

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

### **Decision notice**

**Date:** 9 April 2025

**Public Authority:** Oxford City Council  
**Address:** Town Hall  
St Aldate's  
Oxford  
OX1 1BX

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

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1. The complainant has requested information about a specific complaint against officers, including employees of other another organisation. Oxford City Council ("the Council") originally indicated that no information was held, or was otherwise exempt from disclosure. During the course of the Commissioner's investigation, the Council revised its position, and informed the Commissioner that it refused to confirm or deny whether the information was held, relying on the exemption for personal information in section 40(5B) of the FOIA.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(5B) to refuse to confirm or deny that it holds the requested information. However, by failing to issue a refusal notice to the complainant, it breached the requirement of section 17(1) of FOIA.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 21 July 2024, the complainant wrote to the Council and requested information in the following terms:  
  
"I would like to know if the Council holds any information concerning both Oxford City Council and Oxford Direct Services Ltd employees who

have taken holidays abroad that were paid for by [business name redacted by ICO]?

Should you hold any relevant information, then please provide copies of the documents or communications. Obviously I would expect any personal information to be redacted."

5. The Council responded on 20 August 2024. It indicated that no information was held by it.
6. Following an internal review the Council wrote to the complainant on 17 September 2024, and further, on 9 October 2024. It maintained that the requested information was not held, but provided other related information (although heavily redacted under the exemption provided by section 40(2)) that it disclosed in response to another request.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 9 October 2024 to complain about the way their request for information had been handled, and specifically that the Council was not entitled to withhold information under section 40(2) of FOIA.
8. During the course of investigation, the Council informed the Commissioner that having revisited the request, it considered that its original handling of the request was incorrect, and that it should have issued a response in which it neither confirmed nor denied that information was held under section 40(5B) of FOIA.
9. The Council explained to the Commissioner that it now took this position.
10. The scope of this case and of the following analysis is whether the Council is entitled to rely on section 40(5B) to refuse to either confirm or deny it holds the requested information.

## **Reasons for decision**

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### **Neither confirm nor deny ("NCND")**

11. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. This is commonly known as "the duty to confirm or deny". However, there are exemptions to this duty, whereby a public authority may NCND whether it holds the requested information.

12. The decision to use a NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
13. In this case the Council has taken the position of neither confirming nor denying whether it holds the requested information. The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether or not the Council is entitled to NCND whether it holds any information of the type requested by the complainant.

#### **Section 40 – Personal information**

14. 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.
15. Therefore, 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?**

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

"any information relating to an identified or identifiable living individual"
17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. 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.
19. 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.

20. The Council has explained that this request has taken place in the context of public allegations against specific individuals – including those employed by Oxford Direct Services Ltd. Should the Council confirm or deny that information is held, it would reveal information about those individuals, including whether or not such complaints about them existed.
21. The Commissioner has considered the Council's position, and understands that this request relates to allegations against specific officers or other individuals. The Commissioner notes that the request is very precise in what it asks for, and that should the Council confirm or deny information is held, it would effectively 'answer' the question posed by the request – of whether such complaints existed. Either response reveals personal biographical details about individuals, and is therefore their personal data.
22. 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. The most relevant DP principle in this case is principle (a).

### **Would principle (a) be contravened?**

23. 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".

24. 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.
25. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether a legitimate interest is being pursued, whether confirming or denying that the requested information is held is necessary to meet that legitimate interest, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
26. In this case, the Commissioner accepts that there is a legitimate interest in ensuring that the Council appropriately considers complaints against officers and other individuals.

27. However, the Commissioner considers that such individuals would not reasonably expect the Council to routinely disclose to the public whether or not they had had specific complaints made against them.
28. Whilst the Commissioner recognises that there is a wide public interest that that staff complaints should be properly addressed by the Council, he perceives that this public interest is most effectively met through the Council's management of its personnel – and the proper processes set in place for that, as well as the ability of the public to submit complaints to it should it hold concerns about the behaviour of officers. It is also relevant for the Commissioner to note that part of the request seeks information about individuals employed by another organisation (Oxford Direct Services Ltd), and the Commissioner perceives that those individuals would have even less expectation that the Council would confirm or deny whether such information was held by it.
29. The Commissioner notes that he often considers similar requests for information, that is, about complaints or allegations against officers or members of public authorities. Recent examples include [IC-181096-Q3X8](#), [IC-42820-N2H6](#), [FS50749152](#). As demonstrated by these decisions, the Commissioner recognises that whilst there is a legitimate interest in ensuring such complaints or allegations are properly addressed by a public authority, this legitimate interest is met through the provision of proper processes to investigate these, as well as the ability of the public to raise such concerns in the first place.
30. Therefore, the Commissioner's decision is that the Council is entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether the information requested is held.

## **Procedural matters**

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31. The Council's refusal of the request under section 40(5B) did not take place until the Commissioner's investigation, and significantly outside the time for compliance. As such, the Council failed to comply with section 17(1) of FOIA.

## **Other matters**

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32. The Commissioner reminds the Council of the importance of carefully considering a request on first receipt. This is particularly important in cases involving personal data, or where it may need have regard to the NCND provisions of FOIA.

## **Right of appeal**

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33. 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)

34. 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.
35. 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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**Information Commissioner's Office**  
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