

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 June 2026

Public Authority: West Lindsey District Council
Address: Guildhall
Marshall's Yard
Gainsborough
Lincolnshire
DN21 2NA

Decision (including any steps ordered)

1. The complainant submitted a three part request to West Lindsey District Council (the council) for information about councillors in council tax arrears of more than two months.
2. The council provided information in response to part 1 of the request, but refused parts 2 and 3, citing the exemption at section 38 (health and safety) of FOIA.
3. The Commissioner found that all of the withheld information is the personal data of an individual. He therefore considered whether disclosure would contravene any of the data protection principles. He is satisfied that the council is entitled to rely on section 40(2) (third party personal information) of FOIA to withhold the information falling within scope of parts 2 and 3 of the request. In light of that finding, the Commissioner did not consider it necessary to go on to determine whether section 38 is engaged in relation to any of the withheld information.
4. The Commissioner does not require further steps.

Request and response

5. On 6 August 2025, the complainant requested the following information:
 1. How many WLDC [the council] councillors currently are in at least two months' council tax arrears.
 2. How much do they owe in total.
 3. What are their names.
6. The council initially responded to the request on 4 September 2025, advising that it considered the exemption at section 38 of FOIA to be engaged, but that it required further time to consider the balance of the public interest.
7. On 1 October 2025, the council provided its response. For part 1, the council confirmed that one councillor was in council tax arrears of more than two months. The council said that it was refusing parts 2 and 3 of the request, citing section 38(1) of FOIA. It said that council tax is a contentious issue and that disclosing the requested information would be likely to expose the councillor in arrears to harassment, intimidation or physical harm. The council referred to recent examples in the media of elected officials being physically abused by members of the public.
8. The council also said that disclosure of the withheld information would cause significant distress to the councillor, endangering their mental health. The council confirmed that it had considered the public interest in disclosing the information against the need to protect the councillor's physical and mental wellbeing, and had determined that this favoured withholding the information in this case.
9. On 6 October 2025, the complainant contacted the council to express their dissatisfaction about its handling of their request. They referred to the Upper Tribunal case of [DH v Information Commissioner and Bolton Council \[2016\] UKUT 139 \(AAC\)](#) (the Upper Tribunal case) where it was determined that, in the circumstances of that request, the council tax arrears of councillors should be disclosed.
10. The complainant said that, in the case considered by the Upper Tribunal, the council disclosed information other than the names of councillors in its original response to the request, including how many councillors were in council tax arrears, the political party they belonged to, how much had been owed, how much remained outstanding, and confirmation that two had been summoned to court. The complainant has said that they would not wish harm on any individual and that they appreciate the heightened risk currently experienced by public officials and elected

members. However, they argued that a more transparent approach by the council to councillors who are in council tax arrears might increase public confidence in democratic processes.

11. As far as the Commissioner is aware, the council did not respond to the complainant's correspondence of 6 October 2025.

Scope of the case

12. The complainant recognises that the council says disclosure of the information requested in parts 2 and 3 of the request would be likely to endanger the physical and mental health of the councillor in arrears. However, they are concerned that when making this decision, the council may not have given proper consideration to the comments made by, and outcome of, the Upper Tribunal case.
13. For part 1 of the request, the council has disclosed that one councillor was at least two months in arrears. In its submissions to the Commissioner, the council's concerns focused primarily on the effect that disclosure of the information falling within parts 2 and 3 of the request would have on the councillor's wellbeing and, potentially, on other identifiable individuals. Those concerns relate closely to the disclosure of personal data.
14. The Commissioner's [guidance](#) on section 38 explains that information involving living individuals is covered by section 40 (personal information), and that the focus of section 38 is on other information that might pose a risk if disclosed.
15. The Commissioner is not confined to considering only the exemption cited by the council. It is for him to determine whether the withheld information should be disclosed under FOIA and, where appropriate, to consider whether another exemption applies. This is particularly the case where the Commissioner considers the requested information may be the personal data of an individual or individuals. The Commissioner would not order disclosure of personal information where he considers doing so would breach a data protection principle.
16. In light of the above, the Commissioner considers that it is appropriate first to consider whether the withheld information is an individual's personal data, and if so whether disclosure would contravene any of the data protection principles.
17. Depending on the outcome of his analysis of whether the exemption at section 40(2) applies to the information requested at parts 2 and 3, the

Commissioner will then decide whether it is necessary to go on to determine whether section 38(1) is engaged.

Reasons for decision

Section 40 - personal information

18. Section 40(2) of 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), 40(3B) or 40(4A) is satisfied.
19. In this case, the relevant condition is contained in section 40(3A)(a). 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).
20. 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 FOIA cannot apply.
21. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

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

“any information relating to an identified or identifiable living individual”.
23. Therefore, the two main elements of personal data are that the information must relate to a living person, and that the person must be identifiable.
24. The Commissioner’s [guidance](#) says that, when deciding whether information is personal data, consideration should be given as to whether a person can be identified, either directly or indirectly, from the relevant information. Where it is not obvious that someone may be identifiable, consideration should be given to all the practical steps and all the means reasonably likely to be used by someone motivated to identify the people to whom the information relates. The key question is

whether individuals can be identified from the information with a sufficient degree of certainty.

25. The withheld information comprises the total amount of council tax arrears owed by one councillor (part 2) and the councillor's name (part 3).
26. For part 3, the Commissioner is satisfied that disclosure of the name of the councillor will directly identify them.
27. For part 2, the Commissioner has considered whether the total amount of arrears would, if disclosed without the councillor's name, nevertheless constitute personal data. In other words, he has considered whether the councillor could still be identified from that information if the information held for part 3 was not disclosed.
28. The council has confirmed to the complainant that one councillor is in at least two months' arrears. In these circumstances, the total amount of arrears would relate to that single councillor.
29. Even if the council did not disclose the councillor's name in response to part 3 of the request, the Commissioner is satisfied that the councillor would still be identifiable to certain individuals. At the very least, there will be some individuals, such as family members, friends and colleagues at the council, who are likely to already know who the councillor in arrears is. Furthermore, it is likely that other councillors will have become aware of the position, as the relevant councillor will be unable to participate in certain activities and duties whilst they remain in council tax arrears.
30. The Commissioner is therefore satisfied that there are individuals who would be able to identify who the councillor is, even if the council did not disclose their name in response to part 3.
31. For the information to be personal data, it must also relate to the individual. 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.
32. The Commissioner is satisfied that revealing that a particular councillor is in arrears, and by how much, relates to that individual because it would reveal information about their personal financial circumstances.
33. The Commissioner therefore considers that the information withheld in response to parts 2 and 3 of the request would both identify and relate to an individual. He is satisfied that it meets the definition of personal data at section 3(2) of the DPA.

34. Whilst the Commissioner has determined that all of the withheld information is personal data, this finding, in itself, does not automatically exclude such information from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
35. The Commissioner considers the most relevant DP principle in this case would be principle (a).

Would disclosure contravene principle (a)?

36. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

37. 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.
38. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

39. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”¹.

¹ Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

40. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
41. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

42. In considering any legitimate interest in the disclosure of the requested information under FOIA, the Commissioner recognises that such interests can include broad general principles of accountability and transparency, as well as case-specific interests.
43. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
44. It is the Commissioner's view that there is a legitimate interest in transparency and accountability relating to elected representatives and their compliance with council tax obligations. The Commissioner notes that the Upper Tribunal case recognised a compelling public interest in the public knowing whether a councillor has failed to pay council tax, at least where the councillor has remained in default for over two months such that statutory restrictions may apply.
45. The Commissioner therefore considers that the complainant is pursuing a legitimate interest.

Is disclosure necessary?

46. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under

FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

47. The Commissioner is satisfied that, in this case, there are no less intrusive means of meeting the legitimate interests in transparency and accountability identified above.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

48. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, the Commissioner must consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
49. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual has expressed concern about disclosure; and
 - the reasonable expectations of the individual.
50. In the Commissioner's view, a key issue is whether the relevant councillor would reasonably expect their information to be disclosed. That expectation may be shaped by factors such as their general expectation of privacy, whether the information relates to them in a professional capacity or as a private individual, and the purpose for which the personal data was provided. It is also relevant to consider whether disclosure would be likely to cause unwarranted damage or distress.
51. Whilst the payment (or non-payment) of council tax is a personal matter, the Upper Tribunal case recognised that a councillor is a public official with public responsibilities to which non-payment of council tax is directly and significantly relevant, and that "council tax default strikes at the heart of the performance of a councillor's functions". The Upper Tribunal also said that:

"The public interest in knowing the information is central to the proper functioning and transparency of the democratic process. The identification of a defaulting councillor involves an intrusion into his private life..... but it is an intrusion that a councillor must be taken to have accepted when taking office."

52. However, whilst the Upper Tribunal determined that the distress that would be caused in the case that it was considering was not sufficient to outweigh the "significant" public interest in the disclosure of councillors in council tax arrears, it did comment that:

"There may be exceptional cases in which the personal circumstances of a councillor are so compelling that a councillor should be protected from such exposure."

53. The key question for the Commissioner is whether this is one of the exceptional cases in which the councillor's personal circumstances are sufficiently compelling to outweigh the significant public interest in disclosure.
54. The Commissioner has taken into account that disclosure under FOIA is to the world at large and that council tax arrears relate to an individual's private financial circumstances. He has also considered the council's evidence about the exceptional personal circumstances in this case, and the impact disclosure would be likely to have on the wellbeing of the councillor and others.
55. The council has already disclosed that one councillor was in at least two months' arrears, and the Commissioner has accepted that there will be some individuals, such as family members, friends or colleagues, who are already aware of the identity of that councillor. To that extent, confirmation that one councillor is in arrears would not necessarily disclose new information to those individuals. However, disclosure of the information requested at part 2 would reveal additional personal information about that identifiable individual, namely the extent of their council tax arrears, which is currently unlikely to be known by friends, family and colleagues.
56. The Commissioner considers that the council's submissions in support of its reliance on section 38, insofar as they describe the impact that disclosure would have on the councillor and other individuals, are relevant to the balancing exercise under Article 6(1)(f) of the UK GDPR. The council also provided the Commissioner with additional information about personal circumstances specific to this councillor and the particular impact disclosure would be likely to have in those circumstances. That information cannot be set out in this notice, as

doing so would itself risk revealing sensitive personal information about an identifiable individual.

57. Although the Commissioner cannot set out that additional information in this notice, he has taken it into account in light of the Upper Tribunal's findings. The Tribunal recognised that councillors hold public office and must expect a greater degree of scrutiny and accountability, and did not regard upset or distress, in itself, as necessarily sufficient to justify withholding information of this kind.
58. However, the Commissioner is satisfied that his conclusion in this case does not rest on generic arguments about the effect disclosure may have on any councillor's wellbeing. Rather, it rests on personal circumstances specific to this councillor, and on the particular impact disclosure would be likely to have in those circumstances, including potentially on the wellbeing of others. The Commissioner is satisfied that those case-specific circumstances carry significant weight and are relevant to his assessment of whether this is one of the exceptional cases envisaged by the Upper Tribunal.
59. In the circumstances of this case, and having considered the evidence provided by the council, the Commissioner is satisfied that this is one of the exceptional cases envisaged by the Upper Tribunal. He therefore finds that the councillor's personal circumstances are so compelling that their rights and interests override the legitimate interests in disclosure. The Commissioner concludes that Article 6(1)(f) would not provide a lawful basis for disclosure of the withheld information.
60. Given the above conclusion that disclosure of the requested information would be unlawful, the Commissioner does not need to go on to separately consider whether disclosure would be fair or transparent.
61. As the Commissioner has found that the council is entitled to rely on the exemption at section 40(2) to withhold all of the information relevant to the request, he does not consider it necessary to consider the council's reliance on section 38 of FOIA in relation to any of the withheld information.

Right of appeal

62. 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)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

63. 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.
64. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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