

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2024

Public Authority: Herefordshire Council
Address: Plough Lane
Hereford
HR4 0LE

Decision (including any steps ordered)

1. The complainant requested information from Herefordshire Council (“the Council”) relating to allegations of fabricated or induced illness (FII).
2. The Commissioner’s decision is that the Council is not entitled to rely on section 40(2) (personal information) to withhold the requested information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must disclose the withheld information.
4. The Council must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

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

"I raised the following public question in Feb 23 to the CYPSC:

The public have previously asked for the FII audit data to back up the reassurances given by Cabinet members that the rate of FII allegations in Herefordshire are not higher than the national average. The public were told that the data would be available by 18 November 22. That date slipped and we were told it would be available in January 23. Nothing has been published yet and we are now five months since the reassurances were given.

If the audit is now complete, please can we have the full data set so that we can understand how many families have been affected by an FII allegation and of these, how many have been substantiated and how many have been successfully challenged by innocent parents/carers?

Another year has elapsed and I have still not received any information. Therefore, please can you confirm if this data has been made available to the public yet and if so when it was made available please? Can you provide me with a copy of the data requested."

6. The Council responded on 5 June 2024 and refused to provide the requested information citing section 40(2) (personal information) of FOIA as its basis for doing so.
7. On 10 June 2024 the complainant requested an internal review. The Council provided the complainant with the outcome of its internal review on 28 June 2024 in which it maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 1 July 2024 to complain about the way their request for information had been handled. Specifically, they argued that the Council had incorrectly applied section 40(2) of FOIA to their request.
9. Therefore, in this notice the Commissioner will cover whether the Council is entitled to rely on section 40(2) of FOIA to refuse to provide the requested information.

Reasons for decision

Section 40(2) – personal information

10. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
11. Section 3(2) of the Data Protection Act 2018 defines personal data as:

“any information relating to an identified or identifiable living individual.”
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. In this case the Council has withheld the number of families that were affected by an FII allegation between 1 January 2021 and 31 December 2022. It considers the information to be the personal data of the families who have been affected by an FII allegation.
14. In its submissions to the Commissioner, the Council stated that withheld information relates to the families who have been affected by FII an allegation. It also stated that the families could be indirectly identified from the withheld information. The Council considers that due to the small number of families concerned, an individual could identify the families who have been affected by an FII allegation using the withheld information and private sources of information. It explained that if the families have shared their circumstances with another person, that person would be able to identify them.
15. Furthermore, the Council stated the families who have been affected by an FII allegation may have shared their circumstances with the Families Commission, a commission established to give families the opportunity to raise concerns about their experience of children’s services. It considers that those families could be identified due to the low number of families that have been affected by an FII allegation.

The Commissioner’s position

16. The Commissioner acknowledges that a small number can constitute personal data if the information both relates to and would identify an individual. However, in such cases the Commissioner expects a public authority to be able to explain how that individual would be identified with a degree of certainty.

17. Based on the explanation provided by the Council, the Commissioner is not satisfied that the families affected by an FII allegation could be identified from the withheld information. Whilst the Council has stated that the families could be identified if they have shared their circumstances with the Families Commission or another individual, the Commissioner considers this explanation to be vague and speculative.
18. The Commissioner has considered whether there are any obvious means of identifying the families who have been affected by an FII allegation. However, he is not aware of any information within the public domain that could be used to identify the families and there does not appear to be any other means of identification.
19. Therefore, the Commissioner considers that the withheld information does not constitute personal data as defined in section 3(2) of the DPA as the families who have been affected by an FII allegation are not identifiable. His decision is that the Council is not entitled to rely on section 40(2) of FOIA to refuse to provide the withheld information.

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.

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