

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2021

Public Authority: Hart District Council
Address: Harlington Way
Fleet
GU51 4AE

Decision (including any steps ordered)

1. The complainant requested some correspondence from Hart District Council ("the Council") relating to Dogmersfield Parish Council. The Council withheld the information under section 36(2) of the FOIA: prejudicial to the effective conduct of public affairs.
2. The Commissioner's decision is that the requested information comprises the personal data of the complainant, as explained in this notice. She has, therefore, used her discretion to consider the exemption at section 40(1) of the FOIA, and finds that the information is exempt.
3. She does not require the Council to take any steps

Request and response

4. On 5 August 2020, the complainant wrote to the Council and requested information in the following terms:

"I wish to make a freedom of information request for sight of correspondence between Daryl Philips, Joint Chief Executive of Hart District Council and Monitoring Officer (using both his official Hart DC email and his personal email address) and [councillor's name redacted], a Councillor for Dogmersfield Parish Council - also using

both his Dogmersfield Parish Council email address and his personal email address.

I wish to receive sight of all correspondence between the 15th April 2020 and the 15th May 2020 and specifically correspondence regarding planning protocols, council procedures or code of conduct issues. I wish to have sight of any correspondence which references Dogmersfield Parish Council or names myself [own name redacted] or the Chair, Graham Chisnall. I would also like copies of any emails which forward this correspondence to other parties."

5. The Council responded on 12 August 2020. It confirmed that it held information falling within the scope of the request, but withheld the information in its entirety, citing the exemptions at section 36(2) – prejudicial to the effective conduct of public affairs – and/or section 40(2) of the FOIA – third party personal data.
6. Following an internal review, the Council wrote to the complainant on 30 November 2020. It no longer relied on section 40(2), but continued to rely on section 36(2) to withhold the information. Specifically, it relied on section 36(2)(b)(ii) – prejudicial to the free and frank exchange of views for the purposes of deliberation – and section 36(2)(c) – otherwise prejudicial to the conduct of public affairs – to withhold the information.

Scope of the case

7. The complainant contacted the Commissioner on 2 October 2020 to complain about the way their request for information had been handled by the Council. The Commissioner advised the complainant to ask for an internal review, the outcome of which the complainant forwarded to the Commissioner in January 2021.
8. During the Commissioner's investigation, the Council amended its position slightly to rely on section 36(2)(b)(i) – prejudicial to the free and frank provision of advice – in addition to section 36(2)(c), and no longer cited section 36(2)(b)(ii).
9. However, the first step in assessing this complaint is to determine the extent to which the requested information would be the complainant's own personal data. Section 40(1) of the FOIA places an absolute exemption on information which is the personal data of the requester; that is, the complainant.

10. If section 40(1) is (or would be) engaged in relation to the request, the Council would not have been under any obligation to provide information under the FOIA, in response. This notice covers this, accordingly.

Reasons for decision

Section 40 – personal information

11. Section 40(1) of the FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.
12. Section 3(2) of the Data Protection Act 2018 (“the DPA”) defines personal data as:

“any information relating to an identified or identifiable living individual”.
13. The two main elements of personal data are therefore that the information must relate to a living person, and that the person must be identifiable.
14. 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 or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
15. 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.
16. In this case, the request is for correspondence between two third parties; that is to say, neither of the parties to the correspondence is the requester. However, the Commissioner has considered whether the requester is identifiable from the contents of the correspondence.
17. Having considered the withheld information, the Commissioner is satisfied that the contents relate to individuals, including the requester. She is satisfied that the correspondence primarily relates to the requester, and that it is in the context of events at Dogmersfield Parish Council (“the Parish Council”) following on from the Parish Council’s consideration of a specific planning appeal, as indeed is evident from the wording of the request.

18. The Commissioner notes that the requester is not named in the correspondence. However, in considering identifiability, she will take into account the possibility of identification taking place by linking the withheld data with other available data.
19. As her Anonymisation Code¹ provides, the Commissioner's view is that (when considering the application of section 40) *"public authorities have to assess whether releasing apparently anonymised data to a member of the public would breach the data protection principles. This is intended to ensure that public authorities take into account the additional information that a particular member of the public might have that could allow data to be combined to produce information that relates to and identifies a particular individual – and that is therefore personal data"* (Anonymisation Code, p. 19).
20. Therefore, in determining whether data identifies a living individual, the Commissioner will consider any identifying factors in the data itself, and also the possibility that the data could be combined with other information in the public domain or already in the possession of others.
21. In this case, the Commissioner has considered the fact that meetings of the Parish Council, including those just prior to the request being made, were held in public, and the fact that minutes of the relevant meetings are readily available for perusal on the Parish Council website. She notes that members of the public, including councillors, would have been aware of the relevant events which gave rise to the withheld correspondence, and indeed aware of the identity of the requester, who was a party to those events, and is named in the minutes.
22. She is therefore satisfied that, if combined with other information in the public domain, the correspondence would lead to the ready identification of the requester.
23. Furthermore, the Commissioner has considered the possibility of identification by a "motivated intruder", defined in the Anonymisation Code as *"a person who starts without any prior knowledge but who wishes to identify the individual from whose personal data the anonymised data has been derived"*. A motivated intruder, the Code explains, is someone who may undertake standard investigative techniques, such as use of the internet or making their own enquiries, to use the "anonymised" data to identify people.

¹ *Anonymisation: managing data protection risk code of practice*
<https://ico.org.uk/media/1061/anonymisation-code.pdf>

24. The Commissioner is satisfied that the correspondence, if disclosed, would enable the ready identification of the requester by any member of the public who might be motivated to find it out, since it relates clearly to events reported in Parish Council minutes, in which the requester is named.
25. In effect, the events giving rise to the correspondence in this case were played out in public. Despite the requester not being named in the correspondence, the Commissioner has determined that they are readily identifiable from it, both by way of other information already in the public domain, and by any motivated intruder.
26. Having considered the withheld information and the circumstances of the case, the Commissioner is, therefore, satisfied that the information relates to and identifies individuals. The information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
27. In particular, she is satisfied that the information relates to and identifies the requester, and that the exemption at section 40(1) of the FOIA is therefore engaged.
28. The Commissioner is aware that the requester has no qualms about the information potentially being disclosed under the FOIA. They commented: *"Because the correspondence relates to actions undertaken by two individuals as part of Hart District Council and Dogmersfield Parish Council I remain of the view that the advice is most appropriately dealt with under FOI because it is correspondence from and in relation to public bodies"*.
29. However, the exemption at section 40(1) is absolute, and does not require any consideration of the public interest test; neither does it provide for the consideration of any lawful basis for processing the data under the General Data Protection Regulation 2018 which may, potentially, have allowed lawful disclosure.
30. In summary, there is no route of access to a requester's own personal data under the FOIA.
31. The Commissioner has considered whether it would be possible to redact the personal data of the requester, in order for the Council to consider the remainder of the withheld correspondence for disclosure under the FOIA. However, in her view, it is not possible to isolate any information which is not the personal data of the requester, because of the nature of the subject matter.
32. As the exemption is therefore engaged in respect of all of the information falling within the scope of the request, the Council is not obliged to supply any information in response, under the FOIA.

Other matters

33. In this case, the Council failed to recognise that the withheld correspondence comprised the personal data of the requester, and did not consider the request under the DPA. Whilst the Commissioner cannot require a public authority to take action under the DPA via a FOIA decision notice, in view of her decision that the withheld information comprises the personal data of the complainant, the Council should consider providing a response to the complainant under the DPA in respect of the information they requested.

Right of appeal

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

35. 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.
36. 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

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