

Freedom of Information Act 2000 (FOIA)

Date: 21 June 2022

Public Authority: City of Bradford Metropolitan District Council
Address: City Hall
Centenary Square
Bradford
BD1 1HY

Decision (including any steps ordered)

1. The complainant has requested information with regards to some specific land. City of Bradford Metropolitan District Council (the council) provided some information, stated some information had previously been provided and refused to either confirm or deny whether some of the requested information was held, citing section 40(5B) of the FOIA.
2. The Commissioner's decision is that the request was for the complainant's own personal data, hence section 40(5A) provided that the council was not obliged by the FOIA to confirm or deny whether it held this information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 28 July 2021 the complainant made the following request for information to the council:

“RE: Land adjacent to number [address redacted]

Councillor [name redacted] sent an email (dated 26/07/21 +/- 3 days) regarding the above location to your planning enforcement department. Can you please provide me with a copy of this e-mail.

I would also like to have details of any text messages, whatsapp messages, letters and emails Councillor [name redacted] has sent or received regarding the above site, timeframe (24/07/21 – 28/07/21).

I would also like to know if Councillor [name redacted] has ever deleted any communication in relation to the above site.”

5. The council responded on 26 August 2021 stating emails from the Councillor to Planning had already been sent to the complainant under a different request reference.
6. It also confirmed that the councillor had not deleted any emails or received any WhatsApp messages or texts falling within the scope of the request.
7. The complainant requested an internal review on the same day stating that the council had not responded to the following part of his request:

“Councillor [name redacted] sent an email (dated 26/07/21 +/- 3 days) regarding the above location to your planning enforcement department. Can you please provide me with a copy of this e-mail.”

8. He stated that the previous response covered emails to the planning department and not the enforcement department.
9. On 24 September 2021 the council provided its internal review refusing to either confirm or deny whether it held the information highlighted in the internal review request, citing section 40(5B) of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 24 September 2021 to complain about the way his request for information had been handled.
11. He has specifically stated that the part of his request that has been refused under section 40(5B) of the FOI relates to himself and his property.
12. Given this clarification from the complainant the Commissioner has exercised his discretion to consider section 40(5A), which is the relevant neither confirm nor deny provision where the information falling within the scope of the request would be the complainant's own personal data.

Reasons for decision

Section 40(5A) of the FOIA

13. This section provides that a public authority is not obliged by the FOIA to confirm or deny whether it holds information that constitutes the personal data of the requester.
14. Section 3(2) of the Data Protection Act 2018 defines personal data as:-

"any information relating to an individual or identifiable living individual."
15. 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.
16. In this case, the complainant has stated that the information requested relates to himself and his property. The Commissioner's view is that any such information will relate to the complainant and he will be identifiable in relation to that information. Therefore, any information falling within the scope of the request would be the personal data of the complainant, hence section 40(5A) provided that the FOIA did not oblige the council to confirm or deny whether it held this information.

Other matters

17. In this case, the council failed to recognise that the request was for the complainant's own personal data and did not consider the request under the GDPR. Whilst the Commissioner cannot require a public authority to take action under the GDPR via a FOIA decision notice, in view of his decision above the Council should reconsider the request as a subject access request for the complainant's own personal data.

Right of appeal

18. 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

19. 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.
20. 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