

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2023

Public Authority: Burcot and Clifton Hampden Parish Council

Address: Clerkatcliftonhampden@gmail.com

Decision (including any steps ordered)

1. The complainant requested from Burcot and Clifton Hampden Parish Council ("the council") information relating to councillors' communications with the clerk, and information relating to a specialist who was employed to respond to the request for information. The council disclosed some information, but said that other information was not held. It also withheld other information under section 40(2) of FOIA.
2. The Commissioner's decision is that the public authority has breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days. However, he has decided that the council was correct to apply section 40(2) to redact personal data from the information it disclosed. He has also decided that no further information is held by it for the purposes of section 1 of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 22 May 2022, the complainant wrote to the council and requested information in the following terms:

“Please can you provide me with copies of all correspondence, documents, and emails that were either addressed to/from or copied to the Parish Clerk from members of the newly elected Parish Council between the period 5 April 2023 and 11 May 2023.”
5. The council responded on 17 August 2023. It disclosed copies of emails, however it redacted sections from these under section 40(2) of FOIA and Regulation 13 of the EIR. It confirmed that declarations of interests were published by South Oxfordshire District Council.
6. The complainant requested that the council carry out an internal review of its decision on 22 August 2023. The complainant also made a further request for details of a specialist which the council had employed to provide assistance in responding to the initial request. The complainant requested:
 - “A copy of the contract between the council and the ‘specialist assistance’ that clearly details the protection of my personal data.
 - A copy of the brief provided to the ‘specialist assistance’.”
7. Following an internal review, the council wrote to the complainant on 10 September 2023:
 - i. It provided copies of acceptance forms,
 - ii. said that the initial declaration of interests were drafts, and directed the complainant to the completed versions on South Oxfordshire District Council’s website
 - iii. disclosed draft and final meeting agendas, and the proposed list of councillor responsibilities,
 - iv. informed the complainant of the name of the specialist.

Scope of the case

8. The complainant contacted the Commissioner on 19 September 2023 to complain about the council’s response to their request.
9. They argued that the council did not disclose a copy of the declaration forms which were signed by the new councillors at the meeting (i.e., the initial declarations).

10. They also argued that they had not been provided with the minutes of the annual parish meeting, and that the council had not responded to their further requests about the specialist.
11. The complainant also complained about the application of section 40(2) or Regulation 13 of the EIR to the information in relation to the councillor's declarations of interest forms.
12. During the course of the investigation, the council copied the complainant into its response to the Commissioner's investigation letter. It disclosed copies of the draft declaration of interest forms which it holds, together with its response to other parts of the complainant's request for information, including notes which the clerk had taken at the Annual Parish Meeting.
13. The scope of the following analysis is therefore whether the council is likely, on the balance of probabilities, to hold further information for the purposes of section 1 of FOIA, and whether the council was correct to withhold or redact information under section 40(2) of FOIA from the correspondence which it initially disclosed to the complainant. The Commissioner will also consider whether the council complied with the requirements of section 10(1) of FOIA.

Reasons for decision

Section 1 – General right of access to information

14. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled—

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
15. The council argues that some of the requested information is not held by it.
 16. Section 1(1) requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.

17. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
18. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.
19. The question for the Commissioner to determine is whether information is **actually** held by the council; not whether it **should** be held.

The complainant's position

20. The complainant argues that the council, has not provided all of the information which it holds which falls within the scope of the request.

The council's position

21. The council confirmed that the minutes for the Annual Parish Meeting have not yet been drafted by the clerk. As such they are not held by it. It disclosed copies of the clerks notes of the meeting to the complainant which refer to this meeting.
22. The council further confirmed that although draft declaration of interests forms are held by it, the copies which were signed by councillors on 11 May 2023 were sent to the Monitoring Officer of South Oxfordshire District Council, who is required to collect and publish these¹. The only copies which are held by it are draft documents which were sent as attachments to emails. It disclosed copies of these to the complainant when it responded to the Commissioner's investigation questions.
23. The council confirmed that the 'brief to the expert' does not exist. Advice was made by telephone. It also confirmed that the only contract with the expert is a verbal one. Therefore, no information is held by it.

¹ <http://democratic.southoxon.gov.uk/mgParishCouncilDetails.aspx?ID=218&LS=1>

24. The council confirmed that the clerk has carried out searches on her PC for relevant information, and all councillors were asked to also carry out searches for relevant information on their own personal equipment and files.

The Commissioner's conclusion

25. The Commissioner has considered the complainant's arguments together with the council's arguments in support of its position that no further information is held by it.
26. The council has confirmed to the Commissioner that no further information is held. It has explained why that is the case, and has described the searches it has undertaken to identify if any further information is held by it. It has concluded that there is no further information is held. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
27. On this basis, the Commissioner has concluded that, on the balance of probabilities, no further information is held by the council which is not subject to an exemption.

Section 40(2) personal information

28. The following analysis explains why the Commissioner is satisfied that the public authority was entitled to apply section 40(2) of FOIA to redact personal data from the information it disclosed.
29. Section 40(2) of FOIA allows a public authority to withhold personal data if one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
30. The first question for the Commissioner is whether the redacted information is personal data. The redacted information is primarily the names of members of the public, and the names and private email addresses of councillors from correspondence which took place prior to them commencing their term of office on 8 May 2023. Other information which has been redacted is the names of third-party individuals who are identifiable from their names as the parish council only covers a small area.
31. The Commissioner is satisfied that the requested information is personal data. It relates to the private email addresses of identifiable individuals, such as the contact details of various councillors. It is also the names of private individuals who can be identified from the information if it is disclosed without redaction.

32. 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 focussed here on principle (a), which states:

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

33. Personal data is processed when it is disclosed in response to an FOI request. Therefore, the information can only be disclosed if to do so would be lawful, fair, and transparent
34. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in the information being disclosed, and whether that legitimate interest overrides the rights and freedoms of the individuals whose personal information it is. The Commissioner must also decide whether the disclosure is necessary, or whether the legitimate interests identified could be met in another way.
35. The complainant, and the wider public, have a legitimate interest in understanding information about new councillors. Councillors are public representatives who play an important role in decision making and democracy; their decisions affect the local community. The public therefore has a legitimate interest in knowing more about councillors' private interests in order to reassure themselves that their decisions and actions are taken appropriately and with the best interests of the wider community in mind.
36. The Commissioner is satisfied that it would be necessary to disclose the information in order to fully meet the requirements of the complainant's request for information.
37. The Commissioner must therefore balance this legitimate interest against the rights and freedoms of the individuals whose data has been withheld.

Balancing the legitimate interests

38. Having considered the withheld information, the Commissioner has decided that in this case the condition at section 40(3A)(a) is met as a disclosure of the information would contravene data protection principle (a).
39. The Commissioner has decided this by assessing whether there is a lawful basis for processing the requested information under Article 6(1)(f) of the UK GDPR.

40. He has determined that, whilst the complainant has a legitimate interest in disclosure, and disclosure would be necessary to satisfy that interest, there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms.
41. The Commissioner has determined this by balancing the legitimate interest of the complainant against the fact that the individuals concerned would have a reasonable expectation that their information would not be disclosed to the public.
- The final versions of the declarations of interest forms have been published on South Oxfordshire District Council's website, and the draft versions held by council were disclosed during the Commissioner's investigation. No information has therefore been withheld in respect of these.
 - The councillors would not expect that their private email addresses would be disclosed in response to an FOI request. As disclosures under FOIA are considered to be to the whole world, a disclosure of the private email addresses risks unwanted and unwarranted communications being received by the individuals on their private email addresses. Issues such as phishing attempts may increase as a result of the wider publication of their addresses.
 - It is not necessary for the public to have access to councillors' private email addresses as they are able to contact the council and councillors via the formal means provided.
 - The council confirmed that it has set up council email addresses now the individuals are in place, and so it is not necessary for that information to be disclosed in order to meet the legitimate interests identified.
 - The Commissioner has identified no legitimate interests in the names of members of the public being disclosed beyond the transparency of the documents generally. Given that they would not expect their details to be disclosed, the Commissioner considers that the rights and freedoms of the members of the public outweighs the legitimate interests identified.
42. As the Commissioner has concluded that disclosure would not be lawful under Article 6(1)(f) of the UK GDPR, he has not gone on to separately consider whether disclosure would be fair or transparent.
43. The council was therefore correct to apply section 40(2) to withhold the information from disclosure.

Section 10 – time for compliance

44. Section 10(1) of FOIA provides that FOIA requests should be responded to within 20 working days of the day after the receipt of the request.
45. The complainant made the request for information on 22 May 2022. The council's initial response to the request was outside of the 20 working days, on 17 August 2023,
46. The council also disclosed further information to the complainant with its response to the Commissioner dated 1 December 2023.
47. The Commissioner's decision is therefore that the council did not comply with the requirements of section 10(1) of FOIA.

Right of appeal

48. 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

49. 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.

50. 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

Ian Walley
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