

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2023

Public Authority: Seascale Parish Council

Address: clerkseascalepc@gmail.com

Decision (including any steps ordered)

1. The complainant has requested information with regards to parking. Seascale Parish Council (the council) provided the information it held redacting some information under section 43(2) of the FOIA – commercially sensitive, and section 40(2) – third party personal data. The council later removed its reliance on section 43(2) of the FOIA, providing that information.
2. The Commissioner's decision is that the council was correct to redact the information it has under section 40(2) of the FOIA.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 2 February 2023 the complainant made the following information request to the council via the WhatDoTheyKnow website:

“Please supply all relevant documents/ agreements/ contracts/invoices/ and or other documentation relating to the agreement to provide parking of cars from sellafield ltd (and all other companies based or contracted to the sellafield site) and Seascale parish council. This should include the beach front carpark and any other land owned or managed by Seascale parish council.”

5. The council responded on 10 February 2023, stating that a recent request was made and answered in full at a council meeting on 1 February 2023. It provided a link¹ to the minute meetings.
6. After viewing the link, the complainant responded on 10 February 2023 asking if the council is unable or unwilling to provide the requested agreement because it is commercially sensitive.
7. The council confirmed on 11 February 2023 confirming that the agreement is commercially sensitive and that it was unable to provide a copy.
8. The complainant requested an internal review on the same day as she considered that all information held by the council should be available to the public to view.
9. The complainant contacted the Commissioner on 21 February 2023 dissatisfied with the council's response to the request.
10. On the 2 March 2023 carried out its internal review. It provided a copy of the agreement, titled Sellafield contract along with the Sellafield contract Seascale Car Park Road marking Works.
11. The council redacted in the Sellafield contract the cost figure under section 43(2) of the FOIA – commercially sensitive and redacted personal data under section 40(2) of the FOIA.

¹ <https://www.seascaleparish.com/meeting-archives/>

Scope of the case

12. The complainant contacted the Commissioner further stating they consider the information should be released with no redactions.
13. During the Commissioner's investigation the council dropped its reliance on section 43(2) of the FOIA and provided the complainant with the financial cost figure.
14. The scope of the case is for the Commissioner to determine whether the council can rely on section 40(2) of the FOIA to redact the personal information it has from the Sellafield contract.

Reasons for decision

Section 40(2) of the FOIA – third party personal data

15. 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.
16. Section 3(2) of the Data Protection Act 2018 defines personal data as:
"any information relating to an identified or identifiable living individual."
17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. In this case, the information being withheld is the signature of the council clerk and the Director of Sellafield Limited and an address for the which is the address of a private individual. The Commissioner is satisfied that the redacted information is personal data as the information relates to and identifies an individual/s.
19. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:
"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. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
22. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
23. The Commissioner appreciates that there is a legitimate interest in the public knowing the address listed by the council in the contract and seeing who has signed the contract.
24. The council has explained that the address recorded in the contract for the council is a private individuals home address. The council itself does not have a physical address, so the private individual's was used for the sake of the contract.
25. The council has told the Commissioner that there would be no expectation that this address would be placed into the public domain. It says it has a publicly available council email address that is on its website to allow members of the public to contact it for council business. There is no need for the private individuals address to therefore be placed in the public domain.
26. With regards to the two signatures. The council has explained that the contract shows who signed it. The Clerk and the Sellafeld Limited Director. It does not consider that placing their signatures into the public domain is again something that either person would expect the council to do.
27. The council has told the Commissioner that the information that has been redacted is not in the public domain and not something that is required in the public domain in order to fulfil any council requirements.
28. Having considered the council's explanations for this case, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individual in this specific case and considers that there is no legal basis for the council to disclose the withheld information and to do so would be in breach of principle (a).
29. The Commissioners decision is that the council is entitled to rely on section 40(2) of the FOIA to redact the information it has.

Right of appeal

30. 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@justice.gov.uk

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

31. 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.
32. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF