

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 04 June 2025

Public Authority: London Borough of Bromley
Address: Civic Centre Churchill Court
2 Westmoreland Road
Bromley
BR1 1AS

Decision (including any steps ordered)

1. The complainant submitted a four-part request, requesting information associated with a fixed penalty notice (FPN) they received in 2024 and later appealed.
2. London Borough of Bromley (the 'Council') provided information in response to part one, two and four. It stated it did not hold any further information within scope of the request.
3. In response to part three the Council withheld information under section 40(2) of FOIA, as it considered this to be personal data.
4. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information, other than that which has already been disclosed.
5. The Council is also entitled to withhold the roles and names of Council officer(s) under section 40(2) of FOIA as it is the personal data of another individual and disclosure would be unlawful.
6. The Commissioner does not require further steps.

Request and response

7. On 24 November 2024 the complainant made the following request for information under FOIA:

"I am writing to request information under the Freedom of Information Act 2000. Specifically, I would like to obtain the following:

1. Copies of all internal documents, notes, emails, and correspondence related to my Fixed Penalty Notice (FPN) case (FPN Number: AB11275739), including any deliberations on the medical evidence provided.
2. The internal procedures, policies, and guidance documents followed by the enforcement officers when issuing FPNs for littering, especially concerning witness statements and video evidence handling.
3. Details of the officer(s) and decision-makers involved in the issuance and review of my FPN, including their names and roles.
4. Copies of any records or documentation justifying the decision to reject my appeal after receiving medical evidence of my condition."
8. The Council responded on 19 December 2025. It provided information in relation to parts one, two and four of the request. In relation to part three of the request, the Council withheld some information (Council employee names) under section 40 however, it did provide the name of the senior member of staff.
9. The Council provided its internal review on 21 February 2025 and maintained its original position.
10. The Commissioner notes that the complainant appealed the fixed penalty notice which was subsequently cancelled, albeit due to a Council procedural error.

Reasons for decision

11. The following analysis sets out why the Commissioner has concluded that the correct access regime is the Freedom of Information Act 2000 ('FOIA'), the public authority did not hold further information outside of that which it released, and that it was entitled to rely on section 40(2) of FOIA to withhold the names of employees.
12. The complainant challenged the Council's response, they were not satisfied the Council provided all the information relating to deliberations Council around the notice, specifically in relation to the medical evidence provided during the appeal process.
13. The complainant also challenged the Council's decision to withhold the names and roles of Council employees involved in the FPN and, FPN appeal, decision making process.

14. Section 1 of FOIA says that a public authority is required to confirm or deny that it holds the requested information, and disclose relevant information that it holds, unless an exemption applies.
15. Section 84 of FOIA defines "information" as: "information recorded in any form". FOIA therefore only applies to information that a public authority already holds in recorded form at the time of a request. If the Council do not hold a particular piece of information that a requester has asked for, they do not have to create it. FOIA does not require a public authority to answer general questions, provide opinions or explanations. In addition, information contained in someone's mind is not recorded information. This is supported in the Commissioner's guidance¹.
16. The Commissioner has reviewed the request and notes the Council states in relation to question three that it does not hold the requested information.
17. In response to the Commissioner the Council explained that FPN's carry a strict liability and such the Council does not deliberate the offence. In this case the complainant has requested the Council provide records or documentation justifying the decision to reject their appeal after receiving evidence of a medical condition. The Council advised that it does not hold this information as the personal circumstances of the alleged perpetrator are not considered by the Council under the legislation, rather an appeal of a FPN is handled by the Magistrates. The Council recognised that whilst the complainant did submit medical evidence, this did not generate any formal discussion, due to the above and therefore, no discussion was recorded.
18. In addition, the Council acknowledged that it could have been made clearer to the complainant that due to the above, no records were ever generated relating to the Council's consideration of the medical evidence, nor would they have been.
19. If a public authority does not hold recorded information to answer a request, the Commissioner cannot require the authority to take any further action. The Commissioner is therefore unable to identify any further action that the Council could reasonably be expected to take as part of its statutory obligations under FOIA in order to identify the

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

requested information. If information is not held in recorded form, then it cannot be disclosed in response to a request.

20. The Commissioner, therefore, finds on the balance of probabilities, the Council does not hold any recorded information falling within the scope of part three of the request. As such, the Commissioner has decided that the Council has complied with section 1(1) of FOIA.
21. The Commissioner further notes that his role is not to decide whether the Council should hold that information or the way in which particular records ought to be held. The Commissioner is only concerned with the way that information is, as a matter of fact, actually held.
22. In this case there is no detriment to the complainant because the Council have confirmed they do hold the information. However, for future reference the Council should have recognised that some of the information requested is a request for personal data, specifically in relation to part four.
23. Therefore, the Council should have cited section 30(5)-Neither confirm nor deny and handled the request under the right of access.

Section 40- personal information

24. The complainant has also requested the names or roles of decision makers involved in their case. The Council withheld this information under section 40- personal information and explained it would not disclose the names of officer(s) involved in operational activities. However, it did provide the name of the Manager in that area.
25. Section 40(2) of FOIA says that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle. 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')
26. 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.
27. 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?

28. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
29. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
30. 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.
31. The Commissioner is satisfied that the roles and names of individuals constitutes their personal data and falls within the definition of 'personal data' in section 3(2) of the DPA.
32. The fact that information constitutes the 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 disclosure would contravene any of the DP principles.
33. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

34. 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".
35. 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.
36. 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.
37. The Commissioner is satisfied that disclosure of this information in this case would breach data protection principles.

Other Matters

38. FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance² explains that in most cases an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. In this case, the internal review was requested on 24 December 2024, and the Council did not respond until 21 February 2025.
39. The Commissioner notes that the Council has explained that this delay was due to human oversight however, he does consider this to be an excessive delay. He has recorded this delay for his own monitoring purposes.
40. The Commissioner also wishes to comment more generally on the way the Council has handled this request for information.
41. Whilst the Commissioner has found the Council, on the balance of probabilities, did not hold any recorded information to answer some of the request and that s40(2) FOIA was engaged, the Commissioner was disappointed with the cursory nature and quality of the explanations provided to the complainant in the initial response dated 19 December 2024.
42. He expects public authorities to provide complainants with reasoned and detailed accounts of why it has reached a decision that it does not hold recorded information. The Commissioner also expects public authorities to be clear about whether it has considered the request under FOIA or the EIR and, where information is withheld, to clearly explain which exemptions apply.

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

Right of appeal

43. 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

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF