

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 November 2023

**Public Authority:** Local Government Social Care Ombudsman  
**Address:** 53-55 Butts Road  
Coventry  
CV1 3BH

#### **Decision (including any steps ordered)**

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1. The complainant has requested the name of a Council officer. The Local Government Social Care Ombudsman ('LGSCO') refused to provide the requested information, citing section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that the requested information can be withheld under section 40(2).
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 25 August 2023 the complainant requested:

"1. Further to my earlier communication can you in accordance with EIR/FOI/GDPR send me a copy of the date stamped report and the communication that accompanied it when sent to the Council by the Inspector.

2. I request a copy of all related correspondence between the Council and the LGO which go to identifying the source of the document.

3. I request copies of the correspondence between the Council and the LGO regarding what was on the portal including the letter to the Inspector referrer (sic) in your officers decision notice.”
5. LGSCO responded on 25 August 2023. In relation to part 3 of the request, it disclosed information with the name of a Council officer redacted under section 40(2).
6. On 18 September 2022 the complainant requested an internal review, stating:

“I wish to seek a review of the decision to redact the names of the Council Planning Officers who sent emails to [REDACTED]. These are public servants in front office functions their names should be disclosed. There is no valid justification for such a redaction.”
7. Following an internal review LGSCO wrote to the complainant on 25 September 2023. It upheld its previous position.
8. The Commissioner understands the request relates to a complaint that the complainant made to the LGSCO.

## **Reasons for decision**

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### **Section 40 – personal information**

9. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
10. In this case the relevant condition is contained in section 40(3A)(a) . This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
11. 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's not personal data then section 40 of FOIA cannot apply.
12. 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.

13. The withheld information in this instance is the name of an officer at Northumberland County Council. A person's name is clearly their personal data.
14. However, the fact that information constitutes personal data doesn't automatically exclude it from disclosure under FOIA. The Commissioner must now consider whether disclosure of the requested information would contravene any of the data protection principles.
15. The most relevant data protection principle in this case is principle (a) which states that "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"<sup>1</sup>.

### **Would disclosure contravene principle (a)?**

16. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an FOI request if to do so would be lawful, fair and transparent.
17. In order to be lawful, one of the lawful bases listed in Article 6(1)<sup>2</sup> of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

### **Lawful processing: Article 6(1)(f) of the UK GDPR**

18. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data."

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<sup>1</sup> [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

<sup>2</sup> [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

19. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under FOIA, it is necessary to consider the following three-part test:
20. **i) Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;  
**ii) Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;  
**iii) Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject, which is the Council officer in this case.

The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

### **Legitimate interest test**

21. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may represent legitimate interests; they can be the requester's own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin FOIA, or may represent the private concerns of the requestor.
22. It's important to remember that disclosure under the FOIA is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).
23. At the time of requesting an internal review, the complainant explained that they want to ascertain the identify of the Council officer who communicated with the LGSCO about their complaint. The complainant is concerned that this Council officer may have been involved in the events that led to their complaint to the LGSCO and therefore it's a conflict of interest for them to be communicating with the LGSCO.
24. With the above in mind, the Commissioner is satisfied that there is a legitimate interest in disclosure of this information.

## **Necessity test**

25. The Commissioner must now consider if disclosure is necessary for the purpose that this legitimate interest represents or if there is an alternative method of doing so.
26. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under FOIA is necessary to meet the legitimate interest identified, or whether there is another way to do so that would interfere less with the privacy of individuals.
27. The Commissioner isn't convinced that disclosure is necessary in this instance to fulfil the legitimate interest of the request. The complainant's concern is that a conflict of interest has occurred during the handling of their complaint. This could be addressed via the complaints procedure of either the LGSCO<sup>3</sup> or the Council.<sup>4</sup> This would address the complainant's concerns without disclosure of personal data to the world at large.
28. However, he acknowledges that in order to bring a complaint to the LGSCO, the complainant may have already brought a complaint to the Council. He acknowledges that the requested information hasn't otherwise been made available to the public. For completeness, he will go onto consider the balancing test.

## **Balancing test**

29. If the data subject wouldn't reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
30. In performing this balancing test, the Commissioner has considered the following
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and

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<sup>3</sup> [Complaints about our service - Local Government and Social Care Ombudsman](#)

<sup>4</sup> [Northumberland Council Complaints \(complaintsdepartment.co.uk\)](#)

- the reasonable expectations of the individual.
31. In the complainant's view, 'All such officers will be aware that their names can be disclosed in relation to work activities.'
  32. However, the LGSCO confirmed to the complainant, 'I note the officer in question is not a planning officer, but the officer who is the link between us and the Council. Their role is to deal with our requests and to pass us information they have received. I cannot see any reason why they would have any involvement in any planning decisions. Bearing in mind their reasonable expectation we would not pass this information on I can see no grounds to release this information to you.'
  33. The Commissioner disagrees with the complainant; just because an individual is employed by the Council this doesn't mean that there is always a reasonable expectation that their personal data will be disclosed to the world at large.
  34. Furthermore, it appears the officer in question is just acting as a conduit between the Council and the LGSCO, for the purposes of addressing this complaint. The Commissioner therefore agrees with the LGSCO that the officer would be unlikely to expect that their personal data would be disclosed to the complainant in these circumstances.
  35. To summarise, the Commissioner isn't convinced that disclosure is necessary to fulfil the legitimate interest being pursued here. However, for completeness he has conducted the balancing test and determined that the rights and freedoms of the data subject outweigh the legitimate interest being pursued.
  36. The Commissioner therefore considers that there is no Article 6 basis for processing and so disclosure would not be lawful. For that reason the Commissioner hasn't gone on to separately consider whether disclosure would be fair or transparent.

## Right of appeal

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37. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**