

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 10 March 2011

**Public Authority:** Wycombe District Council  
**Address:** Queen Victoria Road  
High Wycombe  
Buckinghamshire  
HP11 1BB

### Summary

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The complainant supplied Wycombe District Council (the Council) with an address and a vehicle registration number, together with details of the vehicle make, model and colour, and asked it to confirm whether the Council had issued any penalty charge notices on the vehicle. The Council refused to supply this information, citing section 40(2) of the Freedom of Information Act 2000. The Council stated that this information was personal data, and that its disclosure would be a breach of the Data Protection Act 1998. The Commissioner decided that the Council was correct in its application of section 40(2) and that the information should be withheld. Therefore the Commissioner does not require the Council to take any further action in this case.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 29 December 2009 the complainant submitted a request to the Council, the request was as follows:

*".....I did ask in my previous correspondence if you would confirm the house number of the property outside where the car is parked....."*

*.....In view of my comments, would you please confirm unequivocally that you have in fact served a Penalty Charge Notice in respect of car registration No. [Redacted], the date or dates the Notice or Notices were served and whether the Notices have been appealed."*

3. The Council provided a response to the complainant in a letter dated 25 January 2010. The public authority refused to disclose the information requested on the basis of the exemption contained in section 40(2) of the Freedom of Information Act 2000.
4. The complainant requested an internal review of the public authority's decision on 26 January 2010.
5. On 23 February 2010 the public authority wrote to the complainant with the result of the internal review it had carried out. The Council upheld its decision to refuse disclosure of the requested information by virtue of the exemption contained in section 40(2).

## **The Investigation**

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### **Scope of the case**

6. On 29 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The application of section 40(2)
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### **Chronology**

8. The Commissioner wrote to the Council on 4 August 2010 informing it of the complaint and asking it to provide copies of any withheld information along with its arguments for withholding it by virtue of section 40(2).
9. The Council responded in full to the Commissioner in a letter dated 2 September 2010.

## Analysis

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10. The full text of the relevant provisions of the Act referred to in this section is contained within the legal annex.
11. In considering whether the exemption is valid, the Commissioner has taken into account that the Act is designed to be applicant blind and that disclosure should be considered in its widest sense, which is to the public at large. In doing this the Commissioner has not taken into account the circumstances of the complainant. If information were to be disclosed it would, in principle, be available to any member of the public.

### Exemption: Section 40(2)

12. Section 40(2) provides an exemption for information which is the personal data of a third party. Section 40(2) is contingent on two conditions and the public authority has stated that it is withholding the recorded information under section 40(2) by virtue of section 40(3)(a)(i) - that release of the information would breach the Data Protection Act 1998. This condition requires firstly for the information to be personal information under the DPA and secondly that the disclosure of it would contravene a data protection principle.

#### Is the information about the house number 'personal data'?

13. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as:

*'...data which relate to a living individual who can be identified*

*a. from those data, or*

*b. from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'*

14. The Commissioner notes that the complainant has argued that he has not actually asked for any personal details of the resident of the

address in question, and he acknowledges that the request, in itself, does not ask for the disclosure of the resident's details.

15. Taking into account the fact that this information relates to a specific address the Commissioner is persuaded by the Council's argument, in so far as he believes that the requested information constitutes the personal details of individuals that could lead to their identification. The Commissioner is not convinced that the information requested can be said to be sufficiently anonymous so as to avoid the identification of the residents of the property.
16. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way. The information can be in any form, including electronic data, images and paper files or documents.
17. Following the Information Tribunal's decision in the case of *England and London Borough of Bexley v Information Commissioner (EA/2006/0060 & 0066)*, the Commissioner is satisfied that the address of a residential property constitutes personal data for the reasons explained below.
18. If the address of a property is known, it is possible in many cases to identify the owner and if rented the name of a tenant from other information which is in the public domain, for example, Land Registry, the electoral roll or talking to neighbours of that property. More obviously, in the hands of the Council itself it is possible to identify an owner and/or tenant from the address of a property, as the addresses of properties are held with ownership details on the Council Tax register.
19. Secondly, the Commissioner must establish whether disclosure of that data would breach any of the data protection principles under the DPA.
20. Therefore, after considering the above points the Commissioner has formed the view that in the circumstances of this case the information in question does constitute the personal data of third parties, i.e. the residents of the address in question.

*Does the disclosure of the information contravene any data protection principles?*

21. Having concluded that the information falls within the definition of 'personal data', the Commissioner must then consider whether

disclosure of the information breaches any of the eight data protection principles as set out in schedule 1 of the DPA.

22. In this case the public authority informed the complainant that it believed that the second data protection principle would be contravened by releasing the withheld information.

### **The Second Principle**

23. The second data protection principle aims to ensure that organisations are open about their reasons for obtaining personal data, and that what they do with the information is in line with the reasonable expectations of the individuals concerned.
24. There are clear links with other data protection principles – in particular the first principle, which requires personal data to be processed fairly and lawfully.
25. In practice, the second data protection principle means that organisations must:
- be clear from the outset about why it is collecting personal data and what it intends to do with it;
  - comply with the Act's fair processing requirements – including the duty to give privacy notices to individuals when collecting their personal data;
  - comply with what the Act says about notifying the Information Commissioner; and
  - ensure that if it wishes to use or disclose the personal data for any purpose that is additional to or different from the originally specified purpose, the new use or disclosure is fair.

This clearly links back to the first data protection principle.

26. The Commissioner is mindful that the Council has not supplied him with arguments in relation to the second principle and has therefore focussed on the first data protection principle.

### **The First Principle**

27. The first data protection principle requires that the processing of personal data should be fair and lawful and that at least one of the conditions in Schedule 2 of the DPA must be met. The term

'processing' has a wide definition and includes disclosure of the information under the Act to a third party.

*Would it be fair to disclose the requested information?*

28. In considering whether the disclosure of the requested information would be fair the Commissioner has considered the following:

- Would that person expect that his or her information might be disclosed to others, i.e. would disclosure be within their reasonable expectation?
- Would the disclosure cause unnecessary or unjustified distress or damage to the person to whom the information relates?
- Had that person been led to believe that his or her information would be kept secret?
- Had that person expressly refused consent to the disclosure of the information?
- Does the information relate to the private or public life of an individual?

*Reasonable expectations of the data subjects*

29. The Commissioner has first considered whether the disclosure of this information would be within the 'reasonable expectations' of the residents of the address in question.

30. In its submissions to the Commissioner, the Council argued that disclosure in this case would release the address of a specific property from which a living individual could be identified and would have the potential to also release the fact that those individuals may have links with a specific vehicle or had been issued with a penalty charge notice (PCN). Disclosure would effectively be releasing information about a specific property which may have been identified for a particular reason. The Council confirmed that disclosure would be invasive and breach the privacy of the individuals concerned.

31. The Commissioner has given this matter careful consideration. He accepts that from the address of a property an individual can be identified and that disclosure in this case would also say something about those individuals i.e. that they have or have not been issued with a PCN. Disclosure could also lead to other presumptions being made about those individuals, for example, that those individuals are flouting parking laws. Releasing this type of information about a select number of individuals into the public domain would be unfair and could cause these individual's undue distress.

32. It is the Commissioner's view that an individual's possible offences are a personal and private matter and that disclosure in this case would release specific information relating to the private lives of those individuals concerned. The Commissioner has made a distinction between information which relates to one's public life and information which relates to one's private life in other Decision Notices he has issued on section 40(2) of the Act. It is generally his view that information relating to one's private life should not be disclosed as this would be unfair and an inappropriate intrusion into the private life of that individual.
33. As an individual's affairs in relation to possible parking offences are a private and personal matter, the Commissioner accepts that the individuals concerned in this case would have a reasonable expectation that the requested information would not be released into the public domain.

*Consequences of the disclosure on the data subjects*

34. As explained previously in this Notice, it would more than likely be possible to identify the residents of the property in question in this case from the address of the property concerned if this were released. Disclosure would therefore effectively "name and shame" certain individuals for allegedly having committed a parking offence and this would be an unwarranted intrusion into their private lives. It would also make it possible for the complainant to contact the data subjects directly with the potential for harassment.
35. Therefore, in light of the above the Commissioner believes that to disclose the information requested would breach the fairness element of the first data protection principle and therefore the exemption provided by section 40(2) of the Act is engaged.
36. The exemption listed at Section 40(2), by way of section 40(3)(a)(i), is an absolute exemption, and therefore is not subject to a public interest test.

Is the information about the car registration number 'personal data'?

37. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as:

*'...data which relate to a living individual who can be identified*

*a. from those data, or*



*b. from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'*

38. The Commissioner notes that the complainant has argued that he has not actually asked for any personal details of the registered keeper of the vehicle, and he acknowledges that the request, in itself, does not ask for the disclosure of the registered keeper's details.
39. Taking into account the fact that this information relates to a specific vehicle, parked at a specific address the Commissioner is persuaded by the Council's argument, in so far as he believes that the requested information constitutes the personal details of individuals which could lead to their identification. The Commissioner is mindful that a disclosure under the Freedom of Information Act is a disclosure to the world at large, which could in this situation lead to identification of the registered keeper, driver or owner of the vehicle in question. The Commissioner is not convinced that the information requested can be said to be sufficiently anonymous so as to avoid the identification of the registered keepers, drivers, or owners of the vehicle in question, given the route of access available via the DVLA to those with "reasonable cause".
40. When considering whether the information is personal data, the Commissioner had regard to his own published guidance: "Determining what is personal data" which can be accessed at:  
  
[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)
41. The two main elements to be considered in this case are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way. The information can be in any form, including electronic data, images and paper files or documents.
42. Therefore, after considering the above points the Commissioner has formed the view that in the circumstances of this case the information in question does constitute the personal data of third parties, i.e. the registered keeper of the vehicle in question.



*Does the disclosure of the information contravene any data protection principles?*

43. Having concluded that the information falls within the definition of 'personal data', the Commissioner must then consider whether disclosure of the information breaches any of the eight data protection principles as set out in schedule 1 of the DPA.
44. In this case the public authority informed the complainant that it believed that the second data protection principle would be contravened by releasing the withheld information.

### **The Second Principle**

45. The second data protection principle aims to ensure that organisations are open about their reasons for obtaining personal data, and that what they do with the information is in line with the reasonable expectations of the individuals concerned.
46. There are clear links with other data protection principles – in particular the first principle, which requires personal data to be processed fairly and lawfully.
47. In practice, the second data protection principle means that organisations must:
  - be clear from the outset about why it is collecting personal data and what it intends to do with it;
  - comply with the Act's fair processing requirements – including the duty to give privacy notices to individuals when collecting their personal data;
  - comply with what the Act says about notifying the Information Commissioner; and
  - ensure that if it wishes to use or disclose the personal data for any purpose that is additional to or different from the originally specified purpose, the new use or disclosure is fair.

This clearly links back to the first data protection principle.

48. The Commissioner is mindful that the Council has not supplied him with arguments in relation to the second principle and has therefore focussed on the first data protection principle.

## The First Principle

49. The first data protection principle requires that the processing of personal data should be fair and lawful and that at least one of the conditions in Schedule 2 of the DPA must be met. The term 'processing' has a wide definition and includes disclosure of the information under the Act to a third party.

### Would it be fair to disclose the requested information?

50. In considering whether the disclosure of the requested information would be fair the Commissioner has considered the following:
- Would that person expect that his or her information might be disclosed to others, i.e. would disclosure be within their reasonable expectation?
  - Would the disclosure cause unnecessary or unjustified distress or damage to the person to whom the information relates?
  - Had that person been led to believe that his or her information would be kept secret?
  - Had that person expressly refused consent to the disclosure of the information?
  - Does the information relate to the private or public life of an individual?

### Reasonable expectations of the data subjects

51. The Commissioner has first considered whether the disclosure of this information would be within the 'reasonable expectations' of the registered keepers of the vehicles in question. The Commissioner notes that Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002 requires the DVLA to release information from its vehicle register to the police, to local authorities for the investigation of an offence or decriminalised parking contravention, and to anybody who demonstrates 'reasonable cause' to have the information made available to them. It is therefore arguable that the registered keepers of vehicles should have a reasonable expectation that some of the information they have supplied to the DVLA could be disclosed to those with reasonable cause.
52. However, the Commissioner does not believe that it would be in the reasonable expectation of the registered keeper that confirmation that their details had been released in relation to penalty charge notice would be put into the public domain through a disclosure under the Act. In fact, the Commissioner believes that it would be reasonable for the registered keepers to expect that this information would not be disclosed, if it were subject to a request under the Act.

53. The Commissioner therefore has formed the view that a reasonable person would not expect confirmation that their vehicle had been subject to a penalty charge notice to be available to a member of the public who requests it. The Commissioner believes that information that a Local Authority may be taking action against a particular individual in relation to an alleged parking offence, which was committed at a specific address, relates to that individuals' personal and private life. He is of the view that this information deserves protection because disclosure to any member of the public would constitute an unfair infringement of their private lives.

*Consequences of the disclosure on the data subjects*

54. As explained previously in this Notice, it would more than likely be possible to identify the residents of the property in question in this case from the address of the property concerned if this were released. Disclosure would therefore effectively "name and shame" certain individuals for allegedly having committed a parking offence and this would be an unwarranted intrusion into their private lives. It would also make it possible for the complainant to contact the data subjects directly with the potential for harassment.

In addition to this the Commissioner also believes that this information could be used to the detriment of the individuals concerned, in so far as unfair conclusions could be drawn from the fact that a penalty charge notice had been issued, or appealed in relation to them, which could be taken as an indication that enforcement action by the local authority in relation to parking offences was pending or ongoing.

55. Therefore, in light of the above the Commissioner believes that to disclose the information requested would breach the fairness element of the first data protection principle and therefore the exemption provided by section 40(2) of the Act is engaged.
56. The exemption listed at Section 40(2), by way of section 40(3)(a)(i), is an absolute exemption, and therefore is not subject to a public interest test.

## **The Decision**

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57. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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58. The Commissioner requires no steps to be taken.

## Right of Appeal

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59. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 10<sup>th</sup> day of March 2011**

**Signed .....**

**Andrew White  
Group Manager**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Section 40

(1) 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.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

(a) 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), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.

## **Data Protection Act 1998**

### **Section 1 - Basic interpretative provisions**

(1) In this Act, unless the context otherwise requires—

- “data” means information which—
  - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
  - (b) is recorded with the intention that it should be processed by means of such equipment,
  - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
  - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;



- “personal data” means data which relate to a living individual who can be identified—
    - (a) from those data, or
    - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;
  - “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
    - (a) organisation, adaptation or alteration of the information or data,
    - (b) retrieval, consultation or use of the information or data,
    - (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
    - (d) alignment, combination, blocking, erasure or destruction of the information or data;
  - “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.
- (2) In this Act, unless the context otherwise requires—
- (a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
  - (b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.
- (3) In determining for the purposes of this Act whether any information is recorded with the intention—
- (a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or
  - (b) that it should form part of a relevant filing system,
- it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.