

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2018

Public Authority: Warwickshire County Council

Address: Shire Hall
Warwick
Warwickshire
CV34 4SA

Decision (including any steps ordered)

1. The complainant has requested information from Warwickshire County Council following its decision to remove him from its list of Out of Hours Arboricultural Contractors and following the Council's letters of 20 February 2017 to the complainant which set out 'concerns' about the complainant's work. The complainant asked to be given evidence which substantiate the claims made by the Council.
2. The Commissioner's decision is that Warwickshire County Council should have refused the complainant's request in reliance on section 40(1) of the FOIA on the grounds that the information he has asked for constitutes his personal data. The Council should then have dealt with the complainant's request under the subject access provisions of the Data Protection Act 1998.
3. However, as no further recorded information was found to be held, the Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 20 February 2017, the complainant wrote to Warwickshire County Council and requested the following information:
 1. Dates that these observations were made
 2. Who the witnesses were
 3. Sufficiently identify the trees in question so that I can inspect
 4. Disclose details of the documents and/or digital data held by your staff in respect of these allegations/observances

5. Clarify why such data was not disclosed in your DSAR response
6. The complainant's request stems from a letter he received from the Council on 20 February 2017. That letter set out concerns that the Council's Forestry Department had in relation to his activities as an Out of Hours Arboricultural Contractor.
7. The Council responded to the complainant's request on 10 March 2017.
8. The Council did not respond to any of the elements of the complainant's request directly. Rather its letter focused on a meeting where the complainant was given feedback about his concerns.
9. Referring to his removal from the Out of Hours Arboricultural Contractor list, the Council's letter stated that, "They are observations, not allegations" and also that they have not been shared more widely. The Council assured the complainant that there is no animosity towards his tree service business or to him as an individual.
10. On 17 March 2017, the complainant wrote to the Council to express his dissatisfaction with the Council's response. The complainant pointed out that he had asked for "straight forward information so that [he] can investigate the serious allegations contained in your letter of 20 February 2017", and he stated that the Council's response failed "to even mention my request for information let alone provide the information". The complainant then re-stated the terms of his information request of 27 February.
11. On 20 October 2017 the Information Commissioner wrote to the Council about its handling of the complainant's request. The Commissioner pointed out that the Council had failed to state whether or not the requested information was held in recorded form; and, that it had failed to provide the complainant with a copy of the information or issue a refusal notice in compliance with section 17 of the FOIA. On the grounds that the complainant had already expressed his dissatisfaction with the Council's response, the Commissioner asked the Council to conduct an internal review.
12. Having completed its internal review, the Council wrote to the complainant on 21 November to provide him with its final decision. The Council's reviewer advised the complainant that, as his request refers to his business activities, it should have been treated under the FOIA, and where it relates to him personally the request should have been treated under the subject access provisions of the Data Protection Act. The Council said that the complainant's correspondence "was not picked up as a FOIA or SAR, which is regrettable".

13. The Council referred to the way it had responded to the complainant's correspondence prior to and since he made his information request on 20 February, and particularly to a letter it sent him on 5 June 2017. In that letter the Council informed the complainant that:

"feedback was observational and based on a variety of sources, including comments made by third parties and knowledge of works undertaken by your business in the past (not for the County Council) None of the sources for the feedback have been recorded. Essentially the feedback should be considered as hearsay."

And;

"I consider that the Council, viewing the correspondence between you in the round, including the response to a formal request that had already been issued to you, took the view that they had released the information to you that you sought in your largely repetitive request of 27 February 2017. Therefore the Council viewed the letter from Phil Evans to you dated 10 March 2017, which again clarified the Council's position, as being sufficient to address the points 1 – 5 raised in your letter of 27 February 2017."

14. In respect of elements 1 – 5 of the complainant's request, the Council advised him that the questions:

"...have been addressed in the various pieces of correspondence issued to you, including in responses to FOIA and SAR you have made. Therefore I do not consider it necessary for the Council to consider them afresh."

And;

"...the information provided in response to your request reference 2015630, was complete. The documentation you received on 17 January 2017 was all of the information held by the Council relating to you and your business, which was not covered by the exemption under section 30(2)(b) of the FOIA¹".

15. The Council concluded that elements 1 – 5 of the complainant's request had been addressed in various pieces of correspondence, including its

¹ The exemption provided by section 30(2)(b) was applied by the Council in respect of the complainant's request which the Commissioner has dealt with under case FS50714626.

response to his other requests under the FOIA and the subject access provision of the Data Protection Act.

Scope of the case

16. The complainant contacted the Commissioner on 16 October 2017 to complain about the way his request for information had been handled.
17. The Commissioner determined that her investigation should be focussed on whether the Council has handled the complainant's request in accordance with the FOIA, and specifically in respect of the recorded information held by the Council at the time the request was submitted and whether that information should have been disclosed to him under the provisions of the FOIA or dealt with under the subject access provisions of the Data Protection Act 1998.

Reasons for decision

The nature of the requested information

5. The Commissioner has considered the nature of the information which the complainant seeks in order to determine whether this request should have been dealt with under the FOIA or under the Data Protection Act 1998.
18. As stated at paragraph 6, the complainant's request was made following his receipt of a letter from the Council on 20 February 2017 which set out the Council's concerns about the complainant's activities as an Out of Hours Arboricultural Contractor.
19. These background circumstances provide context to the complainant's information request, indicating that the requested information is of biographical significance to the complainant.
20. Under section 1 of the Data Protection Act 1998, personal data is defined as data which relates to a living individual who can be identified from those data or from those data and other information which is in the possession of the data controller, or likely to come into the possession of the data controller. It includes any expression about an individual and any indication of the intentions of the data controller in respect of that individual.
21. Here, the complainant requested recorded information held by the Council in relation to concerns raised about his work as an Out of Hours Arboricultural Contractor.

22. The complainant's company is known by the complainant's name and the complainant is a sole trader. The information which the complainant seeks under the terms of his request is such that the complainant is clearly linked to that information and moreover he can be identified through that linkage.
23. The Council knows that the complainant is a sole trader and that he trades under his own name. In the Commissioner's opinion, the information which the complainant seeks constitutes the complainant's personal data as it is of biographical significance to the complainant as an individual.
24. The Commissioner considers that the requested information, in the context of the Council's letter of 20 February 2017, satisfies the definition of personal data under section 1 of the Data Protection Act.
25. The fact that the complainant has asked for his own personal data should have been apparent to the Council and therefore the Council should have refused the complainant's request under section 4(1) of the FOIA – where the requested information is the personal data of the applicant.
26. The Council should then have advised the complainant that his request would be dealt with under the subject access provisions of the Data Protection Act.
27. Notwithstanding the Commissioner's decision above, the Council has advised the Commissioner that it does not hold information relevant to the five elements of the complainant's request and it has confirmed that no information which is caught by the complainant's request has been withheld.
28. The Council referred the Commissioner to another complaint she is dealing with from the same complainant². The Council informed the Commissioner that it had written to the complainant and has provided him with information relevant to the request in that case and it asserted that the complainant is now in receipt of all the information the Council holds relevant to his numerous requests for information. In addition to this, the Council has assured the Commissioner that "recorded information relevant to this request has never been held".

² Case FS50714626

Right of appeal

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

Website: 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF