

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2024

Public Authority: Broxbourne Borough Council
Address: Bishops' College
Churchgate
Cheshunt
EN8 9XQ

Decision (including any steps ordered)

1. The complainant has requested a copy of a receipt for the purchase of a burial plot from Broxbourne Borough Council ("the council").
2. The council refused to disclose the requested information citing section 40(2) of FOIA (third party personal information). The Commissioner's decision is that the council has correctly relied on section 40(2) of FOIA to withhold the information.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 26 March 2024, the complainant wrote to the council and requested information in the following terms:

"The receipt for 56 OW was never supplied. (Name redacted) has checked our records and the only document supplied was for plot 86 OY. The council insist on not responding to enquiries and the labelling them vexatious when as (Name redacted) advised Mr (Name redacted), (Name redacted) would have no reason to email the council other than for information as and when needed.

A simple acknowledgement and then disclosure would mean the matter would be resolved for now.

(Name redacted) is requesting the following information under the FOI.

The receipt for plot 56OW.”

5. The council responded on 26 March 2024. It refused to provide the requested information citing Section 40(2) of FOIA.
6. On 26 March 2024, the complainant wrote to the council and stated:

“The bank details do not belong to (Name redacted). As I've advised previously the cemetery team were made aware of this and were shown proof this was the case. The details don't belong to a third party they belong to me so if you was to disclose them to (Name redacted) then this would be a data protection breach as I do not consent to the council processing these details.

Why do you say the details belong to a third party when they don't?

The council have seen proof these details don't belong to Name redacted however if it will help then I am happy to meet with you and provide you the same proof I provided them.

Please advise what works best but to be clear the bank details are not (Name redacted's) and if the council disclose these to him then (Name redacted) will not hesitate to take legal action against the council. (Name redacted) does not consent to the council processing this information.”

7. On 26 March 2024 the complainant requested an internal review stating

“Please request a internal review as it is clear that the council are now making up policy as they go along. My bank details are not the property of (Name redacted), it was not a joint account, and he was not authorised to act on my behalf when it comes to financial purchases.

I do not consent to Broxbourne Council processing this information nor do I consent to them sharing it with Name redacted”.

8. Following an internal review the public authority wrote to the complainant on 12 April 2024. It upheld its position stating

“I can confirm the Council does hold this document; however, we are unable to provide you with this information as it includes personal information relating to a third party which would be contrary to S40 (2) of the Freedom of Information Act 2000.

I have reviewed the Council's response and uphold their decision to not divulge the information as it contains personal data of a third party.

If the Council release the receipt, it will be heavily redacted and there would be no information on the page.

You state that the payment information was your own. However, as the payment was made by another party the Council is unable to confirm nor deny whether this is true. Please refer this matter to the Police if you believe there has been fraud and/or theft committed by this person. The Council is happy to cooperate with the Police."

Scope of the case

9. The complainant contacted the Commissioner on 22 May 2024 to complain about the way her request for information had been handled.
10. The complainant believed that the requested information may also contain some of her own information as she believes that the payment was made using her payment card. She was concerned that this would be disclosed to the third party without her consent stating:

"if the third party who made the payment applies for the receipt then I am concerned they will disclose this unredacted breaching my GDPR. I would like the organisation to disclose the receipt with the card number unredacted and then restrict it from processing."
11. The Commissioner considers that the scope of his investigation is to establish whether the public authority is entitled to withhold the requested information under section 40(2) of FOIA

Reasons for decision

Section 40 - personal information

12. 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.
13. 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').

14. 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 FOIA cannot apply.
15. 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.

Is the information personal data?

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

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

17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
19. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
20. In the circumstances of this case, and having considered and seen the withheld information, the Commissioner is satisfied that the information identifies and relates to an identifiable living individual and contains personal information about them.
21. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
22. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
23. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

24. Article 5(1)(a) of the UK GDPR states that:

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

25. 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.
26. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

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

27. 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, in particular where the data subject is a child”¹.

28. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-
 - 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.

¹ Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

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

Legitimate interests

30. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
31. Further, 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. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
32. The complainant believes that as payment for the burial plot was made with her payment card, that the receipt also contains her personal information and therefore she has a legitimate interest in its disclosure and any applicable GDPR legislation redactions and restrictions on how it is disclosed to a third party request.
33. The Commissioner accepts that the complainant has a personal and legitimate interest in receiving this information, but considers that this is a purely private concern and appears to be related to a private dispute by two individuals and, therefore, unrelated to any broader public interest.

Is disclosure necessary?

34. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures 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.
35. The council explained that on 25 August 2023 following a subject access request (SAR), it had provided the complainant with a file containing a number of redacted documents related to the purchase of a burial plot, which included a redacted copy of the receipt 560W stating:

"The purchase of the grave plot was made over a telephone call and paid for using a debit or credit card with the card number given over the phone. The Council did not provide an unredacted copy of the receipt for 560W as the details on the receipt had the personal data of (Name redacted)."

36. The council further explained that it did not determine further whether the card user and individual providing personal details for the receipt was the owner of any debit or credit cards used at the time of the purchase.
37. As the council has already disclosed a redacted version of the information to the complainant via a SAR, it has already partly fulfilled the legitimate interest, however, this will not address the concerns of the complainant that it is her payment card which was used to purchase the burial plot, and that there is a possibility that her own personal information would be disclosed to a third party should they request it and be a breach of UK GDPR legislation. Therefore, the Commissioner accepts that disclosure of the requested information is necessary to meet the personal and legitimate interest in this case.

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

38. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject 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.
39. 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 individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
40. 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.

41. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
42. Turning specifically to this case, whilst the Commissioner acknowledges the complainant's reasons for requesting the information and the general legitimate interest in transparency about this matter, he is not satisfied that there would be a demonstrable public interest in the requested information.
43. Release of information under FOIA is effectively a disclosure to the general public, not just to the person making a request. The fact that a person might need the information for their own particular purposes is not a relevant consideration; public authorities may only consider whether information being requested under FOIA can be released into the public domain.
44. The Commissioner also considers that the individuals (both the complainant and name redacted) whose personal information is on the receipt would have a strong and reasonable expectation that personal information about them will remain confidential. In particular, the complainant has confirmed to the Commissioner that they have concerns about the disclosure of their personal data to other individuals. If the council were to disclose this information under FOIA, it would have to disclose it to anyone who asked. Public authorities cannot pick and choose who they disclose information to under FOIA.
45. In its submissions to the Commissioner, the council confirmed that it had not received consent from the relevant data subject to disclose the information.
46. For the above reasons, the Commissioner considers that the legitimate interest in disclosure is not sufficient to override the expectation of privacy of the data subjects in this case. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
47. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.

Other matters

48. The Commissioner has considered the complainant's comments about the way that their request has been handled but has noted that the complainant's main concern is about the accuracy and ownership of the

recorded payment information, disputed consent and potential for a breach of the UK GDPR legislation should it be disclosed to the third party.

49. FOIA is solely concerned with access to information and does not address the accuracy of any of the information obtained and recorded in good faith at the time it was received and later provided in response to an information request. A public authority will have complied with its obligations under FOIA where it has provided the information it holds in relation to a request irrespective of whether that information is accurate or not.
50. The Commissioner appreciates that the complainant may have concerns that her payment details were used without her consent, and that the council may disclose these details to a third party but the FOIA legislation is not the most appropriate legislation to address these concerns. Confirmation of whose payment card was used for the transactions can be confirmed via the bank statements and bank accounts of all parties.
51. Additionally, any complaints or allegations of identity fraud are outside the scope of FOIA and beyond what the Commissioner can investigate as part of his remit and would need to be referred to the appropriate law enforcement agencies for investigation.

Right of appeal

52. 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

53. 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.
54. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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