

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2024

Public Authority: Erewash Borough Council
Address: Ilkeston Town Hall
Wharncliffe Road
Ilkeston
Derbyshire
DE7 5RP

Decision (including any steps ordered)

1. The complainant requested information from Erewash Borough Council ("the Council") regarding the registration of two food businesses. The Council provided some of the requested information but withheld the names of the registered owners of one of the businesses under section 40(2) of FOIA (personal information).
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) to refuse to provide the withheld information.
3. The Commissioner does not require further steps.

Request and response

4. On 23 July 2023, the complainant wrote to the Council and requested information in the following terms:
 - "1. Who is the registered business owner of [name and address of a cafe redacted]?"
 2. Has a new food business [name of a fish and chip shop redacted] been registered with Erewash Borough Council?"
5. The Council responded on 21 August 2023. It provided the information requested in part 2 of the request, but withheld the information requested in part 1 of the request under section 40(2) of FOIA (personal information).

6. Following an internal review the Council wrote to the complainant on 26 February 2024. It maintained its original position.

Reasons for decision

Section 40(2) – Personal information

7. This reasoning covers whether the Council is entitled to rely on section 40(2) (personal information) of FOIA to refuse to provide the names of the registered business owners of the cafe named in part 1 of the request.
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. The Commissioner is satisfied that the withheld information is the personal data of the cafe owners as the information relates to and identifies these individuals.
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 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.
14. 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 complainant has stated that they have requested the name of the business owner as they need this information to submit a complaint

under section 82 of the Environmental Protection Act 1990 ("the EPA") regarding a statutory noise and odour nuisance. The Commissioner therefore considers that the complainant is pursuing a legitimate interest in gathering the information required to make such a complaint.

16. The Commissioner must next consider whether disclosure is necessary to meet this legitimate interest. Necessary means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and therefore disclosure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
17. The Council argues that disclosure is not necessary to meet the legitimate interest pursued by the complainant. It argues that the complainant can apply for an order under section 82 of the EPA without the names of the business owners. It clarified that section 82(4) of the EPA allows a complainant to apply to bring proceedings against the owner or occupier of the premises where the person responsible for the nuisance cannot be found.
18. The Council states details of the owner of the property are readily publicly available on the Land Registry. It also argues, "given that the Erewash Borough Council food health and safety team has dealt with more than one food business operator at the premises since the complainant's original contact, taking action against the owner of the property would be more effective as they ultimately have control and are responsible for what their tenants do, regardless of who that tenant is".
19. The Council's position is that, as the complainant can apply for an order under section 82 of the EPA without the names of the business owners, disclosing this information under FOIA would breach principle (a) as the complainant's legitimate aim could be achieved by something less.
20. The Commissioner notes that the Council does not appear to dispute that disclosure of the names would be necessary to allow proceedings to be brought against the business owners directly. However, it appears that the Council's position is that taking action against the owner of the property would equally (or better) meet the legitimate interest of the complainant.
21. The Commissioner notes the information provided by the Council regarding ongoing issues experienced by the complainant from the property while it has been the venue for more than one food business. He also notes the Council's argument that the legitimate interest of the

complainant is in taken action to negate the nuisance, rather than specifically taking action against the business owners. This legitimate interest can be met by taking action against the owner of the premises rather than the owners of the cafe.

22. The Commissioner therefore accepts that disclosure of the names of the owners of the cafe is not necessary to meet the legitimate interest pursued by the complainant. Disclosure of the names under FOIA would therefore breach principle (a).
23. As disclosure is not necessary to meet the legitimate interest of the complainant the Commissioner has not gone on to consider the balancing test.
24. The Commissioner's decision is that the Council is entitled to rely on section 40(2) (personal information) of FOIA to refuse to provide the names of the registered business owners of the café.

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.

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