

**Freedom of Information Act 2005
Formal Response**

**To: Mr J Whittle
c/o Cumbrian Newspapers**

Date: 5 August 2005

1. Your requested information about the salary of the Chief Executive of Eden District Council.

You requested to know: the rate paid in 2000-01 and the rate paid now.

The request was contained in a letter dated 7 August 2005 addressed to myself.

2. Your request is refused because the information which you seek is exempt information by virtue of Part II of the Freedom of Information Act, 2000.

3. The Exemptions which apply

The exemption contained in Section 40 of the Act applies to your request.

- 3.1 The exemption which applies to your request relates to personal information and is contained in Section 40 of Part II of the Act. Section 40(2) provides that any information to which a request for information relates is exempt information if:

- a) it constitutes personal data which do not fall within Subsection (1) and
- b) either the first or second condition set out in Subsections (3) or (4) is satisfied. (Subsection (1) of Section 40 relates to requests for personal data where the applicant is the data subject).

The first condition is:

- a) in a case where the information falls within any of the Paragraphs (a) to (d) of the definition of data in Section 1 (1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene
 - i) any of the data protection principles or
 - ii) Section 10 of that Act (the right to prevent processing likely to cause damage or distress) and
- b) in any other case that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in Section 33A(1) of the Data Protection Act, 1998, (which relate to manual data held by public authorities) were disregarded.

3.2 Section 40 applies as the information which you request is personal data within the meaning of the Data Protection Act. The information is:

- a) processed by means of equipment operating automatically;
- b) recorded with the intention that it should be processed by means of such equipment; and
- c) recorded as part of a relevant filing system.

The information relates to a living individual who can be identified from those data. A disclosure of the information which you request would be a processing of that data. In accordance with the first condition set out in Section 40 a disclosure of data to a member of the public cannot contravene any data protection principle.

3.3 There are eight data protection principles of which principles 1 and 2 are relevant to this request.

3.4 The first Data Protection Principle is that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met. There are six conditions which are relevant for the purposes of this first principle. The conditions are:

- 1. the data subject has given his consent to the processing.
- 2. the processing is necessary for the performance of a contract to which the data subject is a party or for the taking of steps at the request of the data subject to enter into a contract.
- 3. the processing is necessary for compliance with a legal obligation to which the data controller is subject.
- 4. the processing is necessary in order to protect the vital interests of the data subject.
- 5. the processing is necessary for the administration of justice or for the exercise of any functions conferred upon any person, the Crown, a Minister of the Crown or a Government department or any other functions of a public nature.
- 6. the processing is necessary for the purposes of legitimate interest pursued by the data controller or by the third party to whom the data are disclosed.

3.5 None of the conditions in Schedule 2 appears to be met. The data subject has not given any consent to a processing of this information by way of disclosure to yourself and the processing is not apparently necessary for any of the specific purposes which are set out in the Schedule.

3.6 The second data protection principle is that personal data shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose or those purposes. The personal data you seek has been processed in order to carry out the employment functions of the Council in relation to the individual concerned. The information is by its very nature personal and private. A processing of the information by way of a disclosure is incompatible with a retention of those data for purposes in connection with employment functions and obligations.

4. The Refusal

- 4.1 Accordingly, your request information relating to the salary, paid to the Chief Executive of Eden District Council is refused.
- 4.2 The information you request is exempt information.
- 4.3 The information constitutes personal data. The first condition set out in Section 40(3) of the Freedom of Information Act, 2000, is satisfied. The provision of the information you request would contravene the first and second data protection principles. The exemption provided by Section 40 of the Freedom of Information Act, 2000, applies.

5. Appeal under the Complaints Procedure

- 5.1 If you are dissatisfied with this decision to refuse your request you may apply for the matter be referred to a panel drawn from the Council's Establishment Committee. The panel is that which would hear a complaint in accordance with the Council's Comments, Compliments and Complaints Procedure, a copy of which I enclose.
- 5.2 Stage 3 of the procedure would apply. If you wish to apply for a review would you do so in writing to me within 20 working days of your receipt of this notice.

6. Referral to the Information Commissioner

- 6.1 Any person may apply to the Information Commissioner for a decision upon whether a specific request has been dealt with in accordance with the requirements of Part I or the Freedom of Information Act, 2000. The Information Commissioner will make a decision on any such application unless it appears to him:
 - a) that the complainant (yourself) has not exhausted any complaints procedure which is provided by the public authority concerned and accords with any Code of Practice issued by the Secretary of State;
 - b) there has been undue delay in making the application;
 - c) the application is frivolous or vexatious; or
 - d) that the application has been withdrawn or abandoned.
- 6.2 The Information Commissioner may decide whether or not the Act has been complied with. The Information Commissioner will provide a notice of his decision. If the Information Commissioner decides that the Council has failed to comply with the Freedom of Information Act he will specify steps which must be taken by the authority to comply with the statutory requirement and the period within which such action must be taken.



Signature: Director of Corporate and Legal Services

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