

Freedom of Information Act 2000 (FOIA)
Re-use of Public Sector Information Regulations 2015
(‘RPSI’)

Decision notice

Date: 31 August 2022

Public Authority: Conwy County Borough Council
Address: info-gov.unit@conwy.gov.uk

Decision (including any steps ordered)

1. The complainant requested to re-use documents released which he initially received from Conwy County Borough Council (‘the Council’) in response to an earlier FOI request, and asked for them in the format in which they were originally held. The Council does not accept that the request is a valid re-use request despite the Commissioner’s decision notice reference IC-40131-P2Y2 issued on 18 May 2021¹ which ruled that their request was valid under regulation 6 of RPSI, and has refused to provide them in their original format citing section 31(1)(a) FOIA.
2. The Commissioner’s decision is that the Council was not correct to refuse the re-use request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To provide and permit the re-use of the requested information in its original format.
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.

¹ [ic-40131-p2y2.pdf \(ico.org.uk\)](https://ico.org.uk/ics/40131-p2y2.pdf)

Background

5. It is not in dispute that prior to the request for re-use under consideration in this case, the complainant requested the following information under the FOIA:

"1. Does the council have any templated letters, templated wording or templated paragraphs that can be used by council officials, when composing letters to either accept or reject representations made in respect of Penalty Charge Notices for parking, bus lane or moving traffic contraventions?"

2. If the answer to question 1 is yes, I ask for a copy of all such templated letters or paragraphs.

For the avoidance of doubt, this request covers both PCNs the authority issues in its own right, and PCN which the authority deals with on behalf of any other public authority."

6. From the evidence provided to the Commissioner, that request was made on 20 December 2019. The Council responded on 16 January 2020 under FOIA, and provided information to the complainant. Following an internal review, it was acknowledged that some information was omitted in the original response. As a result, the Council disclosed further information to the complainant on 3 April 2020.

Request and response

7. On 3 April 2020, the complainant wrote to the Council and requested the following information:

"...all documents released under FOI reference 0838-19 that are owne[r] [sic] by the council, but not the forms owned by the Ministry of Justice that were released under that reference. The documents are to be used for the purpose of non-commercial publication on the internet. In accordance with regulation 11, could the Council please make the documents available in the format in which they are originally held (i.e. individual word files)."

8. The Council responded on 7 May 2020. It stated that:

"The information that was provided to you on 3/4/2020 was a copy of the content of the template or paragraphs, and not a copy of the actual documents held...

Your request for re-use cannot be considered a valid request primarily because you are requesting to re-use information that has not been provided to you."

9. As stated in paragraph 1 of this notice, a decision notice was issued on 18 May 2021 confirming that it was a valid request for re-use and instructed the Council to:

“issue a fresh response to the request for re-use.”

10. The Council issued a fresh response on 18 June 2021 which confirmed that the complainant could re-use the information already provided to them under FOI 0838-19 under the terms of the (OGL) Open Government Licence.
11. The complainant requested an internal review on the same date which made reference to the Council’s obligations under regulation 11 of RPSI and stated:

“It follows that the council is required to make the documents available in the format in which they were held at the time of my request...There appears to be no excuse for the council failing to comply with regulation 11(1)(a).”

12. Following an internal review the Council wrote to the complainant on 5 July 2021. It upheld its original decision that the complainant could re-use the information already provided and also refused to provide the information in its original format citing section 31(1)(a) FOIA. Additionally, it referred to correspondence of 25 June 2020 which advised:

“Your re-use request was then considered as a new FOI request (0062-20) I apologise that in the response it was not clearly stated which limb of s31 was being relied upon. I can confirm now that it the [sic] exemption provided by section 31(1)(a) of the FOIA.”

Scope of the case

13. The complainant contacted the Commissioner on 12 July 2021 to complain about the way their request for information had been handled.
14. They want the Council to comply with regulation 11(1)(a) of RPSI which states that a public sector body must make a document available to an applicant under regulation 8(4)(b) or (c) in the format and language in which it is held on the date of the request for re-use.
15. Regulation 18 of RPSI imports the enforcement and appeal provisions from FOIA. Therefore, the Commissioner can issue a decision notice in order to decide whether a public sector body has dealt with a request for re-use in accordance with the requirements of the Re-use of Public Sector Regulations 2015 (RPSI).

Reasons for decision

16. Section 6 of the RPSI states that:

"6. A person who wishes to make a request for re-use must ensure that the request—

(a) is in writing;

(b) states the name of the applicant and an address for correspondence;

(c) specifies the document requested; and

(d) states the purpose for which the document is to be re-used."

17. Section 7 of the RPSI states that:

Permitting re-use

"7.—(1) Subject to paragraph (2), a public sector body must permit re-use where it receives a request made in accordance with regulation 6...

... (3) Where a public sector body permits re-use, it must do so in accordance with regulations 11 to 16."

18. The Council does not accept that the complainant's request for the documents in the format in which they were held at the time of the complainant's request is a valid request under RPSI. However, the Commissioner has already ruled in decision notice IC-40131-P2Y2 (and referenced in paragraph 1 of this notice) that the request was valid under regulation 6 of RPSI. The Commissioner does not therefore intend to repeat his analysis here. However, as the Council has now applied section 31(1)(a) to the documents in the format in which they were held at the time of the complainant's request for re-use under RPSI, the Commissioner will consider this exemption.

Section 31 – Law enforcement

19. Section 31(1)(a) of FOIA provides that

"Law enforcement.

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) the prevention or detection of crime,"

20. The Commissioner considers that issues relating to the prevention and detection of crime fall within the definition of the term 'public security' for the purposes of Regulation 5(7) of the RPSI.
21. The Council's argument is that disclosure of the templates it uses to issue and enforce Penalty Charge Notices (PCN's) in an editable state in response to an FOIA request, could allow for the potential misuse of those templates by way of misleading the public into believing they are/were the subject of a PCN for parking issued by the Council, and as such could impact on the discharge of its duty as a public authority.
22. It considers that there is a possibility that disclosure could result in targeting individuals with fraudulent letters and emails which would be prejudicial to the interests of those individuals who may be persuaded to make payment under false pretences, which would ultimately reflect on the reputation of the Council.
23. It has further stated that the potential impact/disruption disclosure of copies of the templated letters could have on the privacy of individuals, together with a possible increase in expenditure of public monies in dealing with any resulting issues, supports the withholding of the requested information.

The Commissioner's analysis

24. The question for the Commissioner is therefore whether the Council's claims are correct in this instance. If the Council is correct to argue that section 31(1)(a) is applicable, then the qualification to the right to re-use outlined in Regulation 5(7) is also applicable, and the Council is able to refuse the re-use request.
25. The Commissioner would refer to his previous decision notice in respect of a very similar request for the re-use of PCN letters to Brighton and Hove City Council.² In this case, the Council had originally provided the templates, but following the request for re-use under RPSI it decided that in retrospect, it did so in error. It argued that if the same request was received again, it would refuse it under section 31 FOI (prevention and detection of crime) and refused the re-use request. The Commissioner determined that the Council was not correct to refuse the re-use request although it was able to refuse to permit the re-use of its logo on its webpage as this is excluded from the rights within RPSI.

² [ic-47466-b1n8.pdf \(ico.org.uk\)](#)

26. In this case, in carrying out his assessment, the Commissioner must take into account that the information (although not the templates) is already in the public domain. The council initially provided the information, to the complainant in response to their earlier FOI request, and FOI responses are considered to be to the world at large.
27. As with the Brighton and Hove City Council decision, the Commissioner is mindful that the council will have issued the majority, if not all of these template documents, to members of the public over time as part of its genuine enforcement activity.
28. Similarly, neither the templates, nor the council's general letters disclosing information to requestors under FOI appear to include warnings to recipients not to publish copies of the letters they receive, and it appears therefore to be open for them to publish their own examples on, for instance, lobby groups or chat/help groups on websites³.
29. As part of his consideration of this case, the Commissioner would refer to examples which helped form his decision in respect of the Brighton and Hove City Council case, and are relevant to this issue. In *Webber v Information Commissioner* (EA/2019/0369)⁴ the tribunal considered a similar case relating to template PCN letters. In this case the council applied section 31(2)(c) of FOIA to withhold the information from disclosure, and the Commissioner upheld the application of the exemption.
30. The majority of the decision relates to matters which are not particularly relevant to the council's arguments in this case. They relate to the potential harm to the council's ability to enforce PCN's if individuals are aware of the policies under which the council enforcement officers work. In the current case the council is arguing that it is the public which would be likely to suffer harm.
31. Additionally, it was only the text of Council paragraphs which was under consideration in the case of *Webber*, not whole template letters.

³ As noted from various FOI responses issued by the Council and published on Whatdothey know; [Conwy County Borough Council - view and make Freedom of Information requests - WhatDoTheyKnow](#)

⁴[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2655/Webber%20,%20Gabriel%20\(EA.2019.0369\)%20%20Allowed.pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2655/Webber%20,%20Gabriel%20(EA.2019.0369)%20%20Allowed.pdf)

32. In this case, the Council has refused to provide the templates as it believes that they could be used by fraudsters to mis-lead the public into believing they had received genuine PCN's.
33. However, the public interest test carried out by the Tribunal in Webber is relevant. In its decision the Tribunal was strongly of the view that the public interest rested with the council being transparent about its policies and templates. It considered this to be the case in order that the public is able to confirm that the council's PCN enforcement process is fair, and so that the public fully understands how the process is undertaken. At paragraph 45 of the decision, it pointed out that:
- "...guidance issued by the Secretary of State for Transport 16 under section 87 of the Traffic Management Act 2000 (the guidance) encourages local authorities to be open about how they enforce parking offences so that motorists can know when to challenge a PCN. For example, paragraph 10.4 says: '... [Enforcement authorities] should approach the exercise of discretion objectively and without regard to any financial interest in the penalty or decisions that may have been taken at an earlier stage in proceedings. Authorities should formulate (with advice from their legal department) and then publish their policies on the exercise of discretion. They should apply these policies flexibly and judge each case on its merits. An enforcement authority should be ready to depart from its policies if the particular circumstances of the case warrant it...'
46. The guidance is not binding but local authorities must have regard to it.
34. The Tribunal also recognised the likelihood that disclosing the information may facilitate fraud (and the manipulation of appeal arguments using the information), however it considered that this was outweighed by the need for a fair and open enforcement process, and it therefore ordered the disclosure of the withheld information.
35. As with the Brighton and Hove City Council case, the Commissioner has also considered the First-tier Tribunal's decision in the case of Westminster City Council v Information Commissioner and Gavin Chait EA/2018/0033⁵.

5

[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2557/Westminster%20City%20Council%20EA-2018-0033%20\(04.12.19\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2557/Westminster%20City%20Council%20EA-2018-0033%20(04.12.19).pdf)

36. In that case the question related to whether a disclosure of a list of business rates information would prejudice the prevention and detection of crime. The Tribunal accepted that much of the information was available from various other sources within the public domain, however at paragraph 104, it considered that:

"In relation to property crimes we accept that the planning portal, Google Street View and other sources already allow criminals to identify targets, and that the list is not likely to contribute to opportunistic crimes, but we accept the submission by Sheffield that the provision of a readymade list makes it easier to commit crime and therefore prejudices the prevention of crime: it enables criminals to avoid the significant effort of researching and compiling the information in relation to each potential target."

37. In paragraph 106 it went on to say:

"Although a potential criminal can piece something similar together with enough time, effort and motivation, that does not answer the point that the criminal's life is made easier through the provision of a ready-made list."

38. Within its analysis of the public interest, it placed a significant weight on the argument relating to the potential for fraud. At paragraph 137 it said that:

"In relation to fraud, we accept that the release of this information would make it much easier for a fraudster to pose as a ratepayer and bypass the Council's security systems, and that changing those systems would entail significant time and expense. Further that it would facilitate a fraudster posing as the Council to obtain confidential information from a ratepayer. There is evidence that rates fraud is a real and current problem. The consequences to the Council of a loss of a significant sum of public money are serious. We therefore give this prejudice very significant weight in the balance...

...139. Taking all these matters together, including in particular the prejudice to the prevention of rates fraud and terrorism, we find that there is a very significant public interest in maintaining the exemption."

39. The Commissioner notes that this case effectively involves a balancing of the likelihood that this information could facilitate fraud, as outlined within the Westminster case above, as against the openness and fairness arguments expressed in the Webber Case, and as highlighted in the guidance issued by the Secretary of State outlined above.

40. The Commissioner notes that publishing information on the internet in this case would effectively create a ready-made list of documents for criminals to forge and amend for their own purposes. The use of such templates would also be useful in creating substantially similar looking letters to those issued by the council, and therefore make it more likely that members of the public would be deceived by a false PCN.
41. The Commissioner therefore accepts that there is a likelihood that if the information were to be published as a usable list of documents on the internet, this list could be used as a basis for facilitating fraud.
42. However, the Commissioner must also take into account that the information which is under consideration is already available to the public. He notes that even if the information was not published more widely, obtaining copies of all of the necessary documents would not be as time consuming for fraudsters as was considered for the information in the Westminster case.
43. He also considers that fraudsters would only require two or three documents in order to be able to create reasonable looking forgeries which cover the majority of situations which they are likely to come across; those dealing with the initial 'fine' and those dealing with the initial appeals process following that. These letters will be issued by the Council to members of the public on an almost daily basis. Copies of the initial enforcement letters would therefore be very easy to obtain even if the re-use request had been correctly refused.
44. The Council's logos will be widely publicly available, and the look and feel of documents will largely follow its standard templates. The templates following the initial fines will largely follow the initial PCN document template in look and feel. Therefore, a disclosure of the text paragraphs within the documents does not of itself prevent fraudsters creating convincing looking documents, even without the remaining sections of the templates. They may simply rely upon any Council letter to create a fairly convincing forgery. The resultant document may not be 100% accurate, but it will have a sufficient degree of accuracy to be convincing to many people.
45. The information in the Westminster case related to the processing of business rates payments. These are, for the most part, administrative functions of the Council in collecting a tax on business properties. In the current case the information relates to penalty charge notices imposed on individuals who the council considers has breached its parking bylaws.
46. The imposition of fines differs from the general processing of business rates information. The imposition of fines is a legal, punitive process

which can result in court proceedings if the fines are ignored, or payment is refused. There is a public interest in such a process being carried out openly, and the policies surrounding the process being clear. This is the argument referred to by the Tribunal in the *Webber* case.

47. That is not to say, however, that the Council's business rate administration should not also be carried out transparently and with accountability. The risk of fraudulent scams against the public is also still possible, and in the case of business rates fraud, it is likely to include much greater sums of money.

Conclusions

48. In the Brighton and Hove City Council case the information was already within the public domain, and the Commissioner considered that it was possible that some of the templates may have been uploaded onto websites catering for pressure and help groups relating to the council's PCN enforcement previously.
49. He also noted that when considering its other responses on the *whatdotheyknow* website, that it appears the use of the disclosed information may not have been qualified in any way and in that case, the complainant may therefore have been able to upload the information onto such sites without further recourse to the Council if they had wished to do so, without making a further request under the RPSI Regulations.
50. As with the Brighton and Hove City Council case, the Commissioner accepts, in any event, it would be extremely easy for fraudsters to obtain copies of the initial templates if they were so inclined, and from this they would obtain the information they need to create convincing false PCN's, which many individuals would fall for if they do not carry out checks.
51. As the information (though not the templates) is already within the public domain, and the council issues copies of the letters to members of the public on a daily basis, whilst he recognises the potential risks of the publication of ready-made list of templates, he considers that permitting re-use in this case is unlikely to have a significant impact in preventing such attempts at fraud in the manner described.
52. The Commissioner has therefore decided that the Council was not correct to deny the request to re-use the templates in this case.

Regulation 5(6)

53. Regulation 5(6) of the RPSI Regulations provides that:

(6) These Regulations do not apply to parts of documents containing only logos, crests or insignia.

The Commissioner assumes that the templates include the council's logo.

If this is correct, the Council is able to refuse the re-use request as regards to the part of its templates which contain the logo should it wish to do so. This falls outside of the complainant's rights under RPSI.

Right of appeal

54. 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

55. 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.
56. 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

Gerrard Tracey
Principal Advisor (FOI Complaints and Appeals)
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF