

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2023

Public Authority: Derby City Council
Address: The Council House
Corporation Street
Derby
DE1 2YL

Decision (including any steps ordered)

1. The complainant has requested information relating to Councillors who are in council tax arrears. Derby City Council (the Council) have refused the request under section 40(2)(a) - third party personal data, of FOIA.
2. The Commissioner's decision is that the exemption at section 40(2)(a) is not engaged.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 19 May 2022, the complainant wrote to the Council and requested information in the following terms:

 “How many current DCC councillors have council tax arrears?

 Please detail the names of the relevant councillors and the amount of money they owe in arrears respectively.”
6. The Council responded on 24 August 2022, refusing the request under section 40(2)(a) of FOIA.
7. Following an internal review, the Council wrote to the complainant on 24 October 2022, stating that it upheld its original decision to refuse the request under section 40(2)(a) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 30 November 2022, to complain about the Council’s decision to refuse the request under section 40(2)(a), advising that similar information had been released by other councils.
9. The scope of the following analysis is to determine if the exemption at section 40(2)(a) is engaged.

Reasons for decision

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

10. 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.
11. Section 3(2) of the Data Protection Act 2018 defines personal data as: “any information relating to an identified or identifiable living individual.”
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

13. In this case, the complainant requires the name of any Councillor who, at the time of the request, was in arrears with council tax and in addition, the amount they owe. It is clear to the Commissioner that disclosure of this information would reveal the identity of any Councillor who was in arrears, and the total of such arrears. Therefore, the Commissioner is satisfied that the requested information is personal data.
14. 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."
15. 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.
16. 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 the disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
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 (UT) decision [DH v Information Commissioner and Bolton Council](#), which found that the names of councillors who were in council tax arrears should be disclosed. The view of the UT was that there is a legitimate interest in the public being aware of this information as Councillors are responsible for the expenditure of public money and the administration of council tax; if a Councillor is in arrears of more than two months, they cannot vote on matters that concern council tax.
18. The Commissioner therefore considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that interest.
19. The council has explained to the Commissioner why it believes that the information should not be disclosed in this instance.
20. The UT decision referred to above stated that:

"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."

21. Given the comments set out in the Tribunal decision, the Commissioner accepts that there will be circumstances where a public authority will be entitled to withhold the information described by the complainant's request; however, he is not persuaded that the circumstances described by the Council in this case meet the threshold of 'exceptional'.
22. In regard to the rights and freedoms of the individual, the UT case cited above determined that councillors should expect to be scrutinised and be accountable for their actions in so far as they are relevant to their public office.
23. Having considered the UT's comments, and the circumstances that are relevant to this case, it is the Commissioner's opinion that the legitimate interest of the complainant outweighs the rights and freedoms of the individual in this instance.
24. Therefore, it is the Commissioner's decision that the processing of personal data inherent in the disclosure of the information requested by the complainant would be compliant with principle (a) and hence that the exemption at section 40(2) of FOIA is not engaged. At paragraph 3 above the council is now required to disclose the withheld information.

Right of appeal

25. 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

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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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