

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 02 September 2013

**Public Authority:** South Tyneside Council  
**Address:** Town Hall and Civic Offices  
Westoe Road  
South Shields  
Tyne and Wear  
NE33 2RL

### **Decision (including any steps ordered)**

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1. The complainant has requested the proposal letters for any traffic parking schemes and the names of the proposers. South Tyneside Council (the "Council") provided the complainant with the proposal letters which it held but confirmed that some were not held. It refused to provide the names of proposers under section 40(2) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the Council has provided the complainant with all of the proposal letters it holds and was correct to withhold the names of proposers under section 40(2) FOIA.
3. The Commissioner requires no steps to be taken.

### **Request and response**

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4. On 11 August 2012 the complainant requested information of the following description:  
  
"...copies of all the original proposal letters i.e. the proposal letters that were first sent out to residents and not amended as in the case of letters with reference number (HTD/GF/TO800A09) and names of the proposers of Traffic Parking Scheme Proposals where a door to door consultation has been carried out."

5. On 8 November 2012 the Council responded. It provided the complainant with a copy of the proposal letter but it withheld the names of the proposers under section 40(2) FOIA.
6. The complainant requested an internal review on 12 November 2012 as he explained that he believed that further proposal letters were held and had not been provided. The complainant explained that he wanted to obtain all proposal letters not just the ones with the reference quoted in his original request. The Council sent the outcome of its internal review on 12 December 2012. It provided the complainant with another version of the proposal letter with the reference quoted in the original request. It upheld its application of section 40(2) FOIA in relation to the names of the proposers. It explained that it was setting up a new case to deal with the request for all proposal letters as it was not clear that this is what he had wanted to receive when you made his original request.
7. The complainant wrote to the ICO on 3 February 2013 to explain that he was dissatisfied that the Council had set up a new case to deal with his request for all proposal letters as he considered it should have dealt with this as part of his original request. Furthermore he explained that the Council still had not provided him with all proposal letters after he had clarified that this is what he wanted to obtain on 12 November 2012.
8. On 27 February 2013, the Council provided the complainant with all information it held in relation to proposal letters for all schemes where door to door consultations had been carried out. It said it was providing information in relation to 17 of 31 such exercises that had been carried out. It said that information in relation to the remaining consultations had not been retained and was not therefore held by the Council.
9. The complainant considers that 32 exercises were carried out rather than 31. He considers he has been provided with 4 proposal letters and the remaining information provided was requests. He has also said that he does consider that the Council has retained the other information which it has said is not held. He therefore believes the Council has not fully responded to his request.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 21 September 2012 to complain about the way his request for information had been handled.

11. The Commissioner has considered whether the Council has provided the complainant with all of the proposal letters it holds and whether it was correct to withhold the names of proposers under section 40(2) FOIA.

## **Reasons for decision**

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### **Section 1(1)(a)**

12. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request".
13. In this case the Council's position is that it has now provided the complainant with all of the proposal letters it holds. It has confirmed that it has provided the complainant with the information it holds within the scope of the request relevant to 17 consultations. It has confirmed that in relation to the other consultations the proposal letters were written over to be used in later consultations.
14. The Council confirmed that it carried out manual searches of all hard copy information and electronic searches on computers used by the staff involved. This check included the local computer drives as well as the computer network folders. The search was for all 'Resident Permit' related consultation letters in electronic folders. It said that these searches have now been carried out twice. Once when the original request was received and more recently when preparing its response to the ICO.
15. The Council has confirmed that its records management policy states that information relevant to public consultations should be retained for 7 years.
16. The Council has confirmed that it has conducted searches, both manual and electronic to locate the requested information. It has conducted these searches twice and was unable to find some of the proposal letters. It has however provided the complainant with information falling within the scope of the request for 17 consultations. The Council has indicated that this may be because proposal letters were written over to be used in other consultations. The Commissioner does however acknowledge that by not retaining all of the proposal letters for 7 years, the Council does seem to be in contravention of its records management policy. Despite this, on the balance of probabilities, the Commissioner considers that no further information is held by the Council.

## **Section 40(2)**

17. Section 40(2) FOIA provides an exemption for information that constitutes the personal data of third parties:

*"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."*

18. Section 40(3)(a)(i) FOIA states that:

*"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 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),"*

19. The Commissioner has first therefore considered whether the information redacted under section 40(2) is the personal data of one or more third parties.

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

*"data which relate to a living individual who can be identified –*

*(i) from those data, or*

*(ii) 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."*

21. 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.

22. The withheld information is the names of the proposers. The Commissioner does consider that this is information the data subjects would be identifiable from. He does therefore consider the withheld information would be the data subject's personal data.
23. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) of FOIA, where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met.

### **Likely expectation of the data subject**

24. In this case the Commissioner considers that the data subject would not have expected that the fact that they made a proposal about a traffic parking scheme would then be disclosed into the public domain. This is because individuals within the local area would then know who has made the proposals which may cause the data subject difficulties if it was an unpopular suggestion within a particular area.

### **Would disclosure cause damage or distress to the data subject**

25. For the reasons set out a paragraph 18 above the Commissioner also considers that disclosure of the names of the proposers could cause damage and distress to the data subjects. Furthermore it may damage the data subjects ability to make future proposals if they felt this information would be disclosed into the public domain. This may therefore have a negative impact upon the data subjects ability to ensure that the traffic parking scheme in their area is acceptable for all residents involved.

### **Legitimate public interest**

26. The Commissioner considers that there is a legitimate public interest in the Council operating openly and transparently, particular in relation to issues which are going to affect a whole residential community. However disclosure of the names of the proposers would be unfair in this case as they would not have expected this information to be disclosed and furthermore disclosure may cause damage and distress if the proposal was unpopular in the area or if the data subjects felt unable to enter proposals in the future. The Commissioner therefore considers that section 40(2) FOIA was correctly engaged in this case.

## Right of appeal

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27. 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)

28. 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.
29. 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 .....**

**Pamela Clements**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**