

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2020

Public Authority: Gateshead Council
Address: Gateshead Civic Centre
Regent Street
Gateshead
NE8 1HH

Decision (including any steps ordered)

1. The complainant has requested information from Gateshead Council (the Council) relating to allegations made about him. The Council advised that the information is his own personal data and is therefore exempt under the FOIA, citing section 40(1).
2. The Commissioner's decision is that the Council has correctly applied the exemption.
3. The Commissioner therefore does not require any steps to be taken by the Council.

Request and response

4. On 27 January 2019, the complainant wrote to the Council and requested information in the following terms:

"For this reason, I must therefore request – under the "Freedom of Information Act" a photocopy of the notes made by whoever/statement made by my neighbour, in respect to ALL the allegations made against me, or any maliciously spread and unfounded lies told to you and/or Gateshead Council by whoever, as a deformation of character has occurred at that time. Also, as the allegations are about me, I am entitled – under the law, to have

a photocopy of such allegations written down and/or any statements made against me, if requested. This I expect to receive from you within 28 working days of the date of this letter."

5. The Council responded on 27 February 2019. It stated that the information the complainant was seeking under the FOIA was in fact his own personal data so it was treating the request as a Subject Access Request (SAR).
6. Following some further correspondence between the complainant and the Council, the Council wrote to the complainant on 12 July 2019. It now stated that it was refusing the request under section 40 of the FOIA.
7. After the Commissioner's intervention, the Council sent the complainant the outcome of its internal review on 25 September 2019 where it maintained its position on the matter.

Scope of the case

8. The complainant contacted the Commissioner on 31 July 2019 to complain about the way his request for information had been handled.
9. Once the Commissioner had accepted the complaint for investigation, she wrote to the complainant to advise of her preliminary finding: namely that, having reviewed the request, she was of the view that any information falling within scope would be the complainant's own personal data.
10. The complainant disagreed with the preliminary findings and requested a decision notice.
11. The Council set out, in its internal review, why it considered the withheld information to be the complainant's own personal data.
12. As the Commissioner is also the regulator of data protection legislation, she has decided that she has sufficient information to reach a decision in this case, based on the Council's internal review arguments and her own expertise, without seeking further arguments from the Council.
13. Therefore the Commissioner considers the scope of her investigation to be to establish whether the Council is entitled to withhold the requested information under section 40(1) of the FOIA.

Reasons for decision

Section 40(1) – personal data of which the applicant is the data subject

14. Section 40(1) of the FOIA states that:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

Is the information personal data?

15. Section 3(2) of the Data Protection Act defines personal data as:

"any information relating to an identified or identifiable living individual".

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

19. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the complainant.

20. By way of a reminder, the request was for a *"photocopy of such allegations written down and/or any statements made against me"*.

21. As the complainant has requested information where it is clear that he is the main focus of the information he has asked for, the Commissioner is of the view that the FOIA is not the legislation to use to access this data.

22. In response to the Commissioner's preliminary view, the complainant stated the following:

"My application for data is not "personal data" for which I may or may not hold, but is the data for which Gateshead Council holds about me as the data subject. In this respect Section 40(1) of the

FOIA does not apply, because if Section 40(1) were to apply as you have interpreted, no one would be able to get information about themselves held by anyone else!!!"

23. The Commissioner would like to explain that when she says the information is the complainant's own personal data, she does not mean that he already holds this.
24. What the Commissioner means, is that with the information in question being his own personal data, releasing it under the FOIA is essentially releasing it to the world at large.
25. There is legislation that gives a person a right to access their own personal data, this is the Data Protection Act 2018 and the General Data Protection Regulations 2018. This is where an individual has the right to make a request for their own personal data, and this would be disclosed to them alone rather than the Council essentially releasing it to the public. This type of request is known as a SAR.
26. It appears that the Council has released some of the information under a SAR. The Commissioner has already addressed the complainant's concerns relating to this.
27. In conclusion, section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the balance of public interest. As the exemption is engaged in respect of any information which came or would have come within the scope of the request, the Council was not obliged to supply any information in response.

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@justice.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

**Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**