

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2020

Public Authority: Gloucestershire County Council
Address: Shire Hall
Westgate Street
Gloucester
GL1 2TG

Decision (including any steps ordered)

1. The complainant requested information from Gloucestershire County Council (the "Council") regarding Penalty Charge Notice ("PCN") numbers issued by a bus lane camera on the A40 Gloucester Road, Cheltenham. The Council withheld the information under section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the Council has incorrectly applied section 40(2) of the FOIA in relation to the complainant's information request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the information requested to the complainant, namely PCN numbers issued by the bus lane camera on the A40 Gloucester Road, Cheltenham.
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 Act and may be dealt with as a contempt of court.

Request and response

5. On 25 August 2019, the complainant wrote to the Council and requested information in the following terms:

"As a FoIR can you provide me with all the PCN numbers issued by the bus lane camera on the A40 Gloucester Rd Cheltenham, the one just off the Benhall roundabout since its introduction last year.

Please provide me with all PCN numbers issued to all unauthorised vehicles by this camera since its introduction."

6. The Council responded on 24 September 2019. It stated that it was withholding the information because it believed the PCN numbers were considered to be personal data and exempt under section 40(2) of the FOIA.
7. Following an internal review the Council wrote to the complainant on 23 October 2019. It stated that *"the Council considers that the information requested remains personal data as defined by the General Data Protection Regulations. PCN numbers are specific to a person, and as it is information about someone else...Release of this information to anyone other than the subject of the information would mean the council would be in breach of Principle 1, which states that personal data shall be processed (used) fairly and lawfully"*.

Scope of the case

8. The complainant contacted the Commissioner on 24 October 2019 to complain about the way his request for information had been handled.
9. The scope of the following analysis is to establish whether the Council is entitled to withhold the requested information under section 40(2) of the FOIA.

Reasons for decision

Section 40 personal information

10. 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.

11. In this case the relevant condition is contained in section 40(3A)(a)¹. 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").
12. 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.
13. 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?

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

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

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. 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.
17. 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.
18. The Commissioner understands that the complainant has only asked for the PCN numbers and has not requested other information linked to the PCN numbers. This information, viewed in isolation, cannot be linked to any identifiable individual. However, the Council has explained that it holds the requested information linked to other information which when combined together can identify an individual.

¹ As amended by Schedule 19 Paragraph 58(3) DPA

19. The Council explained a PCN number is its identification number used as a unique identifier and is recorded on its database along with private vehicle registration numbers, the make, model and colour of the vehicle, the issue date and location of the PCN, amount due to be paid and the name of the registered keeper of the vehicle. The Council believes the PCN number can therefore be used in conjunction with this other information to identify an individual.
20. The Council's position is that the requested information in the hands of the Council is personal data. However, the Commissioner's established view is that data which has been sufficiently anonymised at the point of disclosure, such that individuals are not identifiable from it, is not personal data.
21. In similar cases the Commissioner has followed the approach taken by the High Court in the case *Department of Health v Information Commissioner* (CO/13544/2009)². In that case the High Court found that Department of Health statistics would not, in the hands of the public, lead to the identification of individuals, and were not, therefore, personal data.
22. It is the case that, since the date of the High Court decision referred to above, the Data Protection Act 1998 has been replaced by the DPA 2018 and the GDPR, so that decision is not binding or determinative in this case. However, the Commissioner still considers the line taken by the High Court to be persuasive in this case.
23. In summary, therefore, the Commissioner's view is that information that is truly anonymised at the point of disclosure is no longer personal data and can therefore be disclosed without any reference to the data protection principles.
24. In this case, the question is not whether the requested information is personal data in the hands of the Council, it is whether it could be rendered personal data following its disclosure into the public domain in response to the complainant's request. In order to answer that question, it is necessary to consider what information may be available to any member of the public that could be combined with the requested information to render it possible to link it to identifiable living individuals.

² [http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2011/1430.html&query=title+\(+department+\)+and+title+\(+of+\)+and+title+\(+health+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2011/1430.html&query=title+(+department+)+and+title+(+of+)+and+title+(+health+)&method=boolean)

25. As its position was as described above, the Council has advanced no reasoning or evidence on this point. The Commissioner has considered whether the requested information could be combined with, for example, other information previously disclosed by the Council, or information otherwise accessible by the public. If this were the case, it may be that disclosure of the information could lead to the identification of individuals.
26. Having considered this point, the Commissioner is aware of no evidence that other information is available that could result in the requested information being linked to identifiable living individuals following disclosure in response to the complainant's request. Her finding is, therefore, that the information requested by the complainant is not personal data in accordance with section 3(2) of the DPA.
27. It follows that the overall conclusion of the Commissioner is that the exemption provided by section 40(2) of the FOIA is not engaged. At paragraph 3 above, the Council is now required to disclose this information.

Right of appeal

28. 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

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

29. 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.
30. 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
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Wycliffe House
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