

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2023

Public Authority: Mid and East Antrim Borough Council

Address: 1-29 Bridge Street
Ballymena
BT43 5EJ

Decision (including any steps ordered)

1. The complainant has requested information relating to payments made by the Council. Mid and East Antrim Borough Council ("the Council") disclosed information subject to some redactions under section 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the Council has correctly applied section 40(2).
3. The Commissioner does not require further steps.

Request and response

4. On 19 June 2022, the complainant wrote to the Council and requested information in the following terms:

“Under the freedom of information act I request the following information.

1) all direct award contracts for services acquired by council's communications department for the financial years 2018/2019, 2019/2020, 2020/2021, 2021/2022, 2022/2023. Request to include all services within communications department e.g. communications, pr, marketing, events, external support, etc. Provide a copy of each direct award contract.

2) listing of all supplier payments assigned to council's communications department for the financial years 2018/2019, 2019/2020, 2020/2021, 2021/2022, 2022/2023. Detail date of payment, supplier name, service provided.”

5. The Council responded on 9 September 2022. It disclosed information, subject to some redactions under section 40(2).
6. Following an internal review, the Council wrote to the complainant on 22 December 2022. It maintained the application of section 40(2).

Reasons for decision

7. This reasoning covers whether the Council is entitled to rely on section 40(2) (Personal information) of FOIA to refuse to provide some of 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 Council has redacted signatures, the names of junior officers (below the grade of Head of Service), the names of previous employees, the names of sole traders, and the names and email addresses of employees within limited companies.
12. The Commissioner has reviewed the withheld information and is satisfied that it will represent personal data.
13. 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.”
14. 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.
15. 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.
16. The Commissioner considers that the complainant is pursuing a legitimate interest – transparency around the Council’s expenditure of public monies, and that disclosure of the requested information is necessary to meet that legitimate interest.
17. However, the Commissioner also recognises that the request is seeing the personal data of past and present employees, and private individuals who are either sole traders or the employees of businesses.
18. The Commissioner notes that there is significant caselaw relating to such information, and which has consistently found that the rights and freedoms of those individuals must be protected save only in occasional situations where the legitimate interest is significant and overriding. This caselaw is reflected in the Commissioner’s guidance on section 40(2), and the decision notices that the Commissioner regularly issues on such

matters (e.g., for the personal data of officers, see IC-174200-P5G0¹; for the personal data of sole traders, see FS50812261²).

19. In the circumstances of this case, the Commissioner does not consider that any significant and overriding basis has been evidenced for the disclosure of the individuals' personal data. Whilst these individuals have been involved in transactions on behalf of the Council, or been engaged by the Council to provide services, this does not provide a default justification for their identities to become a matter of public record.
20. The Commissioner is also aware that the Council has otherwise disclosed all the requested information, including all the payments made by the Council. The Commissioner considers that this disclosure provides significant transparency about the Council's expenditure of public monies, and that this addresses the legitimate interest being pursued by the requester.
21. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals. Therefore, he considers that there is no legal basis for the Council to disclose the information and to do so would be in breach of principle (a).
22. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of FOIA to refuse to provide the information. The Commissioner requires no further action to be taken by the Council in relation to this request.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024465/ic-174200-p5g0.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2615540/fs50812261.pdf>

Right of appeal

23. 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

24. 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.
25. 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