

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 September 2024

**Public Authority:** Hartlepool Borough Council  
**Address:** Civic Centre  
Victoria Road  
Hartlepool  
Cleveland  
TS24 8AY

#### **Decision (including any steps ordered)**

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1. The complainant requested information about council tax arrears owed by a named MP. Hartlepool Borough Council (the Council) refused to provide the information requested under sections 31(1)(a) (law enforcement) and 40(2) (personal data).
2. The Commissioner's decision is that section 40(2) is not engaged in relation to some of the information requested and that the Council correctly withheld other information under section 40(2) of the FOIA. The Commissioner also finds that section 31 is not engaged in respect of the first part of the postcode.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Disclose the amount that the MP was in arrears and the first part of the postcode of their home address.
4. The Council must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 26 January 2024 the complainant wrote to the Council and requested information in the following terms:  
  
"How much was [name redacted] MP in arrears for Council Tax when a summons was issued by Hartlepool Council?  
  
Where is the location of the property that was in arrears? A redacted or partial address will suffice".
6. The Council responded on 20 February 2024 and stated that the information was exempt under sections 40(2) and 31(1)(a) of the FOIA.
7. On 20 February 2024 the complainant requested an internal review of the Council's refusal to provide the information requested.
8. The Council provided the outcome of its internal review on 22 March 2024 and upheld its position as outlined in its initial response.

## Scope of the case

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9. The complainant contacted the Commissioner on 24 March 2024 to complain about the way their request for information had been handled.
10. The scope of the Commissioner's investigation is to determine whether the Council should disclose the withheld information.

## Reasons for decision

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### Section 40(2) – third party personal data

11. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
12. Section 3(2) of the Data Protection Act 2018 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. In this case, the complainant has requested the amount of council tax arrears owed by a named MP and their address. The Commissioner is

satisfied that the information both relates to, and identifies the individual concerned. It is clear to the Commissioner that the amount of money the individual was in arrears and their full home address constitutes their personal data.

15. In their request the complainant indicated that they would be happy to receive a redacted or partial address. The Commissioner has therefore considered whether disclosure of a partial address constitutes personal data.
16. The Council advised that it considered whether a partial postcode could be provided. However, it stated that Hartlepool is a small town and as such it considers that disclosure of a partial postcode, combined with information already in the public domain would "amount to location data which is personal data relating to an identifiable individual".
17. The Commissioner has undertaken a simple google search using the first part of the postcode in question, that is the outward code which identifies the town or district (eg SK9). The searches indicate that there are over 5,000 properties associated with the postcode area in question. Given the number of properties that are attached to the postcode area, in the absence of any further representations from the Council as to how a living individual could be identified through disclosure of that information the Commissioner has concluded that the first part of the postcode is not personal data, and as such section 40(2) is not engaged in respect of this information.
18. The next step is to consider whether disclosure of the remaining information ie the amount of arrears and the full home address would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a).

### **Would disclosure contravene principle (a)?**

19. 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".

20. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
21. 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

22. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” lawful bases for processing listed in the Article applies.
23. 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”<sup>1</sup>.
24. 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 disclosure of the information 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.

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<sup>1</sup> 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 and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) 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 disclosure 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”.*

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

### **Legitimate interest**

26. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that 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. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
27. The Commissioner accepts that there is a legitimate interest in knowing when elected officials are in council tax arrears. This was considered in the Upper Tribunal (UT) decision *DH v Information Commissioner and Bolton Council*<sup>2</sup>, which found that the name of a councillor who had failed to pay council tax should be disclosed. The view of the UT was that there is a legitimate interest in the public being aware of this information as councillors are responsible for the expenditure of public money and the administration of council tax. In this case, although the individual concerned is an MP as opposed to a councillor, the Commissioner considers that there are similarities in the consideration in light of the fact that MPs are also elected officials. Whilst the individual in this case is not specifically responsible for the administration of council tax, the Commissioner notes that there are a number of media articles referring to the individual concerned being vocal about matters relating to council tax. In addition, MPs are more senior elected officials than councillors.
28. The Commissioner therefore considers that the complainant is pursuing a legitimate interest.

### **Is disclosure necessary?**

29. '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 disclosure of the requested information unnecessary. Disclosure under

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<sup>2</sup> <https://www.gov.uk/administrative-appeals-tribunal-decisions/dh-v-1-information-commissioner-2-bolton-council-2016-ukut-139-aac>

the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

30. The Commissioner is not aware of any other means by which the complainant could reasonably obtain the requested information, nor is he aware of any other circumstances where the Council would make it available.
31. The Commissioner is therefore satisfied that disclosure is necessary to meet the legitimate interests identified.

### **Balance between legitimate interests and the data subject's interests**

32. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
33. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
34. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. 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 provided their personal data. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
35. The UT decision referred to in paragraph 27 stated that:

"There may be exceptional cases in which the personal circumstances of a councillor are so compelling that a councillor should be protected from such exposure."
36. Given the comments set out in the UT decision, the Commissioner accepts that there will be circumstances where a public authority will be entitled to withhold the name of an elected official who has failed to pay council tax. The Council has argued that in this case, it considers that

the individual was acting as a private individual as opposed to an MP. The Council also pointed out that another individual was jointly liable on the account for their private residence. The Council also contends that an individual would not expect their council tax information to be disclosed essentially into the public domain in response to an FOIA request.

37. In relation to the individual's home address, the Council pointed out whilst the individual was an MP at the time of the request, they are no longer an MP. In addition, they no longer live at the property in question. The Council also stated that, whilst the individual was an MP, in accordance with section 24 of the Political Parties and Election Act 2009, the individual indicated that they did not wish for their home address to be published.
38. Whilst the Commissioner has taken into account the Council's representation, he does not consider that this meets the threshold of constituting the threshold of 'exceptional' circumstances as mentioned in the UT case referred to in paragraph 27.
39. The Commissioner is of the view that, as an MP, a more senior elected official than a councillor, the individual in this case should have some expectation in relation to disclosure of information relating to the transparency of their actions, which includes payment of council tax. However, the Commissioner notes that the individual did not consent to their home address being published whilst they were an MP and he therefore accepts that they would not have any reasonable expectation that this information would be disclosed into the public domain.
40. In terms of the consequences of disclosure, the Council argues that, as the information constitutes the individual's personal data, disclosure would have caused distress to them. The Council also pointed out that the individual in question was an active MP, which a high profile due to their views on somewhat contentious topics. It considers that disclosure of the address of the individual "could have resulted in significant risk of harm to [redacted] and wider members of the public in the area". The Council acknowledged that the individual is no longer an MP and no longer lives at the property in question, however, at the time of the request, it considered this risk to be significant and as such it applied section 31 of the FOIA to this information.
41. In relation to the full home address of the MP, the Commissioner considers that the individual had a reasonable expectation that this information would not be released into the public domain and he notes they had not previously consented to this information being made public. He also accepts that disclosure of the information could have caused harm and distress to the individual in question. Based on this, the Commissioner has determined that the fundamental rights and



freedoms of the individual outweighs the legitimate interest identified above. The Commissioner therefore considers that disclosing the home address would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The public authority was therefore correct to apply section 40(2) of FOIA to this information.

42. As stated earlier in this notice, the Commissioner considers that elected officials should expect some level of scrutiny in respect of matters such as payment of council tax. The Commissioner also notes that the non payment of arrears in this case had accrued over a period of time and a summons had been issued in relation to the balance. Taking these factors into account, the Commissioner accepts that there is sufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is an Article 6 basis for processing that particular information and so disclosing it would be lawful.
43. Even though it has been demonstrated that disclosing the requested information under FOIA would be lawful, it is still necessary to show that disclosure would be fair and transparent to satisfy principle (a).
44. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, disclosure will usually be fair for the same reasons. No reasons have been put forward to suggest why disclosure would be unfair even if it were lawful.
45. The requirement for transparency is met because as a public authority, the Council is subject to FOIA. Disclosure is therefore consistent with principle (a) of the UK GDPR.

### **Section 31 – law enforcement**

46. Section 31(1)(a) of the FOIA says that:

“Information .... is exempt information if its disclosure under this Act would, or would be likely to, prejudice- (a) the prevention or detection of crime....”

47. The exemption in section 31(1)(a) covers all aspects of the prevention and detection of crime. It could apply to information on general policies and methods adopted by law enforcement agencies.
48. The exemption also covers information held by public authorities without any specific law enforcement responsibilities. It could be used by a public authority to withhold information that would make anyone, including the public authority itself, more vulnerable to crime.



49. Whilst in some instances information held for the purposes of preventing or detecting crime will be exempt, it does not have to be held for such purposes for its disclosure to be prejudicial.
50. During the course of the Commissioner's investigation, the Council confirmed that it considered section 31 to apply to part two of the request relating to the location of the property at the time of the request. However, at the time of the Commissioner's investigation the Council stated that it did not consider section 31 to still apply as the individual in question was no longer an MP and no longer resided at the property in question. Whilst the Commissioner considers whether the passage of time has had any effect on a decision regarding disclosure when informally resolving complaints, within a formal decision notice, he is required to consider the position at the time a request is submitted. As such, he has considered whether the Council correctly applied section 31 to part two of the request.
51. The Council has withheld the home address of the MP in question. Under section 31(1)(a). The Commissioner has already determined that the full home address is exempt under section 40(2). As such, his consideration in relation to section 31(1)(a) in this case is limited to disclosure of a redacted address ie a partial postcode.
52. As stated in paragraphs 16 and 17 of this notice, the Council's position is that, as Hartlepool is a small town, disclosure of even the first part of the postcode could lead to identification of the home address of the MP in question, when combined with other publicly available information. It considers that disclosure of information which identifies the home address of the MP in question would be likely to result in significant harm to the MP and the wider public in the area due to the MP's high profile views on sensitive topics.
53. In order to engage a prejudice based exemption such as section 31, there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interests that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:
  - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant

prejudice which is alleged must be real, actual or of substance;  
and,

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

54. The Commissioner accepts that, if disclosure of a partial postcode were to lead to the identification of the home address of the MP it would be likely to result in the prejudice envisaged by the Council, and would therefore relate to the interests inherent in section 31(1)(a). However, the Commissioner has already determined that the first part of the postcode does not constitute personal data. This is because a simple google search identified over 5,000 properties associated with the postcode in question. In light of this finding, and in the absence of any further representations from the Council as to exactly how the property could be identified through disclosure of a partial postcode, the Commissioner has no option but to find that section 31 is not engaged in respect of disclosure of the first part of the postcode.

## Right of appeal

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55. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

56. 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.
57. 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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