

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 August 2023

Public Authority: Newry, Mourne and Down District Council
Address: Monaghan Row
Newry, County Down
BT35 8DJ

Decision (including any steps ordered)

1. The complainant has requested information about dual language road signs from Newry, Mourne and Down District Council ("the Council"). The Council provided some information in response to the request and withheld the remainder under Section 40(2) (personal data) of the FOIA.
2. The Commissioner's decision is that the Council is entitled to rely on Section 40(2) to withhold the remaining information.
3. The Commissioner does not require further steps.

Request and response

4. On 16 May 2023, the complainant wrote to the Council and requested information in the following terms:

"I am writing to you under the Freedom of Information Act 2000 to request the following information from Newry, Mourne and Down District Council:

For all roads polled within the Council's jurisdiction for the erection of dual language signage, I kindly request the results for and against the proposition for those roads which had a majority in support of the erection of said signage.

Similarly, for those roads polled for the erection of dual language signage which had a majority opposing the erection, I request the respective results for and against.

I would also like to receive a comprehensive list of the dates related to dual signage requests. This should include the date each request was submitted, the date polls were held for each request, and the date of the erection of signs for each road requested in the Newry, Mourne, and Down District Council area.

In relation to requests for dual signage submitted by Councillors, could you please provide a breakdown of the total number of requests originating from each political party represented in the council.”

5. The Council responded on 26 May 2023. It provided the information described in the third paragraph of the request and refused to provide the application numbers by party and councillor. It also refused the breakdown of positive and negative returns for the number of roads polled citing section 40(2) (personal data) as its basis for doing so. The Council upheld its position at internal review.

Reasons for decision

6. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request.
7. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
8. The Commissioner has considered whether or not the withheld information is personal data. He recognises that small numbers carry a greater risk of identification than larger ones. However, that does not mean that every small number identifies any individual. Whether individuals can be identified will depend on the particular facts, such as the size of the overall dataset, the number of data points that have been requested and the information already in the public domain, that could potentially be cross-referenced with the disclosed information. It is not sufficient for there to be only a hypothetical risk of identification. If there is no realistic route to identification, the information is not personal data, regardless of its sensitivity.
9. When considering the possibility of identification, the Commissioner applies the “Motivated Intruder Test.” This test starts with a hypothesis

that there exists a person who wishes to identify the individuals covered by the disputed information. The person is willing to devote a considerable amount of time and resources to the process of identification. They may have some inside knowledge (i.e. information not already in the public domain) but will not resort to illegality – they are determined but not reckless. The Commissioner looks to see how such a person would go about identifying the individuals involved.

10. The Council have explained disclosure of the breakdown of returns could lead to the identification of individuals where there are small consultation numbers, or where local knowledge could be used to identify household responses.
11. In this case, the Commissioner is satisfied that the information is personal data.
12. In the case of a 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.
13. 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.
14. 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.
15. It is necessary to balance the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects. In doing so, it is necessary to consider the impact of disclosure.
16. In the Commissioner's view, a key issue when considering the balancing test is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals, taking into account whether or not they have consented to its disclosure.
17. In this case, the Commissioner considers that disclosing the withheld information may lead to the indirect identification of individuals. With regards to poll results and numbers of households, this information, combined with possible local knowledge, may also lead to the indirect identification of a third party. The Commissioner considers that those individuals would not expect the data to be disclosed to the public at large.

18. Based on the above factors, the Commissioner has determined that the fundamental rights and freedoms of the individuals outweigh the legitimate interest identified above. 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 Regulation.
19. As the Commissioner has determined it would not be lawful to disclose the requested information, it has not been necessary for him to consider whether disclosure is necessary. Therefore, it follows that the Council was correct to apply section 40(2) of FOIA to this request.

Right of appeal

20. 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

21. 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.
22. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
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SK9 5AF