

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2024

Public Authority: East Hampshire District Council
Address: Penns Place
Petersfield
GU31 4EX

Decision (including any steps ordered)

1. The complainant has requested information relating to their business. East Hampshire District Council ("the Council") disclosed some information (being the number of formal complaints made to it) but withheld the remainder on the basis that it represented the personal data of third parties and was therefore exempt from disclosure under section 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the Council has disclosed the number of formal complaints, and has correctly withheld the remaining information under section 40(2).
3. The Commissioner does not require further steps.

Request and response

4. On 15 February 2024, the complainant wrote to the Council and requested information in the following terms:

"I am making a request for any information held about me personally and my business [name of business redacted by the ICO] covered by the FOI and where applicable the Environmental Information Regulations as well as any data covered under the SAR for the period from October 2021 and present. Specifically, I request copies of all noise recordings, photographic evidence and complaints received about

me and my business and all correspondence relating to my planning application.”

5. The Council responded on 21 February 2024. It stated that the information requested under FOIA was withheld under section 40(2). However, the Council explained that less than 5 formal complaints had been received by it.
6. On 10 April 2024, the complainant wrote to the Council and asked it to undertake an internal review. This was on the basis that they believed more complaints had been received than that stated by the Council.
7. Following an internal review the Council wrote to the complainant on 12 June 2024. It maintained that the requested information was exempt under section 40(2). It also confirmed that, following further searches, 7 formal complaints had been received, and provided a summary of their content. The Council also explained that, in respect of the complainant’s planning application, any published objections could be viewed on the Council’s website. The Council also advised that it had issued a separate response to the complainant under the terms of the Data Protection Act 2018, in which it had provided the complainant’s own personal data.

Scope of the case

8. This decision relates only to that requested information which does not represent the complainant’s personal data (and to which a separate response has been provided by the Council under the terms of the Data Protection Act 2018). The Commissioner notes, for the benefit of the complainant, that their own personal data is exempt from disclosure under the FOIA by virtue of section 40(1) (Personal information of the applicant).
9. The complainant contacted the Commissioner on 5 July 2024 to complain about the way their request for information had been handled, and specifically that the Council had not disclosed the number of formal complaints, and was not entitled to withhold the remaining information under section 40(2).
10. The Commissioner considers that the scope of his investigation is whether the Council has disclosed the number of formal complaints, and whether it is entitled to withhold the remaining information under section 40(2).

Reasons for decision

Section 1 – General right of access to information

11. This reasoning covers whether the Council has disclosed the number of formal complaints received about the complainant's business.
12. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any – or additional – information which falls within the scope of the request (or was held at the time of the request).

The Commissioner's conclusion

15. The Commissioner understands that the complainant has queried whether the number of formal complaints, stated by the Council to be 7, is correct.
16. The Commissioner has questioned the Council about how it has established the number of formal complaints received.
17. The Council has explained that it provided this number following consultations with the relevant teams within the Council, namely the Environmental Protection Team, the Animal Welfare Team, and the Case Management Team.
18. The Council has clarified that this number does not include planning objections, which are not treated as complaints. Such objections are published by the Council on its website, to which the complainant has been directed.
19. The Council has also clarified that this number may not include all items of correspondence received by the public that relate to the complainant's business. Only that correspondence that has been treated as a formal complaint will have been counted. The Council has clarified

to the Commissioner that all correspondence, including the 7 formal complaints, has been withheld under section 40(2) (which the Commissioner considers below).

20. Having considered the above, there is no evidence available to the Commissioner that suggests that the number provided by the Council is incorrect. Formal complaints are handled by specific teams, and those teams have been consulted to identify how many have been received.
21. Having considered all the circumstances, the Commissioner therefore accepts the Council's position that it has disclosed the actual number of formal complaints. As such, the Commissioner has decided that the Council has complied with section 1(1) of FOIA.

Section 40(2) – Personal information

22. This reasoning covers whether the Council is entitled to rely on section 40(2) of FOIA to withhold the remaining information sought by the request.
23. 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.
24. Section 3(2) of the Data Protection Act 2018 defines personal data as:

"any information relating to an identified or identifiable living individual."
25. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
26. In this case the Council has withheld correspondence from individuals about the complainant's business, as well as sound recordings made at an individual's address. The Commissioner notes that whilst the sound recordings were made to record any sound of the complainant's business, they still represent the conditions present in the individual's own address. The Commissioner is satisfied that such recordings can be characterised as the individual's personal data.
27. The Commissioner also recognises that it is unlikely that such information can simply be 'redacted' so as to anonymise it, as it may still contain detail that would allow individuals to be identified, such as by the complainant.
28. The Commissioner emphasises, for the benefit of the complainant, that disclosure under FOIA represents to disclosure 'to the world'. The

Commissioner must therefore have regard to other information or knowledge that will, or may be, in the public domain, and which could be combined with that disclosed under FOIA to allow individuals to be identified.

29. In this case, the Commissioner is therefore satisfied that the withheld information represents personal data.
30. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
31. 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.
32. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
33. The Commissioner considers that the complainant is pursuing a legitimate interest, being transparency about complaints made about their business.
34. However, the Commissioner also recognises that individuals who have submitted complaints (and provided sound recordings) to the Council will have done so in the expectation of confidence, to be considered by the Council as the relevant decision making authority. Any decision on the validity of complaints, or whether to take action in response of them, lays with the Council, and similarly, any challenge against that decision can be directed to the Council as the decision maker. It is also relevant for the Commissioner to highlight that, if individuals are not able to expect such complaints to be handled in confidence, it would deter members of the public from raising concerns with the Council for fear of harm.
35. The Commissioner often considers similar requests (for complaints made by members of the public to a local authority). Example decisions of

these cases include FS50597259¹, FS50808064², and IC-241497-G9L1³. In those cases, he has consistently found that whilst there is often some legitimate interest in the disclosure of the information, this is not sufficient to override the individuals' rights and freedoms under data protection law. Having considered the particular circumstances present in this case, the Commissioner is satisfied that the same conclusion is applicable here.

36. The Commissioner has therefore determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals. Therefore, he considers that there is no legal basis for the Council to disclose the requested information and to do so would be in breach of principle (a).
37. Therefore, the Commissioner's decision is that the Council is entitled to rely on section 40(2) to refuse to provide the information.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1560722/fs50597259.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615722/fs50808064.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025986/ic-241497-g9l1.pdf>

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.

Daniel Perry
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