

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 August 2022

Public Authority: Georgeham Parish Council
Address: Haxlea
2 Threeways
Bratton Fleming
Barnstaple
Devon
EX31 4TG

Decision

1. The complainant requested information from Georgeham Parish Council ("the Council") relating to the Council's handling of prior notice applications which were submitted to the Council by the complainant.
2. The Commissioner's decision is that the requested information is the complainant's own personal data and therefore the Council is entitled to rely on section 40(1) of the FOIA to withhold the requested information.

Request and response

3. The complainant made the following information request to the Council on 25 March 2022:

"I take that this a refusal to retract the Council's comments?
Please advise me

1. which Councillor raised the matter for discussion
2. which Councillor submitted the document to NDCC

3. whether the document was endorsed by all the members before being submitted.”
4. On the same date, the complainant also submitted the following request for information to the Council:

“I should also like a copy of the full record of discussion at the meeting and copies of all email exchanges between the Councillors regarding this matter.”
5. The final position of the Council was that it has provided the complainant with all the information it holds within the scope of their requests.

Reasons for decision

6. This reasoning covers whether the requested information is the complainant’s personal data and therefore, exempt from disclosure under section 40(1) (personal information) of the FOIA.
7. 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.
8. 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.”
9. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
10. In this case, the complainant has requested information relating to the Council’s handling of prior notice planning applications. As the complainant made the prior notice applications, the requested information will relate to the complainant and they will be identifiable in relation to that information. Therefore, the Commissioner is satisfied that the requested information is the personal data of the complainant.
11. The Commissioner’s decision is that the Council is entitled to rely on section 40(1) of the FOIA to refuse to provide the requested information. The Commissioner requires no further action to be taken by the Council in relation to this request.

Other matters

12. In this case, the Council failed to recognise that the complainant had requested their own personal data and did not consider the request under the Data Protection Act 2018 (DPA). Whilst the Commissioner cannot require a public authority to take action under the DPA via a FOIA decision notice, in view of his decision that the requested information is 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

13. 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

14. 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.
15. 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