

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 October 2021

Public Authority: Devon County Council
Address: County Hall
Topsham Road
Exeter
Devon
EX2 4QJ

Decision (including any steps ordered)

1. The complainant requested information from Devon County Council ("the Council") relating to any allegations made against a business that they are associated with. The Council refused to confirm or deny if information was held under section 40(5B) (third party personal information) of the FOIA.
2. The Commissioner's decision is that any information held by the Council that fell within the scope of the request would be the complainant's personal data. The Council was therefore correct to neither confirm nor deny whether the requested information was held, but should have applied section 40(5A) (personal information of the requestor).
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

4. On 8 June 2020, the complainant wrote to the Council and requested information in the following terms:

Please confirm (a) whether or not you hold information supporting the allegation made in your Education Finance Blog of

12th December 2019 referring to [redacted business name], "When this is further investigated the teacher involved has no dealings with the company of services mentioned" and (b) if that is the case, please communicate to us all the relevant information supporting the allegation within twenty working days.

5. The Council responded on 16 October 2020. It refused to confirm or deny the information was held under section 40(5B).
6. Following an internal review the Council wrote to the complainant on 4 February 2021. It maintained its earlier response.

Scope of the case

7. The complainant contacted the Commissioner on 22 February 2021 to complain about the way his request for information had been handled, and specifically that the Council was not entitled to apply section 40(5B).
8. The complainant has informed the Commissioner that the request seeks information that will relate to their business. This fact appears to have been acknowledged by the Council in related correspondence to the complainant.
9. In cases where a requestor is seeking information (under the terms of the FOIA) that will represent their own personal data, the relevant neither confirm nor deny provision will be section 40(5A), and not section 40(5B).
10. The scope of this case and of the following analysis is therefore whether the Council should have applied section 40(5A).

Reasons for decision

Section 40 – Personal information

11. Section 1(1) of the 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.

12. 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.

13. Section 40(5A) of the FOIA states that:

The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

14. Section 3(2) of the Data Protection Act 2018 ("the DPA") defines personal data as:

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

15. The Commissioner understands, from public information available from Companies House, that the request relates to a private limited company, for which the complainant is the sole director. It is relevant for the Commissioner to note that the name of the private limited company clearly incorporates the complainant's name.

16. The Commissioner has previously noted that information about individuals acting as sole traders, employees, partners and company directors where those individuals are identifiable and the information relates to them may constitute personal data¹.

17. In the circumstances of this case, the Commissioner considers that whilst the private limited company is a separate legal person, any information falling within the scope of the request would be the personal data of the complainant. This is because the company can clearly be related to the complainant by its name, and that the complainant is listed as the sole director. As such, the Commissioner is satisfied that any information held by the Council falling within the scope of the

¹ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/what-is-personal-data/what-is-personal-data/#pd7>

request would relate to and identify the complainant, and therefore would be the complainant's own personal data as defined by the DPA.

18. The Commisisoner's conclusion is, therefore, that the Council was entitled to refuse the request under section 40(5A).

Right of appeal

19. 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

20. 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.
21. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF