

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 November 2017

**Public Authority:** Canterbury City Council  
**Address:** Military Road  
Canterbury  
CT1 1YW

#### Decision (including any steps ordered)

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1. The complainant has requested copies of the responses of two individuals he had made a complaint about. Canterbury City Council (the council) refused the request under section 40(2) of the FOIA – third party personal data.
2. The Commissioner's decision is that section 40(2) of the FOIA is engaged
3. The Commissioner does not require the council to take any steps.

#### Request and response

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4. On 22 May 2017 the complainant requested the following information from the council:

*"When I lodged a complaint some time back about [name of parish council chairman redacted] and his wife [name redacted], I was not provided with their responses.*

*Could you arrange for these to be sent to me please?"*

5. The council responded on the 12 June 2017, it considered that the requested information related to third parties and refused it under section 40(1) of the FOIA.
6. The Commissioner has subsequently confirmed with the council that it is actually relying on section 40(2) of the FOIA as this is the exemption that deals with third party personal data.

7. The complainant requested an internal review which the council provided on 7 July 2017 upholding its refusal.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 12 July 2017 to determine whether the council was able to refuse his request.
9. The Commissioner considers the scope of the case is to determine whether the council is able to rely on section 40(2) of the FOIA to refuse the requested information.

### **Reasons for decision**

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

10. Section 40(2) of the FOIA states that:

*"Any information to which a request for information relates is also exempt if-*

*a) It constitutes personal data which do not fall within subsection (1), and*

*b) Either the first or second condition below is satisfied."*

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

11. Personal data is defined by the Data Protection Act 1998 (the DPA) as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
12. The information requested in this case is for the responses of two named individuals with regards to a complaint made about them.
13. The Commissioner is satisfied that the information falls within the definition of personal data as set out in the DPA because it 'relates to' identifiable living individuals.

#### **Would disclosure contravene any of the Data Protection Principles?**

14. 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 disclosure against the legitimate public interest in disclosing information.

### **Reasonable expectations**

15. When a public authority discloses information under the FOIA, it is essentially disclosing information to the world and not just the person making the request.
16. The council has told the Commissioner that it is responsible for managing complaints about parish and district councillors within the Canterbury district.
17. The council has explained to the Commissioner that this complaint was dealt with under the Members Code of Conduct complaint process. Although it is not stated explicitly in the council's guidance, the council's practice is that the investigatory process for a code of conduct complaint is undertaken in private and all responses are treated in confidence.
18. The council has told the Commissioner that, in this particular case, the complainant withdrew his complaint in May 2016 and so no further action was taken after that point and there was no outcome or decision made by the deputy monitoring officer who was investigating it.
19. The council consider therefore that the individuals would have had an expectation that their responses to the complaint about them would remain confidential to the investigation. Especially when the complaint was withdrawn by the complainant one year prior to making this request and no findings were made.

### **Consequences of disclosure**

20. The council has told the Commissioner that the information relates to the individuals public life and that releasing the requested responses, especially when the complaint has been withdrawn, would cause distress to the two individuals and possibly cause damage to their future prospects and general reputation.
21. The Commissioner accepts that releasing this sort of information could cause distress to the named individuals and have an impact of their future work life.

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

22. The complainant has told the Commissioner that in his view, where a complaint has been made and could proceed to further investigation and hearing, the individual (to whom the information relates) would reasonably expect that their response to a complaint about them would be provided to the person who made the complaint and any subsequent hearing would be held in public.
23. The Commissioner feels it relevant to point out that her considerations are not just whether the response should be provided only to the person who made the complaint. She can only consider whether the information can be provided to the public as a whole as disclosure under the FOIA is essentially a disclosure to the world.
24. The council has told the Commissioner that it acknowledges that there is a public interest in transparency and accountability of public authorities and this extends to investigations about councillors.
25. It has stated that it has balanced this interest against the consequences of disclosure and expectations of the named individuals and the fact that it has a process in place – Members Code of Conduct complaint procedure - which deals with complaints about councillors.
26. The Commissioner sees that there is always going to be some legitimate public interest regarding complaints made about public officials.
27. Having a complaints process in place will go some way to satisfying any legitimate public interest there is in knowing public officials are held to account where fault is found.
28. However, in this case there was no finding of any fault as the complaint was dropped by the complainant. The Commissioner therefore does not see that any legitimate public interest in releasing the information outweighs the two individual's rights to privacy in this case.
29. The Commissioner does not see how releasing the information to this request, which was made by the complainant one year after withdrawing his complaint, would serve a sufficient legitimate purpose to any potential public interest. It would only open the two individuals up to possible unfair scrutiny on something not pursued to conclusion through the council's complaint process.
30. Therefore the Commissioner's decision is that section 40(2) of the FOIA is engaged in this case.

## Right of appeal

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31. 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)

32. 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.
33. 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**