

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2023

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
SA31 1JP

Decision (including any steps ordered)

1. The complainant submitted a request to Carmarthenshire County Council (the Council) for information relating to road closures in regards to a hunt meet.
2. The Commissioner's decision is that the Council was correct to withhold the information under section 40(2) of FOIA. However, in failing to issue an appropriate refusal notice confirming the exemption, within the statutory timescale, the Commissioner has determined that the Council has breached section 17(1) of FOIA.
3. The Commissioner does not require further steps, as a result of this decision notice.

Request and response

4. On 7 March 2023, the complainant wrote to the Council and requested information in the following terms:

“A hunt meet took place on Monday 2 January 2023 in Carmarthen and an area was closed. Please find below the [redacted] Freedom of Information Act 2000 Request

 1. Was the area closed using the Road Traffic Regulation Act 1984 as Amended by the Road Traffic (Temporary Restrictions Act) 1991
 2. Please confirm the application date to Carmarthenshire County Council for road closure.
 3. Please confirm who applied to Carmarthenshire County Council for the road closure. Please provide the actual road closure application document.”
5. A response was provided on 24 March 2023, in which the Council provided a response, in relation to questions one and two and disclosed a redacted version of the road closure application form, in relation to question three.
6. The complainant contacted the Council to ask about the redactions made, and on 18 May 2023, the Council confirmed that the redactions were made under section 40(2) of FOIA.
7. Upon receiving this response, the complainant submitted an internal review request on 29 May 2023, and on 30 June 2023, the Council provided its internal review response, in which it maintained its original position.

Reasons for decision

Section 40(2)-personal information

8. Section 40(2) of FOIA 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 (DPA) 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 the Commissioner's guidance¹, it explains that for information to be classed as personal data, it must both identify an individual and relate to them. Having viewed the withheld information, the Commissioner is satisfied that it is personal data and would fall within the definition of section 3(2) of the DPA.
12. 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 focused here on principle (a) which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
13. 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.
14. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider if 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.
15. The Commissioner considers that the complainant is pursuing a legitimate interest in requesting a copy of the road closure application form. Therefore, disclosure of the requested information is necessary to meet that legitimate interest.
16. Furthermore, the Commissioner is aware that the complainant has previously been provided with some of the withheld contact details from an earlier request to the Council. However, the Commissioner must consider each case on an individual basis.
17. In balancing the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects involved, the Commissioner has not seen any evidence to suggest that the individuals involved would have a reasonable expectation that their personal data would be disclosed in response to an information request.

¹ <https://ico.org.uk/media/for-organisations/documents/2619056/s40-personal-information-section-40-regulation-13.pdf>

18. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful. He therefore has not gone on to separately consider whether disclosure would be fair or transparent.
19. The Commissioner finds that section 40(2) of FOIA is engaged in respect of the withheld information.

Procedural matters

20. Under section 17(1) a public authority that is relying on an exemption to withhold information, must issue a refusal notice within 20 working days.
21. As the Council did not provide a refusal notice specifying any exemptions being relied upon to withhold information, within 20 working days, it breached section 17(1) of FOIA.

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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF