

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

### **Decision notice**

**Date:** 7 December 2018

**Public Authority:** Reading Borough Council  
**Address:** Civic Centre  
Reading  
Berkshire  
RG1 7TD

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

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1. The complainant requested information, via the [whatdotheyknow.com](http://whatdotheyknow.com) ("WDTK") website, relating to an email he had previously sent.
2. The Commissioner's decision is that all the information that has been requested is the complainant's own personal data. She therefore finds that Reading Borough Council ("the Council") was not obliged to supply any information under the FOIA as any information which the Council held within the scope of the request would attract the absolute exemption at Section 40(1) of the FOIA.
3. The Commissioner does not require the Council to take any further steps.

#### **Request and response**

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4. On 22 May 2018, the complainant contacted the Council via [whatdotheyknow.com](http://whatdotheyknow.com) and requested information in the following terms:

*[The Commissioner has redacted the precise wording of the request as it contained personal information about the details of an email which the complainant had sent (or was alleged to have sent). The Commissioner considers that it is possible that the complainant could be identified from this information]*

5. The Council responded on 4 June 2018. It provided the complainant with some information relating to the request and how the earlier email had been handled. It also provided further comments on the complainant's broader interactions with the Council. The wording of the letter made clear that the Council considered the response to have been made under the FOIA. The response was sent directly to the complainant and not via WDTK.
6. After the complainant expressed dissatisfaction with the content of the response of 4 June 2018, the Council wrote to the complainant again on 29 June 2018. The Council's letter also covered a range of information requests which had been submitted, by the complainant, since its previous correspondence. In relation to the request of 4 June 2018, the Council stated that that particular response had been provided outside of WDTK because it considered that the complainant might find the description of his previous interactions "embarrassing if it were shared with a wider audience."

### **Scope of the case**

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7. The complainant contacted the Commissioner 1 July 2018 to complain about the way his request for information had been handled.
8. The complainant disputed the accuracy of some of the information which had been provided and he was unhappy that the Council's response of 4 June 2018 had been provided outside of WDTK (and hence not published). He asked the Commissioner to consider the Council's compliance with Section 11 of the FOIA.
9. The Commissioner considers that the first step in assessing this complaint is to determine the extent to which the requested information would be the complainant's own personal data. Section 40(1) of FOIA places an absolute exemption on information which is the personal data of the requestor. If that exemption is (or would be) engaged in relation to the request, the Council would not have been under any obligation to provide information, under the FOIA, in response and therefore the question of how the requested information was communicated (which is the function of Section 11) does not arise.

### **Reasons for decision**

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10. Section 40(1) of the FOIA states that:

*"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."*

11. Section 2(2) of the Data Protection Act 2018 defines personal data as:-

*"any information relating to an identified or identifiable living individual."*

12. In this particular case, any information which the Council held would be or relate to email correspondence either from or to the complainant. The complainant (and the issues he wished to raise with the Council) would be the subject of that data. It would therefore be the complainant's personal data and so would have been exempt under section 40(1) of the FOIA.
13. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the balance of public interest. As the exemption is engaged in respect of any information which came or would have come within the scope of the request, the Council was not obliged to supply any information in response.

## Other matters

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### *Section 11 – Means of Communication*

14. The complainant made clear, in correspondence with the Commissioner that he wished her to consider matters relating to the Council's compliance with Section 11 of the FOIA.
15. Section 11 covers the extent to which a public authority must have regard to a complainant's preference when communicating information requested under the FOIA. Because the Commissioner has found that Section 40(1) is engaged, the Council was under no obligation to communicate any information and therefore the Commissioner has not considered any issue relating to the communication of the requested information. However, as the matter is clearly of importance to the complainant, she offers some general comments on the matter.
16. The Commissioner would generally take the view that, where a person makes a request via WDTK, that person "expresses a preference" for the response (and any disclosed information) to be sent via WDTK and hence, published.
17. However, she is also aware that there are circumstances where a public authority may be able to provide a more helpful response (and additional information) if that information is communicated directly to the requestor – particularly when information is likely to include personal data relating to the requestor or their family. Each case must be judged on its individual merits.
18. Disclosure under the FOIA is considered to be disclosure to the world at large in any event, but in this particular case, the Council had a reasonable expectation that any personal data included in its response would be published on WDTK. Whilst the Council might wish to consider whether it was appropriate for it to have responded to the request under the FOIA (as opposed to under Subject Access), it did need to have regard to what might happen to the complainant's personal data if its response was published on WDTK.
19. It is also important to note that Section 11 only covers the *information* that is being communicated in response to a request and not the response itself (which might be a Refusal Notice).

*Other information which was provided*

20. The complainant has invited the Commissioner to consider the appropriateness of the Council providing him with additional information (which he considers to be both extraneous to the request and defamatory) as part of its response to this request.
21. Section 17 of the FOIA sets out the criteria for the information which *must* be provided when a public authority wishes to refuse a request either in full or in part. However, the legislation places neither an obligation nor a restriction on the amount of additional information the public authority may provide, beyond the scope of the request.
22. Whilst the legislation itself may be silent, as a matter of good practice and of promoting information rights, the Commissioner considers that public authorities should aim to provide the fullest possible response that they can. This is particularly important when the additional information might help a requestor understand the information which they requested or to understand the reasons why their request has been refused.
23. In this particular case, the “extraneous” information relates to the complainant’s previous interactions (and his broader grievance) with the Council. Such matters are beyond the jurisdiction of the FOIA and the Commissioner expresses no opinion on whether or not it was appropriate for the Council to include the material in its response. If the complainant considers the material to be defamatory he should seek relief via the courts. The FOIA is not an appropriate mechanism for continuing or prolonging a grievance.

## Right of appeal

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24. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**