

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 January 2023

**Public Authority:** Chichester District Council  
**Address:** East Pallant House  
1 East Pallant  
Chichester  
West Sussex  
PO19 1TY

**Complainant:** Mr Jon Streatfeild  
**Address:** [actionlink23@yahoo.co.uk](mailto:actionlink23@yahoo.co.uk)

### Decision (including any steps ordered)

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1. The complainant has requested information relating to a complaint. The above public authority ("the public authority") provided some information, but the complainant considers that more is held.
2. The Commissioner's decision is that any information the public authority held would be the complainant's own personal data. As such, the public authority should not confirm or deny, under FOIA, whether it holds any relevant information. The Commissioner has therefore applied section 40(5A) of FOIA himself, proactively, to avoid any inadvertent disclosure.
3. The Commissioner does not require any further steps.

### Request and response

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4. On 25 August 2022, the complainant wrote to the public authority and requested information in the following terms:  
  
"I was investigated by Mr Nicholas Bennett from Chichester District Council regarding an alleged breach of the code of conduct at the

- request of Rother District Council (RDC). I would like to see the written guidance given to him by RDC, which might also be called the terms of reference for his enquiry, together with his notes from a video conversation with Lisa Cooper, Monitoring officer at RDC prior to the investigation commencing.”
5. The public authority responded on 16 September 2022. It stated that it was dealing with the request in the normal course of business and provided some information.
  6. The complainant sought an internal review on 8 October 2022 as he considered that more information was held that had not been provided. The public authority responded on 2 December 2022, it informed the complainant that, as it had dealt with the request in the normal course of business, it was not obliged to carry out an internal review or accept a formal complaint – but it decided to “exercise discretion” and carry out a review anyway. The review concluded that no further recorded information was held.

## **Reasons for decision**

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7. Whilst the Commissioner would not encourage individuals to use FOIA to seek their own personal data (precisely for the reasons set out below), the request met the requirements of section 8 of FOIA and was one which was valid under that legislation.
8. Whilst the public authority (presumably in a bid to be helpful) originally dealt with this request as a normal course of business enquiry, when the complainant made plain that he wished to receive a response under FOIA, the public authority should have followed the steps set out below.
9. Section 40(5A) allows a public authority to refuse to confirm or deny that it holds any information which would (or would if it were held) be the personal data of the person making the request – this is because a separate right of access to such information exists via a Subject Access Request (SAR).
10. The request plainly relates to an investigation that an officer of the public authority had been asked to carry out into the complainant. The terms of reference for that investigation and any further information that the public authority held in respect of that investigation must, by definition, have the complainant as their focus. Such information would (to the extent it were held) be the complainant’s own personal data.
11. As the request clearly identifies the complainant, any information that the public authority held would be linked to the complainant. Therefore

the only response that complies with both FOIA and data protection legislation was for the public authority to rely on section 40(5A) to refuse to confirm or deny that any information was held. The public authority is entitled to cite this exemption irrespective of the complainant's wishes.

12. The Commissioner thus applies section 40(5A) of FOIA himself, proactively.

## **Other matters**

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### **Request handling**

13. It is for the public authority, in the first instance, to determine whether a piece of correspondence should be dealt with in the normal course of business or if it should be dealt with as a formal information request (and, if so, under which access regime).
14. However, where an individual explicitly requests that their correspondence be dealt with under FOIA a public authority should (providing the correspondence meets the requirements of section 8) apply its normal FOIA process to that request: confirming or denying that the information is held and either providing the information or issuing an appropriate refusal notice.
15. Where a public authority has initially dealt with a request under the normal course of business, but the requester explicitly seeks a response under FOIA or is dissatisfied with the response they have received, the most pragmatic way forward will usually be for a public authority to utilise its internal review process in the same way as if the initial response was issued under FOIA.

### **Internal review process**

16. When seeking an internal review, the complainant explained to the public authority that he had been advised by the Information Commissioner's Office to "completely exhaust the complaints procedure by asking for an 'Internal Review' and to explain my reasons for this" prior to complaining to the Commissioner. In its internal review, the public authority stated that such guidance "causes confusion" because it had both a formal procedure for dealing with service complaints and an internal review procedure for dealing with information requests.
17. The Commissioner would point out to the public authority that section 50(2)(a) of FOIA refers to him being entitled to refuse complaints about FOIA requests where:

“ the complainant has not exhausted **any complaints procedure** which is provided by the public authority in conformity with the code of practice under section 45.” [emphasis added]

18. Chapter 5 of the section 45 Code of Practice states that:

“It is best practice for each public authority to have a procedure in place for dealing with disputes about its handling of requests for information. These disputes will usually be dealt with as a request for an “internal review” of the original decision. Public authorities should distinguish between a request for an internal review, which seeks to challenge either the outcome or the process of the handling of the initial response, and a general complaint, which should be handled as general correspondence.”

19. The Commissioner therefore considers that the guidance the complainant quoted to the public authority was entirely in accordance with the language of the legislation and Code of Practice. It is not clear to the Commissioner why, in the circumstances of the case, it would have been unclear to the public authority which procedure it should follow.

## Right of appeal

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20. 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)

21. 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.
22. 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 .....**

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