

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2024

Public Authority: Bolton Council
Address: Town Hall
Victoria Square
Bolton
BL1 1RU

Decision (including any steps ordered)

1. The complainant requested information from Bolton Council (“the Council”) relating to Councillors who are in council tax arrears.
2. The Commissioner’s decision is that is that Council is not entitled to rely on section 40(2) (personal information) of FOIA to refuse to provide the withheld information.
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 June 2023, the complainant wrote to the Council and requested information in the following terms:

“I want to know the names of elected Bolton councillors who have not paid or are not up to date on their council tax payments.

Additionally, I would like to know how much they owe in council tax to the Council please and how long it had been since their last payment.

Could I have the information set out as such: Councillor name, how much owed, date of last payment made.”

6. The Council provided the complainant with some information within the scope of the request relating to one Councillor. However it withheld the name of that Councillor citing section 40(2) (personal information) of FOIA as its basis for doing so.

Reasons for decision

7. This reasoning covers whether the Council it entitled to rely on section 40(2) of FOIA to refuse to provide the withheld information.
8. 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.
9. Section 3(2) of the Data Protection Act 2018 defines personal data as:
- “any information relating to an identified or identifiable living individual.”
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. In this case, the Council has withheld the name of a Councillor who has failed to make council tax payments. The Commissioner is satisfied that this information would relate to and identify that individual and so he considers the withheld information to be personal data.
12. 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.”

13. In the case of a 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.
14. 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.
15. The Commissioner appreciates that there is a legitimate interest in the public knowing when Councillors have failed to pay council tax and who those Councillors are. This was considered in the Upper Tribunal (UT) decision *DH v Information Commissioner and Bolton Council*¹, which found that the name of a Councillor who had failed to pay council tax 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.
16. 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.
17. 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.”
18. Given the comments set out in the UT decision, the Commissioner accepts that there will be circumstances where a public authority will be entitled to withhold the name of a Councillor who has failed to pay council tax. However, he is not aware of any circumstances in this case that meet the threshold of ‘exceptional’.
19. With regard to the rights and freedoms of the individual, the UT case cited above determined that Councillors should expect to be scrutinised

¹ [DH v Information Commissioner and Bolton Council: \[2016\] UKUT 139 \(AAC\) - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

and be accountable for their actions in so far as they are relevant to their public office.

20. Having considered the UT's comments, and the circumstances of this case, the Commissioner is of the view that the legitimate interest in disclosure of the withheld information outweighs the rights and freedoms of the individual in this instance.
21. Therefore, the Commissioner's decision is that the Council is not entitled to rely on section 40(2) of FOIA to refuse to provide the withheld information.

Other matters

22. The Commissioner cannot consider in a decision notice the amount of time it took a public authority to complete an internal review because such matters are not a formal requirement of FOIA. However, it is good practice to offer an internal review, and, where a public authority chooses to do so, the code of practice established under section 45 of FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
23. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. By the date of this notice, the Council had not provided the complainant with the outcome of its internal review, seven months after it was originally requested. The Commissioner considers that the Council has failed to act in accordance with the section 45 code of practice.
24. These concerns will be logged and used by the Commissioner when considering the overall compliance of the Council.

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
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