

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2024

Public Authority: Barwell Parish Council
Address: 10 High Street
Barwell
Leicestershire
LE9 8DQ

Decision (including any steps ordered)

1. The complainant requested all correspondence between the Clerk of Barwell Parish Council (the Council) and the Clerk of Witherley Parish Council. The Council informed the complainant that it does not hold any relevant information. The Commissioner's decision is that the request would be the complainant's own personal data and would be exempt from disclosure under section 40(1) of the FOIA. The Commissioner does not require the Council to take any steps.

Request and response

2. On 4 February 2024, the complainant wrote to the Council and requested the following information:

"...the complete set of notes, correspondence/text-email exchange between yourself and [name redacted by the ICO] the clerk of Witherley Parish Council, informing [name redacted by the ICO] of my presence as a member of the public at the Barwell Planning and Parish Council meetings on Thursday 1st February 2024."
3. The Council responded on 9 February 2024. It stated that it has no correspondence that meets the criteria requested.
4. Following an internal review the Council wrote to the complainant on 3 April 2024 upholding its original decision. It also informed the

complainant that any further communication may be considered vexatious in intent and no further communication may be considered under section 14 of the FOIA.

Scope of the case

5. The complainant contacted the Commissioner on 18 June 2024 to complain about the way their request for information had been handled and was not satisfied with the Council's response that it does not hold relevant information.
6. The Commissioner has used his discretion to determine whether the request is a request for the complainant's own personal data.

Reasons for decision

Section 40(1) – personal data of which the applicant is the data subject

7. Section 40(1) of the FOIA provides that any information to which a request for information relates, is exempt information if it constitutes personal data of which the requester is the data subject.
8. The Commissioner's guidance is clear that a requestor's own personal data should not be disclosed under FOIA or the EIR. Instead, public authorities should handle this aspect of the request as a subject access request (SAR) under the UK GDPR or the DPA, as applicable.
9. This reasoning covers why the Commissioner has determined that the requested information would be the complainant's own personal data and therefore, exempt from disclosure under section 40(1) of FOIA.
10. Section 3(2) of the DPA 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. 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.

13. 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.
14. The Commissioner has viewed the request and is satisfied that it relates to, and would identify the complainant. The complainant has clearly asked for their own information in the request using terms such as "my presence as a member of the public at the Barwell Planning and Parish Council meetings..."
15. The Commissioner's conclusion is therefore that the request would be the complainant's own personal data and it is exempt from disclosure under section 40(1) of FOIA.
16. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the public interest. He is also not required to consider whether or not the complainant would be content to have their personal data disclosed to the world at large.

Other matters

17. In this case, the Council failed to recognise that the complainant had requested their own personal data and did not consider the request under the Data Protection Act 2018 (the DPA).
18. Whilst the Commissioner cannot require a public authority to take action under the DPA via an FOIA decision notice, in view of his decision that the requested information is the personal data of the complainant, the Council should consider providing a response to the complainant under the DPA in respect of the information they requested
19. The Commissioner would point out that this does not necessarily mean that the complainant is entitled to receive any relevant information. There are a number of reasons why a data controller may be entitled to withhold information from disclosure under a Subject Access Request (SAR).

Right of appeal

20. 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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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