

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

### **Decision notice**

**Date:** 8 December 2022

**Public Authority:** High Peak Borough Council  
**Address:** Buxton Town Hall  
Market Place  
Buxton  
SK13 6EL

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

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1. The complainant has requested information relating to Councillors who are in council tax arrears. High Peak Borough Council (the council) provided some information but refused the remaining under section 40(2) of the FOIA – Third Party Personal Data.
2. The Commissioner's decision is that the council is correct to withhold the information it has under section 40(2) of the FOIA.
3. The Commissioner does not require the council to take any steps.

## **Request and response**

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4. On 19 May 2022 the complainant made the following information request to the council:  
  
"How many current HPBC councillors have council tax arrears?  
Please detail the names of the relevant councillors and amount of money they owe in arrears respectively"
5. The council responded on 29 July 2022 stating that one councillor is in council tax arrears. It refused to provide any further information, relying on section 40(2) of the FOIA – as it determined it was the personal data of the Councillor.
6. The complainant requested an internal review on the same day and the council provided it on 1 September 2022, upholding its initial response.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 2 September 2022 to complain about the council refusing to provide all the information requested.
8. The scope of the case is for the Commissioner to determine whether section 40(2) of the FOIA is engaged to the information being withheld.

## **Reasons for decision**

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### **Section 40(2) of the FOIA – Third party personal data**

9. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
10. Section 3(2) of the Data Protection Act 2018 defines personal data as:  
  
"any information relating to an identified or identifiable living individual."
11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

12. In this case, the information being withheld is for the name of a Councillor and the amount they owe in council tax arrears. It is clear to the Commissioner that revealing this information would reveal the personal data of the Councillor, namely revealing their identity and how much they owe. Therefore the Commissioner is satisfied that the requested information is personal data as the information relates to and identifies an individual.
13. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
14. In the case of an 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 if to do so would be lawful, fair and transparent.
15. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
16. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
17. The Commissioner appreciates that there is a legitimate interest in the public knowing when Councillors are in council tax arrears and who those Councillors are. This was considered in the Upper Tribunal decision<sup>1</sup> *Kate Markus QC in DH v Information Commissioner and Bolton Council*: [2016] UKUT 139 (AAC), which found that the councillors names who were in council tax arrears should be disclosed.
18. The council says it also took into consideration this decision by the Upper Tribunal and that the public interest in knowing the information is central to the proper functioning and transparency of the democratic process.

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<sup>1</sup>

[https://assets.publishing.service.gov.uk/media/5785141fe5274a0da9000105/GIA\\_4597\\_2014-00.pdf](https://assets.publishing.service.gov.uk/media/5785141fe5274a0da9000105/GIA_4597_2014-00.pdf)

19. However, the council has raised Judge K Markus' point of consideration in the Upper Tribunal decision:

"There may be exceptional cases in which the personal circumstances of a councillor are so compelling that a councillor should be protected from such exposure."

20. The council has explained its reasons to the Commissioner as to why the circumstances in this case are compelling enough that to disclose the information would be unfair and unlawful.
21. The Commissioner has chosen not to put the council's explanations in this decision notice, as to do so could, in itself reveal personal data of the Councillor which could lead to their identity being revealed.
22. Having considered the council's explanations for this case, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individual in this specific case and considers that there is no legal basis for the council to disclose the withheld information and to do so would be in breach of principle (a).
23. The Commissioners decision is that the council is entitled to rely on section 40(2) of the FOIA to refuse to provide the information it has withheld to this request.

## Right of appeal

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24. 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:

25. 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](mailto:grc@justice.gov.uk)

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

26. 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.

27. 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

**Daniel Perry**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**