

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 9 November 2022

**Public Authority:** Manchester City Council  
**Address:** Town Hall  
Manchester  
M60 2LA

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Manchester City Council (the Council) asking if any disputes were logged with the anti social behaviour team from a specific address. The Council relied on section 40(5B)(a)(i) of FOIA to refuse to confirm or deny whether the information was held.
2. The Commissioner's decision is that the Council was entitled to rely on section 40(5B)(a)(i) of FOIA to refuse to confirm or deny whether any information was held.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. The original request made on 10 December 2021 asked:  
"If there has ever been a dispute complaint made from the property [address redacted] prior to July 2020 against anyone."

5. The Council responded on 21 January 2022 refusing to confirm or deny whether it held the requested information under section 40(5B)(a)(i) of FOIA.
6. The complainant wrote to the Council again on 7 March 2022 rephrasing his request, detailed below, which was dealt with as a new request.

"I am simply asking you to confirm if the previous occupant of [address redacted], had any agencies i.e. Anti-Social Behaviour team or the Manchester City Council involved regarding any dispute/abuse or any other issues they were suffering whilst they were living at [address redacted] prior to... June 2020."

7. The Council responded on 4 April 2022 applying the same exemption as above. An internal review was carried out which upheld the original decision.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 4 April 2022 to complain about the way their request for information had been handled.
9. The scope of the Commissioner's decision will be to determine whether the Council is entitled to rely on section 40(5B)(a)(i) when refusing to confirm or deny whether it holds information relevant to the complainant's request of 7 March 2022.

### **Reasons for decision**

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10. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR') to provide that confirmation or denial.
11. Therefore, for the Council to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request the following two criteria must be met:

- Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
- Providing this confirmation or denial would contravene any of the data protection principles.

**Would the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?**

12. Section 3(2) of the DPA 2018 defines personal data as:-

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

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
14. 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.
15. The Commissioner, when considering disclosure in response to an FOIA request, must consider this to be a disclosure to the world at large, and not just directly to the requester.
16. Whilst the 'previous occupant' (the data subject) is not directly named within the request, the Commissioner considers that they will be identifiable when the relevant address is combined with other publicly available information, such as Land Registry records or the electoral roll.
17. Furthermore, the Commissioner is satisfied that confirming or denying whether issues relating to anti social behaviour were, or were not, raised by an identifiable individual, would reveal the personal data of that individual.
18. However, this does not automatically prevent the council from refusing to confirm whether or not they hold the requested information; the Commissioner must go on to consider whether the disclosure of this personal information would contravene any of the data protection principles.
19. Article 5(1)(a) UK General Data Protection Regulation (GDPR) states that:- "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject". The

Commissioner regards this principle to be most relevant to the circumstances of this case.

20. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed – or, as in this case, the Council can only confirm whether or not it holds the requested information - if to do so would be lawful (i.e. it would meet one of the conditions of lawful processing listed in Article 6(1) UK GDPR), be fair and be transparent.
21. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” lawful bases for processing listed in the Article applies.
22. The Commissioner considers that the lawful basis most applicable is basis (f) which states:-

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child<sup>1</sup>”.
23. In this case, the Commissioner accepts that there may be some legitimate interest in the council being open and transparent about the information that it holds regarding reports of anti social behaviour and how it handles such matters on a case by case basis; this will show whether it is acting properly and fairly in each instance. The Commissioner also regards disclosure to be necessary in order to meet the wider public interest in transparency in relation to how the Council handles anti social behaviour disputes.

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<sup>1</sup> Article 6(1) goes on to state that:- “Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”. However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:- “In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”

24. It is necessary to balance the legitimate interests in confirming whether or not the requested information is held against the data subject's interests, fundamental rights and freedoms. In doing so, the Commissioner must consider the impact of the confirmation or denial.
25. In this case, the Commissioner is satisfied that the data subject would have no reasonable expectation that the Council would confirm or deny to the world at large under FOIA whether they were, or were not, involved in a dispute that concerned potential anti social behaviour. He is also of the view that disclosure of the confirmation or denial may cause that individual damage and distress.
26. The Commissioner has determined that there is insufficient legitimate interest in this case to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and disclosure of personal information in this instance.
27. As a result, the Commissioner is satisfied that the Council is entitled to rely on section 40(5B)(a)(i) of FOIA. This means that it was not obliged to confirm or deny whether the information requested by the complainant was held.

## Right of appeal

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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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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** .....

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