

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

### **Decision notice**

**Date:** 18 December 2024

**Public Authority:** Wanborough Parish Council  
**Address:** Hoopers Field  
Rotton Row  
Wanborough  
Swindon  
SN4 0AN

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

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1. The complainant has requested a copy of a resignation letter from a former Parish Councillor. Wanborough Parish Council (the Council) withheld the information under section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that the Council was correct to apply section 40(2) of FOIA to withhold the resignation letter.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 13 June 2024, the complainant wrote to the Council and requested information in the following terms:  

"Pursuant to the FOI Act please could I request a copy of the resignation letter / email of former Cllr [name redacted]."
5. The Council responded on 28 June 2024. It cited section 40(2) (personal information) of FOIA to withhold the resignation letter.

6. Within its response, the Council stated that the complainant had a right to request a review, however it went on to say that it would be inappropriate for it to carry out an internal review in this case.

## **Reasons for decision**

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7. The following analysis will cover whether the Council was correct to apply section 40(2) of FOIA to withhold the requested information.

### **Section 40 - personal information**

8. 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.
9. 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').
10. 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.
11. 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?**

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

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

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
14. 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.

15. 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.
16. The withheld information is a resignation letter from a former Parish Councillor. The Commissioner's view is that it is clear that this letter both relates to and identifies the former Parish Councillor because they are the author of the letter, the content includes their name and their reasons for their resignation. It is therefore, their personal data in accordance with the definition in section 3(2) of the DPA.
17. The Commissioner is therefore satisfied that the withheld information falls within the definition of 'personal data' in section 3(2) of the DPA.
18. The fact that information constitutes the personal data of identifiable living individuals 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.
19. The most relevant DP principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

20. 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".

21. 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.
22. 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**

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".

24. 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.
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 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.
27. 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.
28. It is the Commissioner's view that within the particular Parish, there is a legitimate interest in seeking to understand the reasons for the resignation of a Parish Councillor.
29. The Commissioner therefore considers that the complainant is pursuing a legitimate interest, and that disclosure of the requested information is necessary to meet that legitimate interest.

### **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 is satisfied that in order to service the legitimate interests which have been identified it would be necessary for the information to be disclosed.
32. The Commissioner is therefore satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

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

33. 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.
34. 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.
35. In the Commissioner's view, a key issue is whether the individual concerned has 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.
36. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
37. The Commissioner notes that it is already known that the Councillor has resigned from their position at the Parish Council. He questions therefore whether disclosing the requested information would add anything of public value into the public domain.
38. The Commissioner considers that disclosure of the resignation letter would be likely to cause the former Councillor distress.
39. In order to counter-balance the expectation of privacy there would need to be good reasons or circumstances which would warrant disclosure. The Commissioner has not been made aware of any such circumstances in this case.
40. Taking the above into consideration, the Commissioner considers that the former Councillor would have had a reasonable expectation that their letter of resignation would not be disclosed to the whole world in response to an FOIA request.

41. The Commissioner considers that the important aspect of this request is that it is known that the former Councillor has left their role at the Parish Council.
42. As regards the reasons for the former Councillor leaving their role, there may be a legitimate interest in these being made public where the reasons have an impact on the Parish Council or the public directly. However, neither of these options is highlighted in the resignation letter.
43. Where there is a decision to resign for personal reasons, the public would not have a legitimate reason in knowing this information beyond the fact that a Councillor has resigned.
44. The Commissioner considers that the former Councillor would have a strong and reasonable expectation that their personal letter of resignation would not be disclosed to the world.
45. As such, the Commissioner has decided that disclosure of the letter would not be lawful.
46. The Commissioner's conclusion is that the Council was correct to withhold a copy of the former Councillor's resignation letter under section 40(2) of FOIA.

## Other matters

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47. Within its original response to the complainant, the Council stated that the complainant had the right to request a review of its response. However, it went on to say that, in this case, it would be inappropriate for it to undertake the review.
48. As part of his investigation the Commissioner requested an explanation from the Council regarding this statement. No explanation was provided by the Council, therefore the Commissioner refers it to the FOIA section 45 [Code of Practice](#) which states:

"It is best practice for each public authority to have a procedure in place for dealing with disputes about its handling of requests for information. These disputes will usually be dealt with as a request for an 'internal review' of the original decision."
49. The Council should have in place an internal review procedure and it should carry out internal reviews when requested to do so, rather than providing a statement saying that an individual has a right to a review but then stating that one will not be carried out.

## Right of appeal

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50. 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)

51. 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.
52. 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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