

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 July 2012

**Public Authority:** Bournemouth Borough Council  
**Address:** Town Hall  
Bourne Avenue  
Bournemouth  
BH2 6DY

#### Decision (including any steps ordered)

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1. The complainant requested emails and notes of meetings between the public authority and members of the North Bournemouth Allotment Society in 2011.
2. The Commissioner's decision is that:
  - The public authority was entitled to rely on the exemption at section 40(2) FOIA to withhold third party personal data within the scope of the request.
  - The public authority was not entitled to rely on the exemption at section 40(2) FOIA to withhold emails from the complainant within the scope of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a refusal notice (in accordance with section 17 FOIA) on the basis of section 40(1) FOIA for emails within the scope of the request which originated from the complainant. Further commentary on the implication of the Commissioner's finding in relation to the public authority's obligations under the Data Protection Act 1998 is set out in the 'Other Matters' section at the end of the Notice.
  - 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.

## Request and response

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4. On 15 October 2011 the complainant wrote to the public authority and requested information in the following terms:

*'Emails and notes of meetings by Council Officers in its dealings with North Bournemouth Allotment Society(the NBAS) during 2011.'* This was subsequently clarified during the Commissioner's investigation as a request for emails and notes of meetings between Council officers and NBAS in 2011.

5. The public authority responded on 23 December 2011. It disclosed some information within the scope of the request above and explained that it considered the remaining information within the scope of the request above (the disputed information) exempt from disclosure on the basis of the exemption at section 40(2) FOIA.
6. Following an internal review the public authority wrote to the complainant on 31 January 2012. It upheld the decision to withhold the disputed information on the basis of section 40(2) FOIA.

## Scope of the case

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7. On 3 February 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to review the decision to withhold the disputed information on the basis of the exemption at section 40(2) FOIA.

## Reasons for decision

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### Section 40(2)

8. Information is exempt from disclosure on the basis of the exemption at section 40(2) FOIA if constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or the second condition in section 40(3) is satisfied.

9. Personal data is defined in section 1(1) of the Data Protection Act 1998 (DPA) as:

*'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or 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 person in respect of the individual.'*

10. The email exchanges (which constitute the disputed information) took place against the backdrop of an ongoing dispute between members of the NBAS. The correspondence relates to identifiable individuals either directly from the correspondence or indirectly from the context of the exchanges (i.e. against the backdrop of the ongoing disagreement).
11. The disputed information therefore clearly constitutes the personal data of the identifiable individuals.
12. The public authority considered whether it could suitably redact the disputed information so that relevant information could be disclosed without revealing the identities of individuals to the wider public. It concluded that it would not be possible to redact the information to the necessary level because the individuals concerned are members of a small, local, identifiable society and are likely to be recognised by both members of the NBAS and the wider local community from references to their activities and behaviour.
13. The Commissioner agrees that redaction would not have been effective in the circumstances for the reasons given above by the public authority. He also finds that additional redaction to remove references to individuals' activities and behaviour would be highly likely to render the remaining information meaningless.
14. The Commissioner however notes that a very small number of the emails in the disputed bundle originated from the complainant. Further commentary on the implication of this finding is set out later in this notice.

Would the disclosure of the third party personal data in the disputed bundle contravene any of the Data Protection Principles?

15. As mentioned, for section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that the disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

16. The first data protection principle states:

*'Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless-*

*(a) at least one of the conditions in schedule 2 [of the DPA] is met.....'*

17. The Commissioner first considered whether disclosing the third party personal data in the bundle would have been fair to the individuals concerned. In considering the fairness element of the first principle of the DPA, the Commissioner will consider factors such as the reasonable expectations of the data subjects, the nature of the information, and the impact of disclosure.

18. As mentioned, there was an ongoing internal dispute in the NBAS. The allotment site is leased from the public authority by the NBAS and the former was trying to assist in resolving the dispute to ensure that the conditions of the lease were observed. The public authority explained that the NBAS is a limited, mutual society and such internal disputes were strictly speaking, not a matter for it to adjudicate. It had extended its assistance beyond that of a landlord function in an effort to ensure the continuation and smooth running of a valuable local community resource. The correspondence relates largely to the activities or behaviours of individuals who are members of the NBAS and the individuals who expressed the opinions would not expect that their views would be made public.

19. The Commissioner notes that the third party personal data in the disputed bundle includes candid expressions of opinions in relation to the ongoing disagreement. Some of the information also relates to other personal information about individuals and they would clearly not expect such information to be made public. Disclosure would be intrusive and potentially damaging. The Commissioner therefore agrees with the public authority that given the reasonable expectations of the individuals concerned, disclosing the third party personal data in the disputed bundle would have been unfair and therefore in contravention of the first data protection principle. Furthermore, in relation to Schedule 2 of the DPA, the Commissioner does not consider there to be a sufficient legitimate interest in order for the disclosure of this information to be necessary.

20. The Commissioner finds that the public authority was entitled to rely on the exemption at section 40(2) FOIA to withhold the third party data in the disputed bundle because he is satisfied that disclosure would be unfair to the individuals identified therein.

### Section 40(1)

21. Information is exempt from disclosure on the basis of the above exemption if it constitutes the personal data of the applicant (i.e. the complainant).
22. As mentioned, a very small number of emails in the disputed bundle originated from the complainant. The Commissioner finds that the emails from the complainant fall within the definition of personal data in section 1 of the DPA.
23. The Commissioner consequently finds that the public authority was not entitled to withhold the emails originating from the complainant on the basis of section 40(2) FOIA as they were automatically exempt from disclosure by virtue of section 40(1) FOIA.

### **Other matters**

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24. As mentioned in the main body of the Notice, information is exempt from disclosure under FOIA if it constitutes the personal data of the applicant. The DPA on the other hand grants individuals a presumptive right of access to their personal data. The Commissioner therefore expects the public authority to consider whether the emails exempt from disclosure under section 40(1) FOIA could be disclosed to the applicant under the DPA.

## Right of appeal

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25. 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)

26. 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.
27. 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** .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**