected member from being present at any subsequent meeting of the Council for the reasons provided for in the Local Government Finance Act.

Taking all the above factors into consideration, I confirm the Council's revised decision given on 14 June 2016 which provided you with the amounts involved, but declined to identify the particular individuals.

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Your rights following the internal review

If you are not satisfied with the outcome of the internal review, you may apply direct to the Information Commissioner's Office for a decision. The Information Commissioner's Office can be contacted at the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. I have provided a link to the ICO's website above.

Yours sincerely,

Sent by email

David Roper-Newman
Craven District Council