

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 October 2023

Public Authority: Monmouthshire County Council
Address: County Hall
The Rhadyr
Usk
NP15 1GA

Decision (including any steps ordered)

1. The complainant submitted an information request to Monmouthshire County Council (the Council) for the correspondence in relation to their FOI request.
2. The Commissioner's decision is that the Council was entitled to rely on section 40(1) of FOIA to withhold the requested information.
3. The Commissioner does not require further steps as a result of this decision notice.

Request and response

4. On 27 June 2023, the complainant wrote to the Council and requested information in the following terms:

“Please can this request extend to all subsequent communication between officers regarding my FOI request.”
5. The Council asked for clarification on 27 June, and on 17 July 2023, a response was provided in which the Council withheld the information under section 40(1) of FOIA and regulation 13(1) of the EIR.
6. Upon receiving this response, the complainant asked the Council to conduct an internal review on 19 July 2023, and on 20 July 2023, the Council provided its internal review response, in which it reminded the complainant of its options of either to submit a subject access request (SAR), receive the correspondence in their role as a member of the authority or to contact the ICO.

Scope of the case

7. The complainant contacted the Commissioner on 10 August 2023 to complain about the way their request for information had been handled.
8. The Commissioner contacted the Council to clarify which legislation it was handling the request under. The Council confirmed it was FOIA and that section 40(1) was the most appropriate exemption. The Council also stated that the information requested had already been provided to the complainant, through being a member of the authority.
9. The Commissioner then wrote to the complainant to see if they were happy to withdraw their complaint. The complainant informed the Commissioner that they were unhappy that they had not been able to access the information in the way they initially requested.
10. The Commissioner has therefore considered the Council’s handling of the request, and why it was entitled to refuse the request under section 40(1) of FOIA.

Reasons for decision

Section 40-personal information

11. Section 40(1) of FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.
12. Section 3(2) of the DPA defines personal data as:
"any information relating to an identified or identifiable living individual".
13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
14. 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.
15. In this case, the complainant has requested the correspondence in relation to their own FOI request.
16. The Council informed the complainant that the information is exempt, as it contains the complainant's own personal data, and that it can be accessed under a SAR. Furthermore, the Council provided copies of the email correspondence, to the complainant, on 22 August 2023, via SharePoint, which is the standard corporate file sharing system, used across the authority, and of which the complainant is a member of.
17. The Commissioner has seen a sample of the withheld information and considers that the request is linked to the complainant. As such, any information the Council held, within the scope of the request, could only have been created in relation to the complainant's FOI request.
18. As there is no route to a requester's own personal data under FOIA, if the complainant is unhappy with the information received, they should challenge any exemption from disclosure under SAR.
19. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the balance of the public interest. Nor is he required to consider whether or not the complainant would be happy to have their personal data published to the world at large. If the exemption applies, the information is not available via FOIA.
20. The Commissioner is satisfied that any information which did fall within scope of the request would be the complainant's own personal data and therefore exempt from disclosure under section 40(1) of FOIA.

Right of appeal

21. 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

22. 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.
23. 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

Joanna Marshall
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