

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2017

Public Authority: Isle of Anglesey County Council
Address: Council Offices
Llangefni
Anglesey
LL77 7TW

Decision (including any steps ordered)

1. The complainant requested information from the Isle of Anglesey County Council ('the Council') relating to council tax liability for a property he owns. The Council provided the information requested and also responded to other points the complainant made (which were not information requests). In its internal review the Council acknowledged that it should have applied section 40(1) to the request. The Commissioner's decision is that the Council has complied with section 1 of the FOIA in relation to one part of the request and that it correctly applied section 40(1) to the other part of the request. She does not require any steps to be taken.

Request and response

2. On 1 June 2016, the complainant wrote to the Council concerning matters relating to the council tax liability for a property he owns. Within the letter he made two requests for information in the following terms:
 - "1. I do not know the reason or reasons why the Council has identified [address redacted] as a second home. Had an officer of the Council had the courtesy to ask me about the status of the dwelling. I would have told him or her that it is my only home. I do not own any other dwellings, consequently [address redacted] is not a second home. Will the Council explain how it was compiled this erroneous information, why it holds it and why it has not told me that is [sic] has it.

6. Will the Chairman please provide me with details of the 6 matters it considered, as identified as 'bullet points' on page two of its letter. If the consequences for the emerging Local Development Plan are not included in any of the 6 items will the Chairman please let me know what they are, for example how many dwellings are likely to come to the market (as a consequence of the 'second homes premium') during the duration of the Plan, what the reduction in housing land availability will be and where, how many dwellings will remain unoccupied and unfurnished etc. Will the Chairman please let me know whether the public consultation document in relation to 'second homes etc' was issued before, during or after the Local Development Plan (Consultation Draft), if after does the Council intend to amend the Housing Chapter(s) and any associated documents before the Local Plan Inquiry and if so when those amendments will be issued for public consultation. The request is made under the freedom of information legislation".
3. The Council responded on 23 June 2016. In respect of item one the Council referred to previous letters it had sent to the complainant regarding council tax liability for his property. The Council also provided information relating to item six and stated that it did not hold recorded information in respect of the specific questions contained within this request.
4. The complainant wrote back to the Council on 4 July 2016 expressing dissatisfaction with its handling of the two requests (and other matters). With reference to item one he re-confirmed that [address redacted] was his only residence in the world and made a new request for information *for* "please provide the details of the legislation that requires me to live at [address redacted]". He also expressed concern that the Council had not consulted him about the proposal to levy a premium on second homes or assessed the impact of the premium in the draft Local development Plan.
5. The Council provided the outcome of its internal review on 12 August 2016. It acknowledged that it should have referred to section 40(1) of the FOIA in its initial response. In relation to item one, the Council referred to letters previously sent to the complainant in relation to council tax matters associated with the property in question. The Council also provided some additional background information relating to item six of the request.

Scope of the case

6. The complainant contacted the Commissioner on 23 August 2016 to complain about the Council's handling of the request. He indicated that he considered the outstanding items relating to his request to be:

"I want the information on which the Council has determined that [address redacted] is either a long term empty home or a second home"

"As considered above, the vernacular use of 'second' homes conflicts with the statutory definition.....I asked the Council to let me have details of the legislation that requires a person to live in a house. The Council has not provided the information".

7. During the course of the Commissioner's investigation, the Council confirmed that it considered section 40(1) to apply to information relating to council tax liability relating to the complainant's own property. It wrote a further letter to the complainant providing detailed information relating to the history of council tax liability for the property in question. The Council also provided copies of previous correspondence sent to the complainant relating to the matter. In this letter the Council also confirmed that the legislation governing liability for council tax was contained in Part 1, Chapter 1, Part 6 of the Local Government Finance Act 1992.
8. Some of the information requested constitutes the complainant's own personal data and therefore falls to be considered under the Data Protection Act 1998 ('the DPA'). The separate right of access provided by section 7 of the DPA therefore applies. The Commissioner has considered this separately. This notice only relates to the FOIA aspects of the complaint.

Reasons for decision

Section 1 – general right of access

9. The Council considered the complainant's request regarding the legislation which requires a person to live in a property under the FOIA. As stated above, during the course of the Commissioner's investigation, the Council wrote to the complainant and confirmed the legislation which governs liability for council tax. In this letter, the Council acknowledged that the term "main residence" is not defined in law and explained that it is therefore left to the local authority to determine this issue with reference to various tribunal and court cases. The Council provided further background information about how it determines the issue of a person's sole or main residency, including the considerations it takes into account. The Council also provided details of previous tribunal and court decisions.

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
11. Based on the evidence available to her, the Commissioner is satisfied that the Council has now complied with its obligations in relation to this request and provided the recorded information held relevant to the request.

Section 40(1) – the exemption for personal data

12. Question one of the request in this case relates to queries raised by the complainant about the Council's calculation of council tax liability for a property that he owns. The Council's position is that this information constitutes the complainant's own personal data and is therefore exempt under section 40(1) of the FOIA.
13. Under section 40(1) any information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to comply with the obligation to confirm or deny whether they hold the requested information, by virtue of section 40(5)(a).
14. The Commissioner has issued detailed guidance on determining what information constitutes personal data.¹ This guidance sets out several steps in establishing whether information is personal data, with the first step being whether an individual can be identified from the information and the second step being whether the information relates to the individual in some way, e.g. is it information which is obviously about a particular individual, is the information linked to an individual or is it information used to inform or influence actions or decisions affecting an identifiable individual.
15. The Commissioner accepts that information relating to the council tax liability for a property owned by an individual constitutes personal data relating to the individual. Furthermore, in the circumstances of this case the Commissioner accepts that the requested information would reveal

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http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/determining_what_is_personal_data_quick_reference_guide.ashx

biographical information about the owner of the property – the complainant. That is to say it would reveal how the Council had calculated the council tax liability payable by the complainant in respect of the property.

16. Based on the above, the Commissioner is satisfied that any information which may be held would be complainant's own personal data. The Commissioner therefore finds that section 40(1) is engaged and as this is an absolute exemption there is no public interest test to apply. As section 40(1) applies the Council was not required to comply with section 1(1)(a) because section 40(5)(a) would apply.

Right of appeal

17. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF