

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 August 2012

**Public Authority:** Surrey County Council  
**Address:** County Hall  
Penrhyn Road  
Kingston upon Thames  
Surrey  
KT1 2DN

#### Decision (including any steps ordered)

---

1. The complainant requested comments made by other residents which he considers resulted in Surrey County Council refusing an amendment to a disabled parking bay zone. The council applied section 41 (information provided in confidence) and section 40(2) (personal data of third parties) and refused his request. On review it upheld that decision.
2. The Commissioner's decision is that Surrey County Council has correctly applied section 40(2) in this instance. Given this he has not considered the application of section 41 further.
3. The Commissioner has not required the council to take any steps therefore.
4. The Commissioner however has found that the council should consider whether any information should be disclosed under the complainant's rights under section 7 of The Data Protection Act 1998.

#### Request and response

---

5. The complainant wrote to the council and requested information in the following terms.

*"Relates to my disabled parking bay complaint, [name of council officer redacted] advised me on the 31/05/11 of his firm proposals regarding increasing the size of the bay , he withdrew this by letter on 01/09/11*

*citing various reasons including comments received from other local residents. Under FOI we are allowed to see these comments (excluding details of who sent them). Please arrange for me to receive this information asap so we can consider whether to make a formal complaint with regards to Mr Caddies handling of our complaint. "*

The copy of the request provided to the Commissioner is not dated.

6. The council responded on 13 October 2011. It stated that the information was exempt as section 41 and section 40(2) applied.
7. Following an internal review the council wrote to the complainant on 27 March 2012. It upheld its decision to rely upon sections 41 and 40(2).

### **Scope of the case**

---

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. He said that in order for him to be able to properly consider the council's refusal of his request he needed to see the comments in order to consider whether to make a complaint about the council officer's actions.
10. He also asked the Commissioner to consider the councils delay in responding to his request for review.
11. The Commissioner considers that he has been asked to make a decision on the council's application of the exemptions to the information, together with considering the delay in the council carrying out the review.

### **Reasons for decision**

---

12. Amongst other things, Section 40(2) of FOIA states that information will be exempt from disclosure where it is the personal data of a third party and a disclosure of that information would breach the one of the data protection principles of The Data Protection Act 1998 (the 'DPA').

#### Is the information personal data?

13. The first question to consider is whether the information is the personal data of third parties. The comments themselves are recorded information held by the council which provide their views on the potential amendment to the parking bay. As such the letters provide personal opinions and views, written by the individuals themselves, and

the individuals are identifiable from the letters. The Commissioner is satisfied that the information is personal data for the purposes of the DPA and section 40

14. The complainant stated to the council that he realised that individuals' could be identified from the information. He said however that he was happy for it to remove any identifying information within the letters and simply provide him with the remainder of the information in an anonymised form.
15. In response the council simply stated that it could not redact the letters to anonymise the information it holds.
16. The Commissioner has considered the councils stance on this. He is satisfied that the council could not redact the information in a way to make it both meaningful to the complainant whilst at the same time anonymising the information. He must therefore consider whether the information can be disclosed without breaching any of the data protection principles.

Would a disclosure breach any of the data protection principles?

17. The relevant data protection principle to consider is the first data protection principle. This states that the processing of personal data (i.e. in this case disclosing it to the complainant) must be 'fair and lawful' and that a condition from schedule 2 should be met.
18. The Commissioner has firstly considered whether a disclosure of the comments would be 'fair' to the individuals concerned.
19. The letters are comments made about the complainant's proposal to amend a disabled parking bay which is outside of his house. The application by the complainant is not a normal planning application, where objections received are normally open to the applicant to view. In such cases the disclosure of objections to planning consent is normal and interested parties would have an expectation that that would be the case when making their objections.
20. In this case, because the application is not a planning application individuals would not have the same expectation that their objections would be disclosed and could be viewed by the applicant.
21. A further consideration is that disclosures under the FOI Act are considered to be global, i.e. to any member of the public. The question which the Commissioner must consider is whether the individuals would have an expectation that their information would be disclosed to any member of the public, rather than simply to the complainant.

22. The council has provided the Commissioner with a copy of the comments and having considered them he is satisfied that the writers would not have expected their comments to be made public to the entire world in response to a freedom of information request. The individuals considered that their representations to the council were being made in confidence.
23. Having established that the individuals would not have expectations that the information would be disclosed, the Commissioner must consider whether there are any other reasons or circumstances, balancing against that view, which would make a disclosure of the information to any member of the public fair.
24. The test which the Commissioner must consider is whether the interests of the public (rather than the complainant) in having access to that information outweighs the intrusion which would occur into the privacy of the individuals.
25. The Commissioner considers that the complainant's concerns are essentially a private matter concerning the refusal of his application to amend the parking bay which lies outside of his property. It is essentially an argument between the complainant and the council regarding the bay. The Commissioner therefore considers that there are few wider 'public interest' arguments for the information to be disclosed.
26. The complainant stated that he wishes to know what comments were received by the officer in order to consider whether to make a complaint about the officer concerned. Whilst transparency is the driver behind the Act, in this case a disclosure of the information would not create a great degree of additional transparency on the actions of the council. Creating greater transparency would also impinge upon the privacy of those individuals who made comments about the proposed changes to the parking bay.
27. Given this there are few wider arguments about transparency which would rebalance the expectations of the individuals and make a disclosure of the comments 'fair' for the purposes of the first data protection principle.
28. The Commissioner's decision is therefore that the council was correct to apply section 40(2) to the information.
29. Given that the Commissioner's decision is that section 40(2) applies he does not consider it necessary to consider the council's application of section 41 further.

## Other matters

---

### Section 7 of The Data Protection Act 1998

30. The Commissioner notes that the central aspect of the information is the complainant's proposal to make amendments to the disabled parking bay outside his property. Having considered the withheld information in this case he notes that some of that information may be personal data belonging to the complainant, as well as the personal data of third parties.
31. The complainant did not make his request under the DPA but under FOI. Nevertheless the Commissioner expects councils to consider requests for information and identify whether any of the other relevant information access regimes may be applicable.
32. In this case, as some of the information is personal data belonging to the complainant the council should also have considered whether any of his personal data should have been disclosed under section 7 of the DPA; the complainant's subject access rights.
33. When stating this however the Commissioner recognises that section 7 rights are also subject to exemptions within the DPA and it is possible that little or no information would be available to the complainant. Nevertheless the council is under a duty to consider whether any information should be disclosed and inform the complainant of the outcome of that assessment.

### The councils review of its initial decision

34. The complainant also requested the Commissioner to consider the amount of time which the council took to carry out its internal review of its initial decision.
35. The complainant asked the council to review its decision on 23 January 2012. The council provided its review on 27 March 2012. The council apologised to the complainant and said that the delay was due to heavy workloads at that time.
36. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable

time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

37. The Commissioner is concerned that in this case, it took over 40 working days for an internal review to be completed, despite the publication of his guidance on this.

## Right of appeal

---

38. 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: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

39. 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.
40. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**