

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 September 2012

**Public Authority:** East Riding of Yorkshire Council  
**Address:** County Hall  
Beverley  
East Riding of Yorkshire  
HU17 9BA

#### Decision (including any steps ordered)

---

1. The complainant requested information from East Riding of Yorkshire Council ("the council") relating to his property and a complaint about his hedge. The majority of the information was considered to be the complainant's personal data and has therefore been considered separately as a subject access request in accordance with the Data Protection Act 1998 ("the DPA"). The outstanding information for consideration under the terms of the Freedom of Information Act 2000 ("the FOIA") is the name and contact details of the person who made the complaint about the complainant's hedge. That information was withheld by the council using section 40(2) of the FOIA, the exemption relating to third party personal data.
2. The Commissioner's decision is that that the information was exempt under section 40(2) of the Freedom of Information Act 2000 ("the FOIA") and was therefore correctly withheld.
3. The Commissioner does not require any steps to be taken.

#### Request and response

---

4. Following receipt of a letter from the council on 24 August 2012 indicating that there had been a complaint about the complainant's hedge, on 29 August 2011, the complainant requested information from the council in the following terms:

*"Finally, in accordance with the Freedom of Information Act, would you please let me have details of all documentation relating to [address] which is held by your Department, including details of the contact referred to in the first paragraph of your letter to me of 24 August".*

5. The council responded on 14 September 2011 and supplied some information but said that it could not release the details of the person who made the complaint as that information was exempt under section 30 of the FOIA, an exemption relating to investigations.
6. The complainant requested an internal review. In its internal review on 23 November 2011, the council said that it wished to maintain its refusal however it referred instead to the exemption under section 40(2) which relates to third party personal data.

### **Scope of the case**

---

7. The complainant contacted the Commissioner to complain about the way his request had been handled.
8. As already mentioned, the Commissioner decided that it was appropriate to consider the majority of the information requested under the DPA as a subject access request in accordance with section 7. He has made a separate assessment in relation to that matter. The only issues that have warranted further consideration under the terms of the FOIA is the decision to withhold the name and contact details of the individual who made the complaint and the general handling of the request.

### **Reasons for decision**

---

#### **Section 40(2) – Third party personal data**

9. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

#### **Is the withheld information personal data?**

10. Personal data is defined by the DPA as any information relating to a living and identifiable individual. A name and contact details are clearly personal data.

## **Would disclosure breach the Data Protection Principles?**

11. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations**

12. Details of complaints made to public authorities are typically treated in a confidential way. There were no circumstances in the Commissioner's view that would suggest that disclosure of this information would have been within the reasonable expectations of the individual concerned.

### **Consequences of disclosure**

13. Given that disclosure would not have been within the reasonable expectations of the individual concerned, the Commissioner accepts that the disclosure could cause distress or conflict.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

14. There is always some public interest in the disclosure of any information held by public authorities as this helps to bring about transparency and accountability. However, the Commissioner would like to highlight here that for the purposes of the FOIA, the legislation is primarily about the disclosure of information that is in the general public interest.

15. The complainant is clearly unhappy with the fact that a complaint was made about his hedge and that this prompted the council to take action. He disputes the validity of the complaint and the way it has been handled by the council. He has suggested that the complaint was made with a malicious intention and that there is a strong suspicion of wrongdoing on the part of the council. He has alleged in particular that the complaint was made by a council staff member.

16. While the Commissioner understands that the complainant has concerns, these are nonetheless primarily personal issues that the complainant may pursue via other complaint mechanisms. Furthermore, there is no reason in the Commissioner's view why the complainant would need to access the identity of the individual concerned to pursue a complaint. Either the action taken by the council was valid or it was not. The identity of the individual is not relevant to that consideration.

Furthermore, the council has clarified that the individual who made the complaint was not a member of its own staff, as alleged by the complainant. This appears to have been a misunderstanding that arose during the course of the council's correspondence with the complainant. The Commissioner was not satisfied that disclosure of the withheld information would be proportionate or necessary in the circumstances. In the Commissioner's view, there is very limited wider public interest in this disclosure.

17. In the balance, the Commissioner considered that there was a much stronger argument for protecting the right of the individual concerned to privacy in this situation. He was satisfied that the disclosure would not have been within their reasonable expectations and may cause distress or possible conflict.

### **Procedural issues**

18. The FOIA provides that the reasons for refusing to provide information should be provided within 20 working days. The council did not rely on section 40(2) until its internal review and the Commissioner has therefore found a breach of section 17(1) of the FOIA.

### **Other Matters**

---

#### **Time taken to conduct an internal review**

19. Any expression of dissatisfaction with the handling of a request for information should be taken to be a request for an internal review. Although not subject to a statutory requirement, internal reviews should be undertaken promptly and in any event, within 20 working days unless exceptional circumstances are involved. The council did not do this on this occasion. The Commissioner trusts that improvements will be made in the future.

## Right of Appeal

---

19. 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)

20. 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.
21. 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**