

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 April 2023

Public Authority: **Harborough District Council**
Address: **The Symington Building**
Adam and Eve Street
Market Harborough
Leicestershire
LE16 7AG

Decision (including any steps ordered)

1. The complainant has requested information relating to an internal investigation into officers. Harborough District Council ("the Council") withheld the information under section 40(2) (personal information) and section 44 (statutory prohibition on disclosure) 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 as it is the personal data of third parties and disclosure would be unlawful.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 18 July 2022, the complainant wrote to the Council and requested information in the following terms:

“I would like to request a copy of the report that HDC published recently that looked into the circumstances of the purchase of a bungalow in Market Harborough by HDC for somewhere in the region of three times the then market value.”
5. The Council responded on 22 August 2022. It stated that the requested information was not held, as the specified report had not been published by the Council.
6. Following an internal review, the Council wrote to the complainant on 28 September 2022. It clarified that an unpublished report was held but stated that it was exempt under section 40(2) and section 44 of FOIA.

Reasons for decision

7. This reasoning covers whether the Council is entitled to rely on section 40(2) (personal information) of the FOIA to refuse to provide the requested information.
8. 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.
9. Section 3(2) of the Data Protection Act 2018 defines personal data as:

“any information relating to an identified or identifiable living individual.”
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. In this case, the complainant has requested an internal investigation report concerning the actions of officers around the Council’s purchase of property. This Commissioner understands from the Council’s internal review outcome that this report was received and discussed at a meeting of the Council’s Audit and Standards Committee in March 2022, and was referred to in a local newspaper article.
12. The Commissioner has reviewed the content of the report and considers that it will represent the personal data of council officers and members

of the public. This is because the report is focussed on the actions of those officers and members of the public in respect of a purchase of property by the Council. Whilst parts of the report are focussed on factual matters, the Commissioner is aware that the report has been created in the context of investigating potential officer misconduct, and that the content of the report is intrinsically linked to that investigation. As such, the Commissioner considers it appropriate to consider the report in its entirety to represent personal data.

13. The Commissioner is therefore satisfied that the requested information is the personal data of identifiable individuals – both of council officers and members of the public.
14. 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.”
15. 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.
16. 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.
17. 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.
18. However, having reviewed the content of the report, and having considered the circumstances and purpose for which the report was created, the Commissioner considers that the individuals referenced by the report would have a strong expectation that information about them would remain confidential.
19. The Commissioner also mindful that the Council has already confirmed to the public that the substantive matter is under investigation through the Audit and Standards Committee. This confirmation has provided transparency that the substantive matter is being investigated.
20. Having considered the above, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals who are the subject of the report.

Therefore, he considers that there is no legal basis for the Council to disclose the requested information and to do so would be in breach of principle (a).

21. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to withhold the requested information. As such, the Commissioner does not need to consider the Council's application of section 44. The Commissioner requires no further action to be taken by the Council in relation to this request.

Right of appeal

22. 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

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

23. 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.
24. 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
Wilmslow
Cheshire
SK9 5AF