

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2024

Public Authority: Bournemouth, Christchurch and Poole Council
Address: BCP Council Offices
Town Hall
Bourne Avenue
Bournemouth
BH2 6DY

Decision (including any steps ordered)

1. The complainant requested information from Bournemouth, Christchurch and Poole Council ("the Council") regarding the qualification and training records of individuals who had carried out risk assessments at a golf course. The Council withheld the requested information under section 40(2) of FOIA (personal information).
2. The Commissioner's decision is that the Council is entitled to withhold the requested information under section 40(2) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 25 September 2023 the complainant made the following request for information, in relation to the preventative measures that are in place at Queens Park Golf Course to prevent stray golf balls from causing damage, injury or death to users of the A338 dual carriageway adjacent to the 10th tee:

"...the qualification and training records for any persons carrying out the risk assessment and making the determination that thin immature deciduous tree planting alone is capable of stopping tee driven golf balls."

5. The Council responded on 5 October 2023. It refused to provide the requested information, citing section 40(2) of FOIA (personal information) as its basis for doing so.
6. The complainant requested an internal review, suggesting the Council provide the information requested with names and any other personal data redacted.
7. Following an internal review the Council wrote to the complainant on 20 October 2023. It maintained its original position, stating that the Council considered the information requested to be exempt from disclosure under section 40(2) of FOIA.

Reasons for decision

Section 40(2) – Personal information

8. This reasoning covers whether the Council is entitled to rely on section 40(2) (personal information) of FOIA to refuse to provide the requested information.
9. Section 40(2) 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.
10. Section 3(2) of the Data Protection Act 2018 defines personal data as:
“any information relating to an identified or identifiable living individual.”
11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. In this case, the withheld information comprises the qualification and training records for a small number of staff/former staff. The Council argues that even if names were removed this information cannot be anonymised effectively as due to the small number of individuals involved in carrying out the risk assessments the staff members /former staff members would be identifiable.
13. The Commissioner is unable to go into further detail to explain exactly how the individuals concerned could be identified if the information was disclosed without their names as to do so may itself identify the individuals concerned. However, he accepts the Council's

representations that the information could not be effectively anonymised because of the small number of individuals involved.

14. The Commissioner is satisfied that the withheld information is personal data as the information relates to and identifies the staff members /former staff members for the reasons given by the Council.
15. 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.”
16. In the case of an 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.
17. 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.
18. The Commissioner considers that the complainant is pursuing a legitimate interest. However, the Commissioner does not consider that the disclosure of the requested information under FOIA is necessary to meet the legitimate interest.
19. “Necessary” means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and therefore disclosure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
20. The Council has stated that the complainant has issued legal proceedings against the Council, due to a golf ball having hit their windscreen, and that the complainant can seek the requested information through the legal process. The information would then be provided to the complainant in confidence, rather than disclosed to the world at large under FOIA. As this alternative, less intrusive means of obtaining the information is available to the complainant, the Commissioner considers that disclosure under FOIA is not necessary.
21. As disclosure of the requested information under FOIA is not necessary to meet the legitimate interest, there is therefore no legal basis for the Council to disclose the requested information and to do so would be in breach of principle (a). The Commissioner’s decision is therefore that the

Council is entitled to rely on section 40(2) of FOIA to withhold the requested information.

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.

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