

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2017

Public Authority: Caerphilly County Borough Council
Address: Penalta House
Tredomen Park
Ystrad Mynach
Hengoed
CF82 7PG

Decision (including any steps ordered)

1. The complainant has requested various items of information including dates of disputes between two specified properties. Caerphilly County Borough Council refused to neither confirm nor deny whether it held relevant information citing section 40(5)(b)(i) of the FOIA. The Commissioner's decision is that Caerphilly County Borough Council has correctly relied on section 40(5)(b)(i) to neither confirm or deny whether it holds relevant information. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 5 December 2016, the complainant wrote to Caerphilly County Borough Council, ('the Council') requesting the following information:
*"I am aware of incidents of neighbour disputes between owners of [named properties] which the Council were involved in.

Whilst I am not seeking any [personnel] sic data information I do require the Council to provide me with details of dates of reported incidents between the occupiers of [named properties] which Officers of the Council became involved with... "*
3. Following a request from the Council for clarification, the complainant confirmed that she was looking for dates of neighbour disputes between the previous owners of her property and the other property.

4. The Council responded on 22 December 2016, refusing the request on the basis of section 40(5)(b)(i) of the FOIA to neither confirm nor deny whether it held relevant information.
5. Following an internal review, the Council wrote to the complainant on 27 February 2017. In response to the complainant's comments that:

"This is not personal information I seek as I made it clear in my request. It is simply environmental services data in respect of council records concerning matters which affected and continues to affect my property."

the Council confirmed that if held, the dates would fall within the definition of personal data and to even confirm or deny whether it holds relevant information would breach the first principle of the Data Protection Act 1998, ('the DPA'), thereby upholding its original decision.

Scope of the case

6. The complainant contacted the Commissioner 12 April 2017 to complain about the way her request for information had been handled.
7. The Commissioner considers that the scope of her investigation is to determine whether the Council correctly relied on section 40(5)(b)(i) to refuse to neither confirm nor deny whether it holds relevant information.

Reasons for decision

Section 1 – general right of access to information held

8. Section 1 of the FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:

- the duty to inform the applicant whether or not requested information is held and, if so,
- the duty to communicate that information to the applicant.

9. **Section 40(5)(b)(i) provides that:**

"The duty to confirm or deny –

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection(1), and*

- (b) *does not arise in relation to other information if or to the extent that either –*
- (i) *the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or....”*
10. Therefore, for the Council to be correct in relying on section 40(5)(b)(i) to neither confirm nor deny whether it holds information falling within the scope of the complainant’s request the following conditions must be met:
- Confirming or denying whether information is held would reveal personal data of a third party; and
 - That to confirm or deny whether information is held would contravene one of the data protection principles.
11. In order to reach a view regarding the application of this exemption, the Commissioner has therefore firstly considered whether confirming or denying the existence of relevant information does in fact constitute personal data as defined by section 1(1) of the Data Protection Act 1998 ('the DPA').

Is the requested information personal data?

12. Personal data is defined at section 1(1) of the DPA as:

“personal data means data which relate to a living individual who can be identified-

- (a) *from those data,*
(b) *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 other person in respect of the individual.”*

13. When considering whether the information is personal data, the Commissioner has taken into consideration her published guidance: "*Determining what is personal data*".¹
14. On the basis of this guidance, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:
 - (i) "*Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?*"
 - (ii) "*Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?*"
15. The Commissioner notes that confirmation or denial of relevant information would entail confirming or denying whether there had been disputes between the occupants of two specified addresses. The request therefore relates to living individuals, and confirmation or denial of whether Council Officers had been involved in any potential dispute.
16. The Council has argued that confirmation or denial of such information if it were held, would breach the first data protection principle.

Would confirmation or denial contravene the first data protection principle?

17. The first data protection principle requires that the processing of personal data be fair and lawful and,
 - 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 met.
18. In the case of personal data, both requirements (fair and lawful processing, and a schedule 2 condition) must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf

Would disclosure be fair?

19. In her consideration of whether confirmation or denial of relevant information would be fair, the Commissioner has taken the following factors into account:
- a. The reasonable expectations of the data subject.
 - b. Consequences of disclosure.
 - c. The legitimate interests of the public

The reasonable expectations of the data subject

20. The Commissioner's guidance regarding section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life.² Although the guidance acknowledges that there are no hard and fast rules it states that:

"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."

21. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life).
22. In this particular case, the information (if held) that the complainant seeks relates to the private life of individuals as it concerns the previous occupants of one property and the current occupants of another.
23. The Commissioner considers that an individual would reasonably expect that information confirming whether or not there had been neighbourhood disputes involving the intervention of a Council Officer would remain confidential.

²http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_speci alist_guides/PERSONAL_INFORMATION.ashx

Consequences of disclosure

24. The Commissioner has therefore gone on to consider the consequences of such confirmation or denial and believes that such a disclosure has the very real potential to cause damage or distress to the data subjects.

The legitimate public interest in disclosure

25. Notwithstanding the data subjects' reasonable expectations, or any damage or distress caused to them by such confirmation, it may still be fair to confirm or deny the existence of relevant information if it can be argued that there is a more compelling public interest in disclosure.
26. The Commissioner notes that the complainant has a personal interest in obtaining this information. However she does not consider that there is a more general public interest in the confirmation or denial of the existence of this information.
27. In weighing up the balance between the reasonable expectations of the data subjects, and the consequences of such confirmation or denial, against any legitimate public interest in disclosure, the Commissioner has concluded that the balance is weighted in favour of non-disclosure. Consequently, she is satisfied that the Council appropriately relied on section 40(5)(b)(i) to neither confirm or deny whether it holds relevant information.

Right of appeal

28. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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

Catherine Dickenson
Senior Case Officer
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Wycliffe House
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Wilmslow
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SK9 5AF