

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 April 2023

Public Authority: London Borough of Richmond Upon Thames

Address: Civic Centre
44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. The complainant requested whether students who attended St Mary's University and lived at a specific address in council tax year 2018/2019, were subject to council tax liability by London Borough of Richmond-Upon-Thames (LBROT) Council and the amounts they were liable to pay. LBROT withheld the information, citing section 40(2) of FOIA as its basis for doing so.
2. The Commissioner's decision is that LBROT was entitled to withhold the requested information under section 40(2) of FOIA.
3. The Commissioner does not require LBROT to take any further steps to ensure compliance with the legislation.

Request and response

4. On 8 November 2022, the complainant wrote to the public authority and requested information in the following terms:

"Can you please provide (under an FOI request) the amount of council tax claimed by Richmond Council (and paid to Richmond Council) for the council tax year 2018/19 whereby students who attended St Mary's University (we are informed by [name redacted]) were in exactly the same position as [name redacted] and [name redacted]? This being; third-year students who lived at [address of redacted] and whose exams finished in May 2019."

5. LBROT responded on 21 November 2022. It stated that

"If your request is in relation to individual occupants of [property address redacted] during 2018/19 then this information would be personal information and exempt from release under Section 40 of the FOI Act.

If your request is in relation to the total of all students who attended St Mary's University in 2018/19, then the answer will be the same as for your previous request received on the 15/9/2022, as attached."

6. Following an internal review LBROT wrote to the complainant on 28 December 2022 and maintained its position. It also stated that

"I can however confirm that we have checked our records and confirm that charges have been applied correctly over previous years, where appropriate.

In terms of liability for council tax, your own case was treated no differently to how we treated other students back in 2018/19."

7. On 6 January 2023, LBROT further responded to the complainant providing a broader explanation for withholding the information requested and stated:

"Thank you for providing your contentions in relation to the application of section 40 of the FOI Act.

Whilst I appreciate that, on the face of it, the amount paid by unnamed, or anonymised residents may not be personal information, we must consider the likelihood that the individuals concerned could be identified.

In doing so, the Council will consider, what the ICO has described as the 'motivated intruder' test.

Essentially, this test requires an authority to determine whether someone with, or with the ability to obtain, additional information could identify an unnamed individual.

This is a particularly important test to carry out in the context of an FOI disclosure, which is considered a release 'to the world at large.'

In this instance, I am satisfied that various people with knowledge of the property and, more particularly the residents themselves, would be able to match the address and dates to establish the identities and thereby learn of their Council Tax exemption status.

Hopefully you appreciate that the Council needs to keep such matters private and these details would amount to the personal information of the individuals.

I do note your concerns relating to the fair treatment of the named students.”

Reasons for decision

Section 40 personal 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. 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.
11. 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.
12. 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 the FOIA cannot apply. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA.

Is the information personal data?

13. The Commissioner agrees that all the information being withheld can be categorised as personal data and that the individual(s) concerned (students or other individuals who lived at the property) can be identified from the information. This is because the student or other individual(s) can be identified from a search of the electoral roll using the residential address by those minded to do so. Redacting information

and disclosing the remainder would render the disclosed information meaningless.

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. The Commissioner has focussed here on Article 5 (1)(a) of the UK General Data Protection Regulation , which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”

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.

Legitimate interests

16. The Commissioner appreciates that, for personal reasons, the complainant has a legitimate interest in this information that would be met through disclosing the information.
17. The Commissioner also considers that the complainant’s legitimate interest as to how his council tax liabilities were determined was met through the information that LBROT has already provided through previous requests and correspondence.
18. LBROT stated that there is a legitimate interest of the public understanding of how they collected and determined the rates of Council Tax and applied exemptions and this is satisfied through the information published on its website.

Is disclosure necessary?

19. ‘Necessary’ means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
20. The Commissioner considers that in this case, the complainant is pursuing a legitimate interest as the request relates to the council tax (CT) liability of other third year students at St Marys University who resided at a certain address in the council tax year 2018/2019.

21. However, as LBRUT has disclosed how the CT liability is generally estimated and the factors or exemptions taken into consideration for students in their determinations in this regard to the complainant on a personal basis in previous correspondence, LBROT has already fulfilled the legitimate interest. Therefore, the Commissioner does not consider that disclosure of the requested information is necessary to meet the legitimate interest in this case.
22. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection.
23. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately conduct the balancing test and consider whether disclosure would be fair or transparent.
24. The Commissioner's decision is that LBROT is entitled to rely on section 40(2) of the FOIA to refuse to provide the requested information. The Commissioner requires no further action to be taken by LBROT in relation to this request.

Right of appeal

25. 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

26. 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.
27. 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

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