

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 September 2023

Public Authority: City of Bradford Metropolitan District Council

Address: Britannia House

Hall Ings

Bradford

BD1 1HX

Decision (including any steps ordered)

1. The complainant requested a copy of the latest version of the telephone directory provided to Elected Members. The City of Bradford Metropolitan District Council (the Council) initially stated that it did not hold the information requested. During the course of the Commissioner's investigation the Council located the document in question and disclosed a redacted copy of it, subject to some information being redacted under section 40(2) (personal information). The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to withhold some of the requested information. However, the Commissioner finds that the Council breached section 10 of the FOIA in failing to provide the disclosable information within the statutory timescale. The Commissioner does not require any steps to be taken.

Request and response

2. On 16 June 2023, the complainant wrote to the Council and requested information in the following terms:

"Can you kindly supply me with the latest version the [sic] Telephone Directory for Elected Members include [sic] the date of the latest version".

3. The Council responded on 16 June 2023 and stated that section 21 of the FOIA applied to the request as the information was available on its website and provided a link to its website showing contact details for Elected Members.
4. On 16 June 2023 the complainant requested an internal review of the Council's handling of the request. They stated that the Council may have misinterpreted their request and they were in fact requesting a:

"versioned document containing the names, telephone numbers and email addresses of Council Officers supplied to Elected Members, not a link to your website of Elected Members".
5. The Council responded on 20 June 2023 and stated that it did not hold a "versioned document containing the names, telephone numbers and email addresses of Council Officers supplied to Elected Members".
6. The complainant requested a second internal review on 23 June 2023 and stated that they knew such a document existed.
7. The Council provided the outcome of its second internal review on 26 June 2023 and upheld its position that it did not hold the information requested.

Scope of the case

8. The complainant contacted the Commissioner on 26 June 2023 to complain about the way their request for information had been handled.
9. During the course of the Commissioner's investigation the Council located the document in question and disclosed a redacted copy of the directory, withholding some information under section 40(2).
10. In light of the above, the scope of the Commissioner's investigation into this complaint is to determine whether the Council correctly applied section 40(2) to withhold some of the information requested.

Reasons for decision

Section 40 – third party personal information

11. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

12. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (the DP principles), as set out in Article 5 of the UK General Data Protection Regulation (UKGDPR).
13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (DPA). If it is not personal data then section 40 of FOIA cannot apply.
14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

15. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
18. 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.
19. The telephone directory includes general contact numbers and email addresses as well as details of individual Council officers, including their names, role/service area, work and mobile telephone numbers and email addresses. The Council has disclosed information relating to senior staff and general contact information but it has withheld the names and contact details of officers in junior roles.
20. The Commissioner is satisfied that the withheld information constitutes personal data falling within the definition in section 3(2) of the DPA. This is because the information clearly relates to, and identifies living

¹ As amended by Schedule 19 Paragraph 58(3) DPA

individuals, as it consists of live telephone numbers and email addresses for contacting specific Council officers.

21. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
22. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

23. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

24. 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.
25. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)9f) of the UK GDPR

26. 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” conditions listed in the Article applies. One of the conditions in Article 6(1) must therefore be met before disclosure of the information in response to the request would be considered lawful.
27. The Commissioner considers that the lawful basis most applicable is basis 6(1)(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”².

² 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”.

28. The Commissioner considers that the lawful basis most likely to be relevant in relation to a request for information under the FOIA is Article 6(1)(f); legitimate interests. In considering the application of this provision in the context of a request for information under FOIA it is necessary to consider the following three-part test:-
- i. **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii. **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii. **Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.
29. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

30. In considering any legitimate interests in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
31. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden
32. The complainant has not identified any specific interest in disclosure of the information requested. The Commissioner accepts that there is a legitimate interest in disclosure of information which allows individuals to contact relevant officers within the Council. However, the Commissioner does not consider that this legitimate interest extends to
-

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 UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK 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".

disclosure of the names, telephone numbers and email addresses of all officers. The Commissioner notes that the Council has disclosed the contact details for senior staff, along with general helpline telephone numbers and email addresses of individual service areas, where they are listed within the directory. He also notes that the Council has confirmed that the directory is for internal use only and has been compiled for the purpose of providing its members with information on contacts within each department of the Council to assist them in carrying out their day to day duties.

33. It is common practice for a public authority to argue that the names of junior officials are exempt from disclosure under FOIA on the basis of section 40(2) as disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that the names of the junior officials are exempt from disclosure on the basis of section 40(2) of FOIA. This is in line with the approach taken in the Commissioner's section 40 guidance³ and previous decision notices⁴.
34. In conclusion, whilst the Commissioner acknowledges there is a legitimate interest in ensuring that members of the public are able to contact the Council, he considers that the information that the Council has disclosed to date, along with the various other contact details and methods available on the Council's website are sufficient to meet this interest. He has determined that disclosure of the remaining information which has been redacted from the internal telephone directory, to the world at large, is therefore not necessary.
35. The Commissioner's decision in this case is that disclosure of the withheld information is not necessary to meet the legitimate interests in disclosure. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The Council was therefore correct to apply section 40(2) of FOIA to this request.

³ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

⁴ IC-114449-B7P7 - <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022310/ic-114449-b7p7.pdf> - paragraphs 49-71 and IC-110922-T9R1 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> - paragraphs 39-62.

Section 10 – time for compliance

36. Section 10 of FOIA requires a public authority to confirm whether it holds any information within the scope of a request and to provide any information not otherwise exempt, within 20 working days.
37. In this case the complainant submitted their request for information on 16 June 2023. In its initial response and its internal review response the Council stated that it did not hold any recorded information relevant to the request.
38. During the Commissioner's investigation, the Council located information falling within the scope of the request, some of which was disclosed to the complainant. In failing to provide the disclosable information within the statutory time for compliance, the Commissioner finds that the Council breached section 10(1) of the FOIA.

Right of appeal

39. 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

40. 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.
41. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF