

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2024

Public Authority: Monmouthshire County Council
Address: County Hall
The Rhadyr
Usk
NP15 1GA

Decision (including any steps ordered)

1. The complainant requested an organisational chart for employees handling FOIA and subject access requests (SARs). Monmouthshire County Council (the Council) stated that the information requested was not held and it was not obliged to create new information to respond to an FOIA request. During the course of the Commissioner's investigation, the Council amended its position and disclosed the job titles and details of the hierarchy of staff dealing with FOIA and SARs, but withheld the names of junior staff. The Commissioner's decision is that the Council correctly applied section 40(2) (personal data) to the request. However, the Commissioner finds that, in failing to confirm the information was held, and to provide the disclosable information within the statutory time period, the Council breached sections 1(1)(a) and 10(1) of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. On 5 July 2023, the complainant wrote to Council and requested information in the following terms:

"Please provide the Organisational Chart for employees handling FOIA and Sar requests, including job titles and with the names of public facing employees within the chart".

3. The Council did not respond to this request and it was the subject of a previous complaint to the Commissioner. A decision notice was issued in relation to that complaint on 22 November 2023¹. The Commissioner found that section 17(6) of the FOIA was not engaged and he ordered the Council to either provide the information requested or issue a valid refusal notice.
4. On 23 November 2023 the Council responded and stated that the information requested was not held as “we do not hold an organisation chart down to officer level and we are not expected to create information for FOI requests”. It also confirmed that a link to its corporate organisational chart had previously been provided to the complainant.
5. On 23 November 2023 the complainant requested an internal review of the handling of their request. They asserted that they were seeking access to information that was held by the Council, unless it did not hold the names and/or job titles of the individuals concerned.
6. The Council provided the outcome of its internal review on 2 January 2024 and upheld its position that it did not hold the information requested.

Scope of the case

7. The complainant contacted the Commissioner on 2 January 2024 to complain about the way their request for information had been handled.
8. During the course of the Commissioner’s investigation, the Council accepted that it held the building blocks in respect of the information requested. It provided the complainant with details of the staff dealing with SARs and FOIA requests, including job titles and the managerial structure of the staff involved. However, the Council withheld the names of junior staff under section 40(2) of the FOIA.
9. The following analysis considers whether the Council correctly applied section 40(2) to the request. The Commissioner has also considered whether there are any procedural matters associated with the Council’s handling of the request.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4027538/ic-255758-n2c7.pdf>

Reasons for decision

Section 40(2) – third party personal data

10. 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.
11. In this case the relevant condition is contained in section 40(3A)(a)². 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 ('UK GDPR').
12. In this case the Council has withheld the names of junior officials who deal with SARs and FOIA requests on the basis of section 40(2) of the FOIA.
13. It is common practice for a public authority to argue that the names of junior officials are exempt from disclosure under the 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 junior officials are exempt from disclosure on the basis of section 40(2) of the FOIA. This is in line with the approach taken in the Commissioner's section 40 guidance³. Therefore, in this case the Commissioner adopts the reasoning set out in these previous decision notices which found that the personal data of junior officials was exempt from disclosure on the basis of section 40(2) of FOIA⁴.

² As amended by Schedule 19 Paragraph 58(3) DPA.

³

https://ico.org.uk/media/fororganisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf - see pages 11 and 12

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022310/ic-114449-b7p7.pdf> - see paragraphs 49-71, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> - see paragraphs 39-62 and <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4026862/ic-240684-f9v5.pdf> - paragraphs 11 to 36

Procedural matters

Section 1 – general right of access

Section 10 – time for compliance

14. Section 1 of FOIA states that “any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request”.
15. Section 10(1) provides that a public authority must comply with sections 1(1)(a) and 1(1)(b) promptly and in any event not later than the twentieth working day following the date of receipt of a request for information.
16. In this case the complainant’s request for information was first submitted on 5 July 2023. As stated earlier in this notice, the Commissioner issued a previous decision notice relating to the request on 22 November 2023 ordering the Council to either disclose the information or issue a valid refusal notice. Although the Council responded on 23 November 2023, it stated that the information requested was not held and it upheld this position at the time of its internal review on 2 January 2024.
17. During the Commissioner’s investigation, the Council acknowledged that it held the information requested and disclosed some information and withheld the remaining information under section 40(2) of the FOIA.
18. In failing to confirm it held information falling within the scope of the request the Council breached section 1(1)(a) of the FOIA.
19. In addition, in failing to confirm the information was held and providing the disclosable information within twenty working days, the Commissioner finds that the Council breached section 10(1) of the FOIA.

Right of appeal

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

Website: 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.

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