

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 9 July 2021

Public Authority: Warwickshire County Council
Address: Shire Hall
Warwick
Warwickshire
CV34 4RR

Decision (including any steps ordered)

1. The complainant wrote to Warwickshire County Council (the Council) to submit a multi-part request for information related to fire incidents. The Council disclosed the information requested apart from the information related to locations of fire, for which the Council cited section 40(2) of FOIA (personal data), as the basis for its refusal to comply with this part of the request.
2. The Commissioner's decision is that the Council is not entitled to rely on section 40(2) of FOIA to withhold the information requested.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Disclose the remaining withheld data.
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 11 March 2020 the complainant wrote to the Council to submit a 25 part request for information related to fire incidents. Meanwhile he managed to find some of the information from the Council's website and subsequently, on 6 April 2020 he submitted a redefined version of his request (in 21 parts), which was formulated as follows:

"I am writing to you under the Freedom of Information Act 2000 to request the following information from Warwickshire Fire and Rescue Service at an incident level between 01/01/2015 to 31/12/2019 to help research into arson rates:

- 1. Date of incident - between 01/01/2015 to 31/12/2019.*
- 2. Location of Fire - grid references (eastings and northings) with last two digits removed*
- 3. Unitary Authority.*
- 4. Fire Type - Accidental / Deliberate.*
- 5. Property Category - Residential (Dwelling) / Non-Residential / Other Residential/ Outdoor / Outdoor Structure / Vehicle and all other categories etc.*
- 6. Property Type - Flat / House / Cinema / Health Centre / Barn and all other property types etc.*
- 7. Primary / Secondary*
- 8. Main Cause of Fire.*
- 9. Alarm system: Whether a smoke alarm was present and if it operated.*
- 10. Ignition power: What powered the ignition of the fire.*
- 11. Source of ignition: The source of ignition for the fire.*
- 12. The type of room / compartment the fire started in.*
- 13. Item Ignited: The item / material that was ignited first.*
- 14. Item causing spread: The item / material that was mainly responsible for the spread of the fire.*
- 15. Fatality / casualty: Whether the incident involved a fatality or casualty.*
- 16. Rescues: Whether the incident involved a rescue.*
- 17. Evacuations: The number of people evacuated from the dwelling.*
- 18. The total horizontal area damaged by the flame and heat (sq. m) at the stop of the fire.*
- 19. The total horizontal area damaged by the flame, heat, smoke and water (sq.m).*
- 20. The extent of fire when the incident was closed.*
- 21. Whether an adjacent property was affected by the fire by the close of the incident.*

Please provide the information in the form of excel spreadsheet."

6. The Council responded on 10 June 2020. It provided the complainant with an excel spreadsheet containing the information requested apart from the geographical co-ordinates of fire incidents. The Council stated that it withheld this part of the information under section 40(2) of FOIA (personal data).
7. Remaining dissatisfied with the response, the complainant wrote back to the Council on 10 June 2020, objecting to the Council's partial refusal of his request for information.
8. The Council responded on 16 June 2020, confirming its refusal to provide some of the information requested, again citing section 40(2) of FOIA as the basis for this refusal.
9. On 19 June 2020 the complainant contacted the Council again and requested an internal review. In this communication he presented his arguments against the application of section 40(2) in this case.
10. On 16 July 2020 the Council sent him the outcome of its internal review. The Council provided the complainant with additional reasoning on the application of section 40(2) of FOIA, but it did not change the position taken in its initial response.

Scope of the case

11. The complainant contacted the Commissioner 18 August 2020 to complain about the way his request for information had been handled. He objected to the Council's decision to withhold part of the information requested relying on section 40(2) of FOIA.
12. During the course of her investigation, the Commissioner contacted the complainant to confirm the scope of his complaint. The complainant confirmed that his complaint is focused on the information requested in part 2 of the request. He stated *"I'm complaining about no 2 (Location of Fire) because they've only provided the responsible station instead of the fire location grid references (in full or missing the last two digits) that I've requested."*
13. The following analysis therefore focuses on whether the Council was entitled to rely on section 40(2) of FOIA when it refused to provide the information requested in part 2 of the complainant's request.

Reasons for decision

Section 40 personal information

14. 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.
15. 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 UK General Data Protection Regulation ("UK GDPR").
16. 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.
17. 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?

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

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

19. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
20. 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.
21. 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.

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

22. The withheld information in this case consists of Ordnance Survey Great Britain (OSGB) co-ordinates that are expressed as X for Eastings and Y for Northings with the last two digits removed. The OSGB co-ordinates in full are comprised of a series of six numbers which enable the identification of a specific location within a 100m square.
23. The complainant argued the Council only *"provided data by fire station which covers on average 11.5 square kilometres. I have requested the data at a more granular level of grid references with the last two co-ordinates missing. This equates roughly to the size of output area (OA) which is used in reporting of census data."*
24. The Council asserted that, as a county, it has a number of reasonably dense population centres. However, the Council added *"the rest of the county is sparsely populated and rural. The gridded references of fires, could with other information readily available would allow for the identification of owners of properties."*
25. In relation to the complainant's argument that removing the last two digits would not enable the identification of any particular individuals, the Council argued that *"If the last two digits are replaced with zeros, the map will display the same, slightly larger, area as the full six-digit number. Therefore, the complainant could cross reference this location with other publicly available registers, such as the register of ownership on the Land Registry."* Therefore, the Council considers that a motivated intruder could potentially identify living individuals through piecing together the gridded references together with other information known about that location.
26. In the circumstances of this case, having examined the withheld information and considered the arguments presented by both parties in this case, the Commissioner is not convinced that disclosure of the withheld information would make possible the identification of particular living individual(s).
27. The Commissioner notes that whilst the full grid reference numbers consisting of six digits would highly likely enable the determination of a specific location, the four-digit reference covers a relatively larger area. Providing information relating to such a relatively large area whether in an urban or rural context, in the Commissioner's view is not sufficiently specific to enable the complainant or any third party to use the requested information together with any other information publicly available, to identify living individuals and thereby resulting in disclosure of personal data.
28. Further, the Commissioner is not convinced by the Council's argument that the complainant could replace the missing digits with "00" and go

on to use other publicly available information to identify an individual. This is because in the Commissioner's view to obtain a specific location, the requester or another individual would have a multitude of possibilities as to the two missing digits which in this context is likely to result in guesswork to identify specific premises and/or personal data.

29. Therefore, the Commissioner considers that the remaining information is not personal data and so the Council is not entitled to rely on section 40(2) of the FOIA to withhold it.

Right of appeal

30. 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

31. 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.
32. 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
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Wycliffe House
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