

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2022

Public Authority: Hythe and Dibden Parish Council
Address: The Grove
25 St. John's Street
Hythe
Hampshire
SO45 6BZ

Decision

1. The complainant requested information from Hythe and Dibden Parish Council ("the Council") relating to a meeting held by the Council.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) (personal information) of the FOIA to withhold the requested information.

Request and response

3. The complainant made the following information request to the Council on 27 August 2021:

"Please provide a copy of the recording of the meeting held with the Valleydene residents on 26th August 2021. As this request is made by electronic means the information should be provided in a commonly used electronic form.

Please provide confirmation as to whether or not personal data concerning are being processed, and, where that is the case, access to the personal data and the following information:

1. the purposes of the processing;
2. the categories of personal data concerned;
3. the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
4. where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
5. the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
6. the right to lodge a complaint with a supervisory authority;

Please pass this request on to the data controller if necessary. I should point out that there is a requirement to identify the data controller both on your website and your emails. The website does not contain the required link to the privacy notice on the home page and the link provided in the email footnote doesn't work."

4. In response to the complainant's request for information relating to the Council's handling of personal data, the Council provided the complainant with a link to the privacy notice on its website.
5. However, the Council refused to provide the complainant with the recording of a meeting which took place on 26 August 2021 citing section 40 (personal information) of the FOIA as its basis for doing so.

Reasons for decision

6. This reasoning covers whether the Council is entitled to rely on section 40(2) (personal information) of the FOIA to refuse to provide the recording of a meeting which took place on 26 August 2021.
7. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
8. Section 3(2) of the Data Protection Act 2018 defines personal data as:

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

9. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
10. In this case, the complainant has requested the recording of a meeting which took place on 26 August 2021. In its internal review response, the Council provided a description of the recording. It stated that the recording contains the names and addresses of Valleydene residents who attended the meeting as well as other personal details. Therefore, the Commissioner is satisfied that the requested information is personal data as the information relates to and identifies the individuals who attended the meeting.
11. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
12. 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.
13. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
14. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
15. However, the Council has explained in its internal review response that the meeting held on 26 August 2021 was a private meeting for Valleydene residents, Council members and Council officers only. Therefore, the Commissioner considers that the individuals who attended the meeting on 26 August 2021 have a strong and reasonable expectation that the information they provided during the meeting will remain confidential.
16. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals who attended the meeting on 26 August 2021. Therefore,

he considers that there is no legal basis for the Council to disclose the requested information and to do so would be in breach of principle (a).

17. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to refuse to provide the requested information. The Commissioner requires no further action to be taken by the Council in relation to this request.

Right of appeal

18. 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

19. 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.
20. 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
Group Manager
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Wycliffe House
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Wilmslow
Cheshire
SK9 5AF