

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

### **Decision notice**

**Date:** 11 April 2023

**Public Authority:** City of Wolverhampton Council  
**Address:** Civic Centre  
St. Peter's Square  
Wolverhampton  
WV1 1SH

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

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1. The complainant has requested information from the City of Wolverhampton Council ("the Council") in relation to the costs of residential placements for children. The Council provided some information, but withheld the remainder, citing section 40(2) of FOIA.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of FOIA to withhold the requested information.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

### **Request and response**

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4. On 27 April 2022, the complainant wrote to the Council and requested information in the following terms:

"I am writing to request information under the Freedom of Information Act relating to the cost of children's residential placements in the UK.

Please can you tell me:

1. What is the most expensive residential care placement you have had to commission for a single child in the past five years, when was it, how long was it for and what specialised services were being

- provided for that cost? (eg £10k a week for six months for a 13-year old girl with autism subject to a deprivation of liberty order who was deemed a danger to herself and others). Please indicate if it was a private placement or local authority run provision.
2. How often in the past five years have you had to pay at least £10,000 a week per child? Please break down the answer by year and indicate whether the placements were private or local authority.
  5. The Council responded on 25 May 2022. It provided the information in response to question 2. However, for question 1, it explained that the information could not be provided as it is personal data and, as such, was being withheld under section 40(2) of FOIA.
  6. Following an internal review the Council wrote to the complainant on 6 July 2022. It stated that it upheld its original position.
  7. During the Commissioner's investigation, he asked the Council to provide the 'headline weekly cost' to the complainant, as they had advised in their internal review request that other local authorities had provided this information and they were satisfied with it.
  8. The Council provided the total amount for the whole period of the residential care placement, but the complainant advised that they also needed the time period for which the amount covered.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 20 July 2022, to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of the complaint is to determine if the Council is entitled to rely on section 40(2) of FOIA to withhold the requested information.

### **Reasons for decision**

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#### **Section 40 – personal information**

11. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

12. In this case the relevant condition is contained in section 40(3A)(a) . This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ("the DP principles"), as set out in Article 5 of the UK General Data Protection Regulation ("UK GDPR")
13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ("DPA"). If it is not personal data, then section 40 of FOIA cannot apply.
14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### **Is the information personal data?**

15. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual".*

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. In the circumstances of this case, having considered the nature of the withheld information, the Commissioner is satisfied that the information relates to the data subject(s). This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
20. The complainant has argued that disclosing the requested information would not identify the children to anyone not already intimately involved in their care. They have also advised that other local authorities have provided the information and they have significantly less children in care
21. On the face of it, the withheld information does not directly identify any individual. However, because the Council has explained that the withheld numbers are low (five or fewer), the Commissioner has

considered whether this information, when combined with other information either already in the public domain, or known to particular individuals, may nevertheless make identification possible.

22. The Commissioner is aware that disclosure under FOIA is considered as being made to the world at large, rather than to the requester only, and this includes to those individuals who may have a particular interest in the information (and additional knowledge of the specific circumstances of the child/children involved) which is not shared by the wider public.
23. In considering this point, the Commissioner recognises that different members of the public will have different degrees of access to the 'other information' which would be needed for re-identification of apparently anonymous information to take place. In the Code of Practice<sup>1</sup> on Anonymisation, he acknowledges that "...there is no doubt that non-recorded personal knowledge, in combination with anonymised data, can lead to identification."
24. The Council has provided the Commissioner with the withheld information and he is satisfied that should the information be released under FOIA, it is likely that the individual(s) involved could be identified.
25. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
26. The most relevant DP principle in this case is principle (a).

#### Legitimate interests

27. 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.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

28. The Commissioner is therefore satisfied that there is a legitimate interest in the requested information and will now go on to consider whether disclosure is necessary.

Is disclosure necessary?

29. 'Necessary' means more than desirable but less than indispensable or absolute necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question
30. The Commissioner is cognisant that disclosure under FOIA is disclosure to the world at large. It is the equivalent of the Council publishing the information on its website. When considering the necessity test, he is not therefore considering whether providing the information to the requestor is necessary to achieve the legitimate interest, but whether it is necessary to publish the information.
31. The Commissioner notes that the Council has provided the complainant with the amount spent to cover the whole period for the length of the residential care.
32. The requested information is not otherwise in the public domain, so disclosure would be necessary to achieve the legitimate interests in question.

Balance between legitimate interest and the data subject's interests or fundamental rights and freedoms

33. 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 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.
34. 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
35. 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.
36. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
37. The Commissioner considers that the individuals involved (both the children and their parents/guardians), have a strong and reasonable expectation that personal information about them will remain confidential.
38. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals involved. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.

## Right of appeal

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39. 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)

40. 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.
41. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**