

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 March 2015

**Public Authority:** Hambleton District Council

**Address:** Civic Centre  
Stone Cross  
Northallerton  
North Yorkshire  
DL6 2UU

#### Decision (including any steps ordered)

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1. The complainant has requested information held by Hambleton District Council which concerns the potential sale of his property.
2. The Commissioner's decision is that Hambleton District Council has properly applied section 40(2) of the FOIA to the information sought by the complainant and it is therefore entitled to withhold that information.
3. No further action is required of the Council in respect of this request.

#### Request and response

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4. On 16 July 2014, the complainant wrote to Hambleton District Council ("the Council") and requested information in the following terms:

*"Under the freedom of information, could I also request a copy of all emails, written correspondence and records of discussions between HDC and any member of the public who has made any enquiry regards the property or the application, this will obviously include those with the potential purchaser.*

*Under the same act I also request a full copy of the outcome of the internal investigation you have instigated today regards the conduct of HDC personal [sic] and the handling of my application. This should include all findings and any statements made."*

5. The Council responded to the complainant's request on 13 August. It provided the complainant with documentation relevant to his request but redacted personal data in reliance of section 40(2) of the FOIA.
6. On 22 August the complainant wrote again to the Council. In his email he asked the Council to elaborate on its reasons for withholding information relating to [a named person and his wife].
7. The Council responded to the complainant's enquiry also on 22 August.
8. Following this date a number of emails passed between the Council and the complainant. The Council ultimately advised the complainant that it had nothing further to add in respect of the decision to withhold personal data in reliance of section 40(2) of the FOIA.
9. The Council did not review its handling of the complainant's request. Instead of reviewing the manner in which it dealt with the complainant's request, the Council undertook a review of a complaint made about his planning application.
10. The findings of the Councils review of 9 September, which it made under Stage 2 of its Complaints Procedure, is not relevant to the Commissioner's role in determining whether the Council has handled the complainant's request in accordance to the provisions of the FOIA.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 20 August 2014 to complain about the way his request for information had been handled. The complainant challenged the Council's application of section 40(2) in relation to the redactions made to the information it had sent to him. He asserted that his request seeks full disclosure of all correspondence between [a named person and his wife] and the Council and all internal emails or memos associated with his application.
12. The complainant also complained about the Council's failure to properly respond to the second element of his request.
13. The focus of the Commissioner's investigation and the subject of this decision notice is the Council's reliance on section 40(2) of the FOIA to withhold personal data associated with the first element of the complainant's request.
14. The Commissioner has not investigated the Council's handling of the second element of the complainant's request.

15. The second element of the request concerns a complaint made about the conduct of the Council in its handling of the complainant's own planning application.
16. The Commissioner considers that the second element falls to be considered under the provisions of the FOIA.
17. Should the Council hold any recorded information falling with the scope of the second element, that information, in the Commissioner's experience, would almost certainly constitute the complainant's own, and others', personal data.
18. In the Commissioner's opinion, the Council should have refused to supply any information it holds relevant to the second element of the request in reliance of section 40(1) of the FOIA – where the information constitutes the applicant's own personal data. It should have advised the complainant that it would treat this part of his request under the subject access provisions of the Data Protection Act 1998, and that it was dealing with that request as a 'normal business' matter, under its established complaints handling process.
19. The Commissioner notes that the Council sent the complainant the outcome of its Stage 2 review of his complaint on 9 September.

## **Reasons for decision**

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### **Section 40(2) – the personal data of a third party**

20. The Council has relied on section 40(2) of the FOIA to withhold a small bundle of information.
21. The Commissioner has examined the withheld information and has found it to comprise of a number of emails, which have passed between the Council and a named person and his wife. The focus of the emails is the potential purchase of the complainant's property by the named individuals.
22. The Commissioner has decided that the withheld information is the personal data of the named person and his wife – the data subjects: The information is of biographical significance to the data subjects as it relates to their intention to purchase the complainants property.
23. Section 40(2) provides an exemption from the duty to disclose recorded information where the information is the personal data of any third party and where disclosure would breach any of the data protection principles

contained in the Data Protection Act 1998 ("the DPA") or section 10 of that Act.

24. In order to rely on the exemption provided by section 40, the requested information must constitute personal data as defined by the DPA. The DPA defines personal data 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 or, 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 to the individual.'

25. The Commissioner must now consider whether disclosure of the requested information would breach any of the data protection principles contained in Schedule 1 of the DPA. He considers that the first data protection principle is the one most relevant in this case.

### **The first data protection principle**

26. The first data protection principle has two components:

1. Personal data must be processed fairly and lawfully, and

2. Personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.

27. The Council asserts that it would be unfair to the named person and his wife – the 'data subjects', to disclose the information to the complainant and thereby to the wider public.

28. In order to determine whether disclosure of the information would be unfair, the Commissioner has considered what might the data subjects' legitimate expectations of privacy in respect of their email correspondence.

29. In the Commissioner's opinion, a person would have a reasonable expectation that their correspondence with a public authority would be treated as being private, and where appropriate, as being confidential: It would not generally be made available to the public.

30. In this case the email correspondence is particularly private as it contains details of the intentions of the data subjects' in respect of the

purchase of the complainant's property, and it includes details of the data subjects' private lives, their bank details and their financial circumstances.

31. The data subjects were asked whether they would consent to the disclosure of the information requested by the complainant and they declined to give this. The Commissioner has seen evidence of the data subjects' decision.
32. In this case the Council became involved with this potential purchase of the complainant's property because of its designation of being agricultural land.
33. The Council advised the Commissioner that the complainant was required to market his property as agricultural land: If the complainant could show that there was no genuine interest in the property, he could apply to the Council's Planning Department to have the agricultural conditions lifted and thereby market his property as standard residential property.
34. The Council holds information relevant to the first part of the complainant's request, only by virtue that it had been made aware that the complainant had received an offer to buy his land under its current designation of agricultural land, and this information was relevant to the complainant's application to have the agricultural conditions associated with his land lifted.
35. In the Commissioner's opinion it is a generally recognised principle that a person's correspondence is private and confidential; even where the content of that correspondence is with a public authority. Having considered the nature of the email correspondence the Commissioner has decided that the data subjects would have no reasonable expectation that their personal data would be made by being disclosed through a request made under the FOIA.
36. In order to counter-balance an expectation of privacy there would need to be good reasons or circumstances in a particular case which would warrant disclosure. These reasons and circumstances would need to give to a legitimate and necessary interest.
37. The Commissioner has seen no evidence which would suggest that the Council has acted inappropriately in relation to the potential purchase of the complainant's property, and certainly no evidence that the Council has assisted the data subjects with their negotiations.
38. In full consideration of the above, the Commissioner easily finds that it would be unfair to the data subjects to have their correspondence made public as a result of this request. He is therefore not required to consider

whether any of the conditions in Schedule 2 of the Data Protection Act could be met in order to allow this disclosure.

39. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to withhold the information sought by the complainant.

## Right of appeal

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40. 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: 0870 739 5836

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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**