

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 January 2019

Public Authority: Cambridgeshire County Council
Address: Castle Hill
Cambridge
CB3 0AP

Decision (including any steps ordered)

1. The complainant requested from Cambridgeshire County Council (the Council) information regarding details of Blue Badge appeals. The Council refused the request under the exemptions provided by sections 40(2) (personal information) and section 41(1) (information provided in confidence) of the FOIA.
2. The Commissioner's decision is that the Council correctly withheld some of the requested information under section 40(2) of the FOIA. However, the Commissioner also finds that the remainder of the requested information was not exempt and was withheld incorrectly. The Council is now required to disclose this information to the complainant.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose to the complainant the numbers of successful Blue Badge appeals during 2015 and 2016.
4. The Council must take these steps within 35 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 22 January 2018 the complainant wrote to the Council and requested information in the following terms:

"Number appeals for applicants who applied for discretionary blue badges in 2015, 2016, 2017 and the percentage of successful applications (in the years noted) as well as copies of the successful appeals reasoning (what reasons were accepted by the panel) in the years listed."

6. On 13 February 2018 the Council responded and provided a list to the complainant concerning his request for details of Blue Badge appeals. It reported for each year (2015 to 2017) the number of appeals received.
7. In response to the number of appeals successful, the Council did not state the actual number, instead it reported "5 or under" for the years 2015/2016. For 2017, the Council provided the actual number of appeals successful. The Council did not, however, address the actual request made by the complainant, which was for the "percentage of successful applications".
8. The Council also responded to the part of the request concerning the successful appeals reasoning. It provided some details in response to this part of the request by summarising some of the reasons for each of the years quoted. This response did not address the actual request made by the complainant, which was for "copies of the successful appeals reasoning".
9. On the same day the complainant wrote to the Council. He argued that the Council's response was not sufficient and stated the following:

"I am slightly confused as the where it says Appeals Successful it notes '5 or under' which could technically mean none – if you could please provide the actual amount for the years this phrase is used.

I am also not sure as to where it states under Reasoning 'Supporting documents from medical' or 'Further information submitted upon appeal' as this does not actually describe the condition for which their appeal was successful which is what was requested – if you could please provide the actual conditions which were accepted under the appeals for each candidate."
10. On 26 February 2018 the Council responded, having considered the complainant's raised queries as a request for an internal review. On the issue of the number of appeals successful the Council reiterated that there were "five or under" for years 2015 and 2016.

11. The Council stated that the numbers of the appeals successful in 2015 and 2016 were small numbers and it considered this information to be personal data. Therefore, the Council refused to disclose the information. It confirmed that there were successful appeals in both years but the Council did not reveal the precise numbers. The Council stated that this information was exempt from disclosure under section 40(2) (personal data) of the FOIA and apologised for not stating this in its original response. Again, however, it made no reference to the wording of the original request having been for a percentage, rather than for the number, of successful appeals.
12. In response to the complainant's request concerning the reasoning for successful appeals the Council now addressed this request properly and stated that it considered this information exempt from disclosure under section 41(1) (information provided in confidence) and section 40(2) (personal information) of the FOIA.

Scope of the case

13. The complainant contacted the Commissioner on 26 February 2018 to complain about the way his request for information had been handled. The complainant refused to accept that the disclosure of small numbers created the potential for identification of individual cases and argued against the Council's application of section 40(2) to the part of his request regarding appeals successful.
14. As covered above, this part of the request was actually for the percentage of successful appeals, rather than the number, and the Council failed to address this part of the request properly. However, the Commissioner notes first that the totals of appeals submitted that were disclosed to the complainant (9 in 2015 and 12 in 2016) mean that the figure for the percentage would be similar to that for the actual number, and, secondly, that the complainant sought disclosure of the actual number in his 13 February 2018 correspondence that led to the Council carrying out an internal review.
15. For these reasons, the following analysis concerns the actual number of successful appeals during 2015 and 2016, rather than that number expressed as a percentage.
16. The complainant also argued against the application of section 41(1) and section 40(2) to the part of his request about reasoning for successful appeals.

17. The scope of the following analysis is to determine whether the Council was correct to apply sections 41(1) and 40(2) in response to the complainant's information request.

Reasons for decision

Section 40(2) third party personal data

18. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles of the Data Protection Act 1998 (DPA). Although the DPA has since been replaced by the GDPR and the Data Protection Act 2018, it remained in force at the time that the complainant's request was dealt with.
19. The Council confirmed its position was that it considered the details relating to the number of successful Blue Badge appeals in the years in question, and the reasons for the appeals being successful, constitute personal data and are exempt from disclosure.
20. The Council clarified that the withheld information is the precise number for the appeals successful for the years 2015/2016 and the detailed reasoning for successful appeals.
21. Firstly, the Commissioner must consider whether the requested information is personal data. Personal data is defined in section 1 of the DPA as follows:

"personal data' means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."
22. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes that in this case, the Council considered disclosure would breach the first data protection principle.

Whether the requested information is personal data

23. The Council confirmed that it considered all of the withheld information to be personal data. The Council considers that due to the very low numbers, this information could be used with other information to identify the individuals.
24. The Council also believed that all of the withheld information constitutes sensitive personal data as defined in section 2 of the DPA as it is information relating to the "*physical or mental health or condition*" of the data subjects. The Council explained that the aim of the national Blue Badge scheme is to help disabled people who have severe mobility problems to access goods, services and other facilities by allowing them to park close to their destination. It said that details about applications and appeals therefore relate to their physical health or condition.
25. Turning to the Commissioner's view on whether the withheld information is personal data, the Commissioner has considered this information in two categories. First, the numbers of successful appeals and, secondly, the reasons for the successful appeals.
26. The position of the Council was that disclosing numbers of appeals of five or fewer could lead to those figures being linked to identifiable individuals. The task for the Commissioner here is to consider whether the figures of five or under would relate to and identify any individual.
27. The Commissioner accepts that this information would relate to a number of individuals; the Blue Badge applicants who submitted appeals. As to whether disclosure of this numerical information would lead to identification of any individual, information can be personal data if it can be combined with any other information to enable the identification of an individual. This appeared to be the position of the Council here; the numbers in themselves do not identify any individual, but would do if combined with other information.
28. The next step is to consider what other information the low numbers could be combined with to enable the identification of an individual. The Council provided no reasoning on this point. Whilst it believed that disclosing the low numbers would lead to identification of individuals, it did not explain how this would be possible. In particular, it did not identify any information available in the public domain, or available in a more limited way to any specific party, that could be combined with the numerical information in question here to enable identification of any individual.

29. The Commissioner is also unaware of any other evidence suggesting that the numerical information could identify any party. As the numerical information in itself does not identify any individual, and as the Commissioner is aware of no evidence that suggests that there is other information that could be combined with the information in question to enable identification of an individual, the finding of the Commissioner is that the numbers of successful appeals in 2015 and 2016 is not the personal data of any individual. Section 40(2) is therefore not engaged in relation to that information. The Commissioner has gone on to consider that information further in the section 41(1) analysis below.
30. Moving to the reasoning for the successful appeals, the complainant was specific when making this request that he wished to be provided with "*copies of the successful appeals reasoning*". The Commissioner's view is that an objective reading of this request is that it was for the documentation recording the reasoning behind the appeal. The issue again here is whether that information relates to and identifies any individual.
31. It is clear that this information relates to the individuals who submitted the appeals. The next step is to consider whether that information identifies any individual. The Commissioner accepts that information giving the reasoning behind an appeal is likely to include considerable detail about the condition that forms the basis for the application for a Blue Badge. Her view is that people with an existing knowledge of those individuals, such as friends or colleagues, would be able to combine that knowledge with the information in question to enable identification of the individuals who submitted the Blue Badge appeals.
32. The withheld information concerning the reasoning for the appeals is, therefore, personal data in accordance with the definition in section 1(1) of the DPA. In relation to that information, the Commissioner has gone on to consider whether disclosure would be in breach of any of the data protection principles.

Whether disclosure would breach any of the data protection principles

33. The Commissioner has focussed here on the first data protection principle, which states that personal data shall be processed fairly and lawfully. In particular, the focus here is on whether disclosure would be, in general, fair to the data subject.

34. In forming a conclusion on this point the Commissioner has taken into account the reasonable expectations of the data subjects and what consequences disclosure may have. She has also considered what legitimate public interest there may be in disclosure of the information in question.
35. The Data Protection Principles are set out in schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
36. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individuals, the potential consequences of the disclosure upon them and whether there is a legitimate public interest in the disclosure of the information in question.
37. As part of her consideration here the Commissioner has considered whether the information in question is sensitive personal data in accordance with the definition given in section 2 of the DPA. The definition of sensitive personal data includes information as to the physical or mental health or condition of any individual. The Commissioner's view is that personal data on the reasoning for Blue Badge appeals will fall within this definition of sensitive personal data.
38. Sensitive personal data has by its very nature been deemed to be information that individuals regard as the most private information about themselves. As disclosure of this type of information is likely to have a detrimental or distressing effect on the data subject, the Commissioner considers that it would be unfair and in breach of the first data protection principle to disclose the requested information.
39. In relation to the information recording the reasoning for the Blue Badge appeals, the Commissioner has found that this does constitute personal data and that disclosure of this personal data would be in breach of the first data protection principle.
40. Her conclusion is, therefore, that this information is exempt under section 40(2) of the FOIA and so the Council was not obliged to disclose this information. Given this conclusion, it has not been necessary to go on to also consider section 41(1) in relation to this information.

Section 41 – Information Provided in Confidence

41. The Commissioner found above that section 40(2) does not apply in relation to the numerical information withheld by the Council; that is the numbers of successful appeals in 2015 and 2016, which were five or fewer. In relation to that information it is necessary for the Commissioner to go on to consider section 41(1).
42. Section 41(1) of the FOIA states that:

"Information is exempt information if-

(a) it was obtained by the public authority from any other person (including another public authority), and,

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."
43. To reach a decision on whether section 41(1) applies, the Commissioner will first determine whether the information was obtained by the Council from a third party. As noted above, this analysis relates solely to the numerical information about successful appeals. The first issue for the Commissioner here is whether that numerical information was obtained by the Council from a third party. If this information was not obtained by the Council from a third party, then section 41(1) cannot be engaged.
44. The position of the Council is that the information in question was supplied to the Council by the Blue Badge appellants as part of the appeal process. Were it the case that the Commissioner was considering information about the grounds for appeal, she would agree with the Council that this information was supplied to the Council from those appellants. In relation to the numerical information in question here, however, she does not accept this.
45. The Commissioner's view is that this information will have been extracted by the Council from its systems which record the Blue Badge appeal process. Whilst this system will contain information supplied to the Council from the appellants, she does not accept that the numerical information in question here gathered from the Council's records amounts to information provided by the appellants to the Council.

46. For this reason the conclusion of the Commissioner on section 41(1) is that this exemption is not engaged. In light of this finding and that above on section 40(2), the Council is now required at paragraph 3 above to disclose to the complainant the numbers of successful appeals in 2015 and 2016.

Right of appeal

47. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.
49. 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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