

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 December 2024

Public Authority: North Yorkshire Council
Address: County Hall
Racecourse Lane
Northallerton
North Yorkshire
DL7 8AD

Decision (including any steps ordered)

1. The complainant requested information held by North Yorkshire Council (the council) about a parking permit application that they believe to have been submitted by a particular individual.
2. The Commissioner's decision is that the council is entitled to rely on section 40(5B)(a)(i) (personal information) of FOIA to refuse to confirm or deny whether it holds the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 8 May 2024, the complainant wrote to the council and requested information in the following terms:

"Under the Freedom of Information Act please can you tell me the date when [name redacted], or [redacted] company was added to the waiting list for the Brick Hills car park in Robin Hood's Bay."
5. On 6 June 2024, the council issued a refusal notice, citing section 40(5B)(a)(i) of FOIA. The council advised the complainant that to confirm whether or not it held the requested information would breach "one or more data protection principles." The council's internal review

response confirmed that it maintained its position to neither confirm nor deny whether it held the requested information.

Reasons for decision

6. The reasoning that follows covers whether the council is entitled to rely on section 40(5B)(a)(i) of FOIA as its basis for issuing a refusal notice which neither confirmed nor denied whether the requested information is held.

Section 40 – personal information

7. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR') to provide that confirmation or denial.
8. For the council to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, the following two criteria must be met:
 - Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and,
 - Providing this confirmation or denial would contravene one of the data protection principles.

Would the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?

9. Section 3(2) of the DPA 2018 defines personal data as:

"any information relating to an identified or identifiable living individual".
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. 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.
12. The council advised that to confirm or deny whether the requested information was held, would constitute disclosure of a third party's personal data and therefore contravene one of the data protection principles.

13. The council has said that if the requested information was held, it would relate to a private individual (a named person who has applied for a car park permit).
14. It is the Commissioner's view that if the council were to confirm or deny whether it held the requested information, it would be disclosing to the wider world whether or not a particular individual had submitted a parking permit application. As far as he is aware, this is information that would not routinely be placed in the public domain.
15. The Commissioner is therefore satisfied that confirming or denying whether the information is held constitutes the disclosure of a third party's personal data.
16. The fact that confirmation or denial constitutes the disclosure of 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 confirmation or denial would contravene any of the DP principles.
17. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

18. 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."
19. In the case of a 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.
20. 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.
21. In addition, if the requested data is special category data, in order for disclosure to be lawful and compliant with principle (a), it also requires an Article 9 condition for processing.

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

22. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.

23. 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

24. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the 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 confirmation or denial that the information is held 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.

25. 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

26. In considering any legitimate interest(s) in the confirmation or denial that information is held, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's

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 and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) 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".

own interests or the interests of third parties, and commercial interests as well as wider societal benefits.

27. These interest(s) can include broad general principles of accountability and transparency for their own sakes, 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. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
28. The complainant has said that they are concerned that the council's allocation of parking permits may be unfair, and that priority is given to certain individuals. The complainant has said that they believe that they have been on the waiting list for a parking permit for a longer period of time than the individual named in their request, and that despite this, the relevant individual has received a permit before them.
29. In this case, the complainant has an interest in the parking permit allocations made by the council. Whilst the Commissioner considers that the complainant's interest is primarily a private concern, he also recognises that there is a broader legitimate interest in transparency regarding the allocation of parking permits.

Is disclosure necessary?

30. '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.
31. The Commissioner recognises that the complainant has a valid interest in the requested information, however he is not convinced that disclosure is necessary in this matter to meet the legitimate aims above.
32. The council has said that it has previously explained to the complainant its current policy, which is that full time residents of Robin Hoods Bay take priority over any other applicant when issued with a permit. If there are no full-time residents of Robin Hoods Bay on the waiting list when a permit becomes available, it will be offered to other applicants. The council says that the permit is issued to a vehicle registration for a specific space and does not contain any other information regarding the applicant.
33. The Commissioner notes that the council [publishes](#) details of the parking permit application and allocation process on its website.

34. If the complainant considers that the council is not allocating parking permits correctly and fairly, and that this has had an impact on their own application, the Commissioner considers that there will be other, more appropriate routes through which they can raise their concerns with the council, or possibly the local Government and Social Care Ombudsman (if they remain dissatisfied after exhausting the council's complaint's process). Such routes would not involve disclosing other people's personal data to the wider world under FOIA, which the Commissioner considers would be unnecessarily intrusive.
35. The Commissioner has therefore decided in this case that confirmation or denial is not necessary to meet the legitimate interest in disclosure, and he has not gone on to consider the balancing test. As confirmation or denial is not necessary, there is no lawful basis for this processing, and it is unlawful. It therefore does not meet the requirements of principle (a).
36. Given the above conclusion that confirmation or denial would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether confirmation or denial would be fair or transparent.
37. The Commissioner has therefore decided that the council correctly relied on section 40(5B)(a)(i) of FOIA to neither confirm nor deny it holds information within scope of the request.

Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF