

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

### **Decision notice**

**Date:** 14 June 2016

**Public Authority:** Chesterfield Borough Council

**Address:** Town Hall  
Rose Hill  
Chesterfield  
Derbyshire  
S40 1LP

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

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1. The complainant has requested information regarding a complaint made against him and complaints he has made to Chesterfield Borough Council ('the council'). The Commissioner's decision is that the council has correctly applied the exemption for personal data at section 40(2) of the FOIA. He does not require any steps to be taken to ensure compliance with the legislation.

#### **Request and response**

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2. On 23 July 2015, the complainant wrote to the council and requested information in the following terms:

"I still require a copy of the original complaint, to satisfy myself and my lawyer that he wasn't prompted to do it by someone in Neighbourhoods. He was also evasive when I asked him for the name of the person who gave [name redacted] the permission – at a very late hour – to keep his laminate flooring. Since this decision was ludicrous, and helped cause my current situation, I believe I have the right, under the Freedom of Information Act's Rules, to know that person's name. And again, I require a copy of the original permission granted, so that myself and my lawyer can be satisfied that it wasn't done in fact with malicious intention."

3. The council responded on 18 August 2015 and summarised the request as follows:
  - (1) The name of the person at the council who gave permission to the tenant of [address redacted] to lay laminate flooring down at that property;
  - (2) A copy of the permission letter; and
  - (3) A copy of the original complaint made by the tenant of [address redacted] against you.
4. It confirmed holding the information but refused to provide it citing the exemption for third party personal data at section 40(2) of the FOIA.
5. The complainant requested an internal review on 22 August 2015.
6. On 29 September 2015, the council provided its internal review response. It provided a redacted copy of the permission letter but maintained its original position regarding the remainder of the information requested.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 11 January 2016 to complain about the way his request for information had been handled.
8. During the Commissioner's investigation, the council decided to provide the complainant with an un-redacted copy of the 'permission letter' which contains the name of the person at the council who gave permission to the tenant of [address redacted] to lay laminate flooring down at that property. As the complainant will be in receipt of such information, the Commissioner does not deem it necessary to consider the application of the personal data exemption at section 40(2) of the FOIA to parts (1) and (2) of the request.
9. The Commissioner considered that some of the information requested at part (3) of the request may be the personal data of the complainant. As such, he informed the council that any of the complainant's personal data should be considered as a subject access request under the Data Protection Act 1998 ('DPA'). For the avoidance of doubt, any of the complainant's personal data and is not considered in this decision notice.
10. The Commissioner has considered the council's application of section 40(2) to part (3) of the request.

## Reasons for decision

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### Section 40(2)

11. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').

12. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means 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 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 intentions of the data controller or any other person in respect of the individual.”

13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the council said that disclosure would breach the first data protection principle.

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

14. As explained above, the first consideration is whether the withheld information is personal data. The information is a record of a complaint made by a tenant against the complainant. Having viewed the requested information, the Commissioner is satisfied that it contains the personal data of the tenant who made the complaint.

### **Does the disclosure of the information contravene any of the data protection principles?**

15. As the Commissioner is satisfied that the withheld information is personal data, he now needs to consider whether disclosure would breach the first data protection principle, i.e. would disclosure be unfair and/or unlawful.

16. The first data protection principle states that:

“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 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”
17. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

### **Nature of the information and reasonable expectations**

18. The council said that it would not usually supply a copy of a complaint letter to someone complained about, but would summarise its contents when contacting a person complained about, and therefore it would not be within the reasonable expectations of the person who made the complaint that full details would be disclosed. It said that it would be expected that the interview in which the complaint was made would be kept confidential, especially as it contained details of the effects that the behaviour of the person being complained about was having on the person who made the complaint. The council also said that there is no evidence in the notes of the interview that the person who made the complaint consented to disclosure or was told that the notes might be disclosed.
19. The Commissioner is satisfied that the individual making the complaint would have a reasonable expectation of confidentiality and privacy in relation to the notes of an interview in which a complaint was made.

### **Consequences of disclosure**

20. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the withheld information would cause unwarranted damage or distress to the data subject.
21. The council said that disclosure of the information would undoubtedly cause distress to the person who made the complaint who at the time confirmed the effects that the matter was having on him.
22. The Commissioner considers that disclosure would amount to an infringement into the privacy of the person who made the complaint,

particularly as he has found that disclosure of the information requested would not have been within that person's reasonable expectations.

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

23. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with any specific interests.
24. The complainant in this case explained that he has been in dispute with the council for a very long time about the way the council has treated him and dealt with his complaints in the past and about unnecessary noise being allowed to enter his home. He believes that the withheld information may be evidence of malpractice if it shows that the person making the complaint was prompted to do it by someone in the council.
25. The council has explained that the withheld information shows that the complaint does not appear to be prompted by a council officer but originated from the person making the complaint.
26. Although the Commissioner can appreciate why the information is of particular interest to the complainant, he is mindful of the fact that the FOIA is request and motive blind and has not seen any evidence to indicate that there is sufficient wider legitimate public interest which would outweigh the rights and freedoms of the person who made the complaint against the complainant in this case. The complainant's wish to access this information is a matter that the Commissioner can appreciate but it is nonetheless a personal need.

### **Conclusion on the analysis of fairness**

27. Taking all of the above into account, the Commissioner concludes that it would be unfair to the person who made the complaint to the council to release the requested information. Disclosure would not have been within his reasonable expectations and the loss of privacy could cause unwarranted distress. He acknowledges that there is a legitimate interest in transparency but does not consider that this outweighs the individual's expectations of, and rights to, privacy. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i).
28. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

## Right of appeal

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29. 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)

30. 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.
31. 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 .....**

**Deborah Clark**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**