

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

### **Decision notice**

**Date:** 24 October 2024

**Public Authority:** Cardiff Council  
**Address:** County Hall  
Atlantic Wharf  
Cardiff  
CF10 4UW

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

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1. The complainant has requested information from Cardiff Council (the Council), regarding a gating proposal for an alley at a specific location. The Council disclosed information in scope of the request and explained that it had redacted information relating to third parties under section 40(2) – personal information.
2. The Commissioner's decision is that the Council was entitled to withhold the redacted information under section 40(2) of FOIA.
3. The Commissioner does not require any steps as a result of this decision.

## Request and response

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4. On 18 April 2024, the complainant requested information in the following terms:

"I would like to make a Freedom of Information Request to be supplied with all information that has been collected for the proposed gating of alley to the rear of Greenfield Avenue, Canton and that has been referred to as "Based on the information gathered" by the Assistant Regeneration Officer (redacted). I also request other documentations and internal correspondence in relations to this matter of the proposed gating of alley to the rear of Greenfield Avenue, Canton."

5. The Council responded on 15 May 2024. It disclosed some information in scope of the request and advised that information pertaining to third-party individuals was being withheld under section 40(2) of FOIA – personal information.
6. Following an internal review on 5 June 2024, the Council gave an explanation of the information disclosed to help clarify this for the complainant. It also disclosed some general information that had been previously redacted but upheld its original position for third-party personal data.

## Scope of the case

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7. The complainant contacted the Commissioner on 27 June 2024, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of the investigation is to determine if the Council correctly withheld the information under section 40(2) of FOIA.

## Reasons for decision

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### Section 40(2) – third party personal data

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 is not personal data, then section 40 of the FOIA cannot apply.
12. Secondly, 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.

### **Is the information personal data?**

13. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual."

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. Having considered the nature of the withheld information, which includes that of lower-level officers of the Council and other public authorities, and residents in the local area, the Commissioner is satisfied that the information relates to individuals. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
16. The complainant has argued that the information has already been released into the public domain and therefore releasing the same would not contravene data protection principles.
17. Some of the withheld information does not directly identify an individual. However, because the complainant resides within the area concerned, the Commissioner has considered whether this information, when combined with other information either already in the public domain, or known to particular individuals, may make identification possible. The Council has expressed concern that individuals could be identified from their comments and be subject to verbal or physical harm as a result by others in the community who have differing views. It also added that comments were provided in confidence.
18. The Commissioner is aware that disclosure under FOIA is considered as being made to the world at large, rather than to the requester only, and this includes to those individuals who may have a particular interest in the information (and additional knowledge of the specific circumstances of those involved) which is not shared by the wider public.

19. In considering this point, the Commissioner recognises that different members of the public will have different degrees of access to the 'other information' which would be needed for re-identification of apparently anonymous information to take place. In the Code of Practice<sup>1</sup> on Anonymisation, he acknowledges that "...there is no doubt that non-recorded personal knowledge, in combination with anonymised data, can lead to identification."
20. The Commissioner considers that other individuals will have different levels of knowledge of the Council, the members of staff, and the general area. If the information were to be released by the Council, using the other information, individuals could be identified.
21. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
22. The most relevant DP principle in this case is principle (a).

#### Legitimate interests

23. 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 be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interests can include broad general principles of accountability and transparency, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate.
24. The requester wishes to know the names of officers to be able to identify them as he believes they have influenced a planning decision with their statements. The Commissioner therefore accepts that the complainant has a legitimate interest in the information.

#### Is disclosure necessary?

25. 'Necessary' means more than desirable but less than indispensable or absolute necessity and involves consideration of alternative measures

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<sup>1</sup> [Anonymisation: managing data protection risk code of practice \(ico.org.uk\)](https://ico.org.uk)

which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

26. The Commissioner is aware that disclosure under FOIA is disclosure to the world at large. It is the equivalent of the Council publishing the information on its website. When considering the necessity test, he is not therefore considering whether providing the information to the requestor is necessary to achieve the legitimate interest, but whether it is necessary to publish the information.
27. The Commissioner notes that the Council has demonstrated that there are a number of individuals that the request relates to, which includes its own officers and residents in the local area concerned, as mentioned above, as well as employees from other public authorities. He is therefore satisfied that disclosure of the withheld information is necessary to meet the requester's legitimate interests.

Balance between legitimate interest and the data subject's interests or fundamental rights and freedoms

28. It is necessary to balance the legitimate interests in disclosure against the individual's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the individual would not 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.
29. In considering this balancing test, the Commissioner has taken into account the following factors:
  - 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 individuals expressed concern to the disclosure; and
  - the reasonable expectations of the individuals.
30. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

31. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to those individuals mentioned previously, that is officers of the Council below a senior level, and non-customer facing, as well as those individuals whose personal email addresses are included within the consultation documents.
32. The Commissioner considers that the individuals involved (both employees and residents), have a strong and reasonable expectation that personal information about them will remain confidential and indeed have been promised a level of confidentiality when engaging with the Council.
33. The Commissioner accepts that there is an expectation that the personal information of individual residents and public authority employees at a non-customer facing, and non-senior level will remain private. The Commissioner has seen no indication that the data has been made public by the individuals.
34. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals involved. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
35. Given the above, the Commissioner is satisfied that the Council is entitled to withhold information in scope of the request under section 40(2) of FOIA.

## Right of appeal

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36. 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)

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Joanna Marshall**  
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