

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

### **Decision notice**

**Date:** 9 October 2019

**Public Authority:** Birmingham City Council  
**Address:** Council House  
Victoria Square  
Birmingham  
B1 1BB

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

---

1. The complainant has requested information about a meeting held between Michael Gove and Sir Albert Bore in February 2014 regarding the 'Trojan Horse' letter. The Council withheld the information citing sections 30(2)(a) and (b) – information provided in confidence for the purpose of conducting investigations, and 40(2) – third party personal data, of the FOIA.
2. The Commissioner's decision is that Birmingham City Council has incorrectly applied section 30(2) of the FOIA to the withheld information. She finds that section 40(2) can only be relied on for the personal data of administrative staff. She also finds that the Council breached sections 1 and 10 respectively of the FOIA by failing to identify all information falling within the scope of the request, and failing to respond to the request within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose all the information supplied by the Council titled 'Appendix 2' including that withheld under section 30(2) as detailed in paragraph 28 of this notice;
  - Disclose the personal data within these documents, with the exception of staff listed in Confidential Appendix A.

4. The public authority 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 Act and may be dealt with as a contempt of court.

## **Request and response**

---

5. On 3 April 2018 the complainant wrote to Birmingham City Council and requested information in the following terms:

*'There was a meeting held between the Secretary of State of Education, Michael Gove, and the then leader of Birmingham city council, Sir Albert Bore, in London, on February 10<sup>th</sup> 2014. Other officials may have also been present.*

*I would like to request a copy of all records and correspondence between the council and Department for Education, in relation to that meeting, including but not limited to: all preparatory notes produced by the council and Department for Education; emails scheduling the meeting; the minutes of the meeting; all notes concerning the meeting, produced during, before, and after the meeting; and any follow-up correspondence, including but not limited to emails, text messages, voicemail messages, and non-digital correspondence.*

*I'm also requesting any record or material related to that meeting that I have not explicitly named. Should any of this information be held in non-work personal email accounts (e.g. Yahoo, Hotmail or Gmail) or on a mobile device as a text message or any other media, I would like a copy of those too as my right according to the ICO guideline on official information held in private email accounts: [https://ico.org.uk/media/for-organisations/documents/1147/official\\_information\\_held\\_in\\_private\\_email\\_accounts.pdf](https://ico.org.uk/media/for-organisations/documents/1147/official_information_held_in_private_email_accounts.pdf)*

6. The Council responded on the 4 June 2018. It advised that the 'Information briefing' held in connection with the meeting recorded it as being held on 13 February 2014, not 10 February 2014. The Council stated that it was withholding the requested information under section 30 of the FOIA – Investigations and proceedings conducted by public authorities. Specifically the Council relied on section 30(2)(a)(iii) and 30(2)(b).

7. The complainant requested an internal review on the 12 July 2018 disputing the Council's reliance on section 30(2) of the FOIA.
8. The Council contacted the complainant on 15 August 2018 stating that due to the complexity of the request it needed time to fully review the information and would provide the internal review response by 14 September 2018.
9. The complainant contacted the Council on the 2, 15 and 27 November 2018 as he had not received a response to his request for an internal review. The Council eventually responded on 17 December 2018 (prompted by the Commissioner) upholding its original position.

### **Scope of the case**

---

10. The complainant contacted the Commissioner on 27 November 2018 to complain that the Council had failed to respond to his internal review request. Following the intervention of the Commissioner, the Council responded 3 weeks later. The complainant contacted the Commissioner again on 31 December 2018, objecting to the Council's continuing reliance on section 30(2)(a)(iii) and 30(2)(b) of the FOIA. In summary, he did not consider section 30 applied to the information as the exemption is designed to protect confidential sources in investigations, and as the meeting at the centre of the request involved two high level officials, it was not a criminal investigation involving confidential sources. The complainant also expressed great concern at the time the Council had taken to comply with the request and internal review.
11. The Commissioner therefore considers the scope of the case to be whether the Council is entitled to rely on section 30(2)(a)(iii) and 30(2)(b) of the FOIA, and assessment of the Council's response times to both the request and internal review. During the course of the investigation, the Commissioner became concerned at the lack of information the Council stated it held falling within the scope of the request, and she therefore widened her focus to include section 1 of the FOIA – general right of access to information held. Following the Council's final submissions to the Commissioner, it also relied on section 40(2) of the FOIA for third party personal data within the withheld information. She therefore also considers the scope to include the Council's application of this exemption.

## Reasons for decision

---

### Section 1 – information held / not held

12. Section 1(1) of FOIA states that

*'Any person making a request for information to a public authority is entitled—*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him*

13. In its response to the complainant dated 4 June 2018, the Council explained that the 'Information briefing' it held stated that a meeting took place between the then Secretary of State for Education and Leader of the Council on 13 February 2014 and not the 10 February 2014. The complainant explained that he had taken the date of the meeting from the Education Commissioner's independent report<sup>1</sup> concerning the investigation into the 'Trojan Horse' letter. Having reviewed appendix 2 of the report, it is not entirely clear when the meeting was held, but due to the chronology shown it can be safely assumed that it was between 10 and 13 February 2014. There can therefore be no doubt that the information request related to the meeting the Council stated occurred on 13 February 2014.
14. The Commissioner sent her investigation letter to the Council on 16 May 2019, asking it to supply the withheld and supporting arguments for the application of any exemptions by 13 June 2019. On 10 June 2019 the Council requested a 10 day extension to the deadline. The Commissioner granted a 5 working deadline, taking the date for a response to 20 June 2019. The Commissioner had already noted the length of time the Council had taken to respond to the complainant's

---

1

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/340526/HC\\_576\\_accessible\\_-.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/340526/HC_576_accessible_-.pdf)

initial and review requests – over 2 months for the former and almost 6 months for the latter.

15. She was therefore sceptical when the Council did respond to her investigation letter, to receive only one withheld document comprising 2 sides of A4 – the 'Information briefing' referred to in its original response to the complainant on 4 June 2018. The Commissioner had already noted communications from the Council to the complainant concerning the complexity of the request and associated information. The complainant also supplied to the Commissioner documents he already had access to, which he considered fell within the scope of the request and should be held by the Council. This information had come from previous FOI requests to the Council and DfE, as well as directly from Council Officers themselves.
16. This raised significant concerns regarding whether the Council had thoroughly searched for and disclosed to the Commissioner all information it held falling within the scope of the request. She therefore wrote back to the Council, drawing its attention to the length of time taken to respond to the request, the review, and her own investigation letter. She also made specific reference to other named documents that she believed the Council held. She asked a series of detailed search questions, including: the search terms used; the manual and electronic sources searched; and whether any information was deleted/destroyed and when. Whilst the meeting was held several years ago, given the very high profile nature of the matter and widespread national coverage, the Commissioner would expect key records and documents to be preserved.
17. The Council responded to the Commissioner's concerns and search questions, supplying a range of information relating to the Trojan Horse letter and subsequent actions / investigations. The Council provided these in two appendices. It considered Appendix 1, with the exception of the 'Information brief' to fall outside the scope of the request. Having reviewed all the documents in this appendix the Commissioner concurs with this assessment. For Appendix 2 (which also included the 'Information brief', the Council stated that the information had been collated following searches undertaken in July 2019. It considered that two of the documents could be supplied to the complainant but the rest withheld under section 30(2)(a)(iii) and 30(2)(b) of the FOIA.
18. Having reviewed the withheld documents in Appendix 2, the Commissioner is satisfied that these can be considered information obtained or recorded in connection with the Trojan Horse investigation. One of these is the 'Information briefing' already disclosed to the

Commissioner, and two other documents that the Council has named 'Briefing note for the Leader of the Council, subject: Anonymous Letter re. schools' and 'Email headed 'Contact with Secretary of State Michael Gove on Friday 17.2.14'.

19. The Commissioner therefore finds that the Council breached section 1 of the FOIA by failing to a) identify all the information it held falling within the scope of the request and b) disclose the information to the complainant (see below for the Commissioner's finding on application of section 30 to the withheld information).

**Section 30 – investigations and proceedings conducted by public authorities.**

20. Section 30(2) of FOIA/EIR states

*'Information held by a public authority is exempt information if –*

*(a) it was obtained or recorded by the authority for the purposes of its functions relating to –*

*(iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment'*

And

*(b) it relates to the obtaining of information from confidential sources'*

21. The exemption is designed to protect the identity of confidential sources, primarily to ensure that informants are not deterred from supplying law enforcement agencies with valuable information, but it also protects public authorities who have a range of regulatory functions as outlined in section 31(2) of the FOIA, and obtained information from confidential sources as part of these functions.
22. The Council considers that the withheld information is exempt under section 30(2)(a)(iii) because it was obtained or recorded by the Council for the purposes of its functions relating to the Trojan Horse investigations, by virtue of its powers set out in Section 111 of the Local Government Act 1972 and a range of Education Acts.

23. The Commissioner accepts that the Council has statutory responsibilities and functions outlined in this legislation, and that the information was obtained / recorded for these purposes. The requirement for section 30(2)(a)(iii) is therefore met. The question for the Commissioner to determine is whether this information was obtained from confidential sources (section 30(2)(b)).
24. The Commissioner has produced guidance on the application of section 30<sup>2</sup>, which addresses how to determine whether information is obtained from confidential sources. In order to be determined as a confidential source, the person providing the information will have done so on the basis that they will not be identified as the source. This could include informants, witnesses and whistle-blowers. The exemption not only covers the actual information, but also the administrative processes relating to such sources such as procedures for dealing with them, payments, and appointments made to obtain the information.
25. The Council has believes the information has been obtained from a confidential source because:

*'...the Clarke and Kershaw investigations included information obtained from confidential sources. At the outset of his investigation Peter Clarke made a public call for evidence. Much of the evidence collected was shared between the two inquiries. Some of the witnesses who came forward were only prepared to give evidence on the understanding that it was not shared with third parties. Clarke and Kershaw reported that some witnesses were reluctant to come forward because they did not want to give details of their identity. The published version of the Kershaw report was heavily redacted in order to protect the identities of individuals who had given information in confidence.*

*The withheld document relates to the planning of the investigation process which took place regarding the "Trojan Horse letter". That process involved the obtaining of information from confidential sources. If information relating to the conduct of the investigation was not exempt this would undermine the*

---

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>



*trust and confidence of individuals who gave evidence in confidence, or who may give evidence in any future investigation carried out by the Council where the public are called on to come forward and give evidence on sensitive issues.*

26. The Council provided this argument when the only document it had held was the 'Information Briefing'. However, it subsequently extended its arguments under section 30 to all of the withheld information. In order to assess whether the arguments apply to the withheld, the Commissioner must consider the content of each.
27. The first of these, the 'Information briefing', is dated 13 February 2014 and relates to a meeting that it records as being held on 12 February 2014 between the Secretary of State for Education Michael Gove, the Leader of Birmingham Council Albert Bore, and other civil service and Council staff. For the reasons outlined in paragraph 13 of this decision notice, the Commissioner concludes that this document relates to the meeting specified in the complainant's request. Having reviewed the briefing note, the Commissioner can see nothing in this document that includes information from confidential sources, or any of the administrative processes associated with the gaining of such information. The Council's assertion that the document relates to the planning of investigations and associated processes is too far removed from the administrative processes covered by section 30(2)(b), which concern and protect the direct securing of the information from confidential sources. The fact that the investigations undertaken by the Council and DfE included information from confidential sources has no bearing on the contents of the 'Information briefing'. Additionally, neither the Council's nor DfE's investigation into the Trojan Horse Letter had been commissioned at the point the withheld information was obtained recorded.
28. The Council has argued that if information relating to the conduct of the investigation was not exempt, then this would undermine the confidence of people to come forward in the future. However, the exemption is designed to protect specific individuals and the information they provide; it is a class based exemption, not a prejudiced based exemption. To this end, the information must be from a confidential source to fulfil the class-based requirement, and the Commissioner has already determined that the 'Information briefing' is not derived from confidential sources. Consequently, the Commissioner concludes that section 30(2)(b) is not engaged.
29. Turning to the other two withheld documents, the Commissioner has considered the same arguments provided by the Council above. The



first of these documents, 'Briefing note for the Leader of the Council, subject: Anonymous Letter re. schools', provides a chronology of events and context for the Trojan Horse letter. It includes information about individual schools but the Commissioner can find no reference to people as confidential sources for any information contained therein. Again it predates the decisions of the Council and DfE to conduct separate investigations in to the content of the Trojan Horse Letter. The second of these documents concerns a follow-up email sent after the meeting, agreeing actions. Again there is nothing within the email that relates to confidential sources. It is also important to note that it is the *source* of the information that is being protected, not the information itself. Information may be confidential, but the provider of the information may not be. This is a critical distinction in determining whether section 30(2)(b) applies.

30. The Commissioner therefore concludes that the Council is not entitled to rely on section 30(2) of the FOIA for any of the withheld information as it does not does not comprise any information obtained from confidential sources.

## **Section 40 - personal information**

31. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
32. In this case the relevant condition is contained in section 40(3A)(a)<sup>3</sup>. 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 General Data Protection Regulation ('GDPR').
33. The Council has applied section 40(2) to all the third party personal data within the withheld information. Unfortunately, the Council's arguments for its reliance on section 40(2) are both inaccurate and substandard. Notably, it has failed to consider the correct legislation in place at the time it responded to the request, the Data Protection Act 2018, and instead makes reference to the first data protection principle of the Data Protection Act 1998. However, despite the Council's deficient response,

---

<sup>3</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

in her role as data protection regulator, the Commissioner must herself properly consider whether section 40(2) of the FOIA applies to the withheld personal data. Whilst she could have asked the Council to review its response to the application of section 40, the Council's overall handling of the request had been so poor that she was not prepared to delay the investigation any further.

34. 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 the FOIA cannot apply.
35. 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 DP principles.

*Is the information personal data?*

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

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

37. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
38. 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.
39. 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.
40. The Council has applied section 40 in a blanket fashion to the personal data, simply stating 'the documents and correspondence...contain the personal data of employees of the Council and third parties involved in handling the Trojan Horse matter'. It has failed to identify the nature of the personal data or name the people it applies to. The Commissioner has therefore reviewed the withheld documents herself and identified the following as personal data falling within section 3(2) of the DPA.

- Names and contact details of senior staff within the Council;

- Names and contact details of staff involved in the administration of the meeting;
- References to Head Teachers who although not named, could be identified from local knowledge or a simple internet search; and
- Names of third party people, all of a senior position.

41. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles. The most relevant DP principle in this case is principle (a).

*Would disclosure contravene principle (a)?*

42. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

43. 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.

44. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

*Lawful processing: Article 6(1)(f) of the GDPR*

45. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"<sup>4</sup>.*

---

<sup>4</sup> Article 6(1) goes on to state that:-

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

46. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
- (a) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - (b) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - (c) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
47. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

#### *Legitimate interests*

48. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
49. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

---

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

50. The complainant has requested all information about the meeting held on 12 February 2014 between Michael Gove and Sir Albert Bore concerning the Trojan Horse letter. The Commissioner accepts that there is a strong and legitimate, wider public interest in the handling of the Trojan Horse affair which concerned an alleged plot to take over schools in Birmingham and run them along strict Islamic principles, and in particular the decisions made by senior officers in relation to the handling of the affair. The letter resulted in several investigations and inquiries from local and central government departments and the police, with major national media coverage. Despite the fact that almost five years have passed since the letter was sent to the Council and other public authorities, the significance of the Trojan Horse affair on education is still relevant and reported in the local media today<sup>5</sup>. The Commissioner therefore concludes that any information relating to transparency of the decisions made, and accountability regarding who made them, remains a real and valid legitimate interest for the purpose of Article 6(1)(f) of the GDPR.

*Is disclosure necessary?*

51. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
52. In this case the withheld personal data relates to a range of people with different roles within the Trojan Horse affair. The Commissioner considers these separately in order to determine whether the necessity test is met.
53. For the personal data of staff involved in the administration of the meeting, the Commissioner does not consider that disclosure of this information is necessary in order to satisfy the wider public interest in how the Trojan Horse affair was handled, which includes the meeting at the centre of this FOIA request. The personal data of these staff makes no material difference to the transparency about how public authorities

---

<sup>5</sup> <https://www.birminghammail.co.uk/all-about/trojan-horse>

responded to the letter and subsequent investigations. The Commissioner therefore concludes that the disclosure of this personal data is not necessary to satisfy any legitimate interest in the context of the request for information about the meeting

54. Turning to the personal data of senior officers within the Council, senior external officers and Head Teachers, the Commissioner is satisfied that disclosure of this information is necessary in meeting the legitimate public interest in understanding how the Trojan Horse letter was handling by the authorities. These very senior officers should be accountable for the decisions that were made regarding the letter and subsequent actions. Regarding the Head Teachers and other named high profile individuals, the Commissioner finds that this information provides a wider context for the actions taken in response to the letter, and again supports the legitimate interest of accountability and transparency.

*Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms*

55. Having determined that disclosure of the personal data of senior officers, Head Teachers and senior/high profile individuals is necessary to meet the legitimate interests outlined above, this must now be balanced against these data subjects' interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
56. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individuals expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
57. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an

individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

58. The Commissioner has been unable to identify any specific harm or distress that disclosure may cause. The very senior officers named in the withheld information are accustomed to public scrutiny and being in the public eye. The Commissioner also notes that much, if not all of the information relating to Head Teachers is already in the public domain. Renewed publicity maybe unwelcome but as previously noted, such senior staff should be accountable for their decisions and actions regarding such a matter of wider-spread public interest.
59. The Council has not indicated whether individuals have been consulted about the disclosure, and so the Commissioner is not able to ascertain their views, but again given their seniority she does not consider that they would have any reasonable expectation of privacy in such a matter as it clearly concerns their actions in their role as a senior public official.
60. Based on the above factors, the Commissioner has determined that there is sufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is an Article 6 basis for processing (in this case Article 6(1)(f)).

#### *Fairness and transparency*

61. Even though it has been demonstrated that disclosure of the requested information under the FOIA would be lawful, it is still necessary to show that disclosure would be fair and transparent under the principle (a).
62. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
63. The requirement for transparency is met because as a public authority, Birmingham City Council is subject to the FOIA.

#### *The Commissioner's view*

64. The Commissioner has therefore decided that the Council was entitled to withhold the information under section 40(2), by way of section 40(3A)(a) for the administrative staff named in Confidential Annex A,



but has failed to demonstrate that the exemption at section 40(2) is engaged for any other personal data within the withheld information.

### **Section 10 – time for compliance**

65. Section 10(1) of the FOIA states that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
66. The request for information was made on 3 April 2018. The Council finally responded on 4 June 2018. This was 43 working days after the request was made. The Commissioner therefore finds that the Council breached section 10 of the FOIA.

### **Other matters**

---

67. The Commissioner has made reference in this decision note to the Council's overall poor handling of this request. This includes:
  - A breach of section 10, in this case taking over twice the amount of time allowed by the Act
  - Taking almost 6 months to undertake the request for review;
  - A failure to identify all the information held within the scope of the request;
  - The application of incorrect data protection legislation under section 40 of the FOIA, a complete lack of adequate identification of the personal data to which it applied, in addition to an absence of robust arguments.
68. Whilst the Commissioner's role is not to determine whether information should be held by a public authority, only whether it is, her investigation raised serious concerns about the Council's records management practices. These concerns, along with the failures detailed above, will be passed to her Monitoring and Compliance Unit for further consideration.

## Right of appeal

---

69. 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@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)

70. 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.
71. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**