

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2022

Public Authority: Fareham Borough Council

Address: Civic Offices
Civic Way
Fareham
PO16 7AZ

Decision (including any steps ordered)

1. The complainant has requested information from Fareham Borough Council ("the Council") relating to information omitted from its Register of Members' Interests. The Council provided the complainant with some information within the scope of his request, however it refused to disclose the remainder, citing section 40(2) as a basis for non-disclosure.
2. The Commissioner's decision is that the Council has correctly applied section 40(2) to the withheld information, therefore the Commissioner requires no steps to be taken.

Request and response

3. On 6 December 2021 the complainant wrote to the Council and requested information in the following terms (the Commissioner has added numbering for ease of reference):

"I have attached a link to Fareham Council's published Register of Members Interests for [specified Councillor].

Under Paragraph 4 heading Land: under My Interests the information has been censored and under 'And of my spouse/civil partner (or person with whom I am living as such) and of which I am aware' this too has been censored.

1. Under a freedom of information request could you please supply me the information that has been censored. If not could you please supply me an explanation as to why this has been censored and the legislation that permits this censorship. There appears to have been more than one address censored, which would suggest that information has been censored of properties that are not [specified Councillor's] dwelling.
2. Under a freedom of information request could you please supply me who authorised the censorship of [specified Councillor's] published Register of Members Interests.
3. Could you please give me an explanation why no other serving Fareham Councillor has had censorship to their published Register of Members Interests and why [specified Councillor] is the exception.
4. The Council responded on 17 December 2021. It provided the complainant with some information in response to parts 1, 2 and 3 of his request, however it refused to disclose the remaining information requested in part 1, i.e. the censored information itself ("the withheld information"), citing section 40(2) of FOIA as a basis for non-disclosure.
5. Following an internal review the Council wrote to the complainant on 24 December 2021. It stated that it was still applying section 40(2) of FOIA to the withheld information.

Scope of the case

6. The complainant contacted the Commissioner on 18 January 2022 to complain about the way their request for information had been handled.
7. The Commissioner has considered the Council's handling of the complainant's request, in particular its application of section 40(2) of FOIA.

Reasons for decision

8. The following analysis explains why the Commissioner is satisfied that the public authority was entitled to apply section 40(2) of FOIA to the complainant's request.
9. Section 40(2) of FOIA allows a public authority not to disclose information if it is personal data, i.e. information from which

individual(s) could be identified and if one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

10. The Commissioner from his reading of the complainant's request is satisfied that the requested information is personal data as it relates to the address of a specified individual. The condition at section 40(3A)(a) is satisfied here as disclosure would contravene data protection principle (a).¹
11. The Commissioner has ascertained this by assessing whether there is a lawful basis for processing the requested information under Article 6(1)(f) of the UK GDPR. He has determined that, whilst the complainant has a legitimate interest in disclosure, and disclosure would be necessary to satisfy that interest, there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms.
12. The Commissioner has determined this by balancing the legitimate interest of the complainant against the fact that the individuals concerned would have a reasonable expectation that their information would not be disclosed to the public. Such disclosure would be likely to cause distress to the individuals. Section 32 of the Localism Act 2011 allows for some information to be kept private and those concerned would expect the Council to adhere to this.
13. As the Commissioner has concluded that disclosure would not be lawful under Article 6(1)(f) of the UK GDPR, he has not gone on to separately consider whether disclosure would be fair or transparent.

¹ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-regulation-13.pdf>)

Right of appeal

14. 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

15. 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.
16. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF