

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2018

Public Authority: Warwickshire County Council

Address: Shire Hall
Warwick
Warwickshire
CV34 4SA

Decision (including any steps ordered)

1. The complainant has requested information from Warwickshire County Council which the Commissioner has decided is the complainant's personal data.
2. The Commissioner's decision is that Warwickshire County Council inappropriately applied section 30(2) and 40(2) of the FOIA to the information the complainant seeks.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 13 June 2017, the complainant wrote to Warwickshire County Council and requested information in the following terms:

"I request how many complaints have been made about me and/or my business ([requester's name] Tree Services). Dates would be helpful but

if nothing else, just within a time-frame context i.e. in the last ten years or in the last 5 years."

5. The Council responded to the complainant's request on 11 July 2017. The Council advised the complainant that it holds the requested information but was refusing to disclose that information in reliance on section 30(2)(b) of the FOIA.
6. On 17 October 2017, the complainant wrote to the Council to ask it to conduct an internal review. The complainant outlined several reasons why he considered the Council was in error in refusing his request. These reasons included the complainant's belief that the Council's reliance on section 30(2)(b) is not valid; that there are no on-going investigations or proceedings and no confidential information is being requested; that the Council had failed to explain why disclosure of the information was not in the public interest, pointing out that he only seeks a number; and, that the Council had failed to explain why disclosure of the requested information would compromise or affect the confidentiality of the sources of complaints.
7. Having conducted its internal review of the request, the Council wrote to the complainant on 14 November 2017 to advise him of its final decision. The Council's reviewer decided to uphold the decision that the information the complainant seeks is subject to the exemption provided by section 30(2)(b). The reviewer advised the complainant that the Council was not required to consider the public interest on the grounds that section 30 is a class-based exemption.
8. The Council noted the ICO's guidance on section 30(2) and it determined that the exemption under section 40 for personal data would also apply to the withheld information. The Council explained that it had considered the information it holds, together with the information already available to the complainant and it determined that, if the information was released to him, he would be able to "identify the identity of confidential sources".

Scope of the case

9. The complainant contacted the Commissioner on 28 November 2017 to complain about the way his request for information had been handled.
10. The complainant asserts that there is no reason why the Council cannot disclose to him the number of complaints, if any, it has received about him or his business during the past ten years and he asserts that such a disclosure would breach no-ones confidentiality.

11. In view of the complainants complaint, the Commissioner determined that the focus of her investigation should be to determine whether the Council has handled the complainant's request in accordance with the FOIA, and specifically whether the Council is entitled to withhold the information he seeks in reliance on sections 30(2)(b) and 40 of the FOIA.

Reasons for decision

12. On 2 May 2018, following its receipt of the Commissioner's enquiry, the Council wrote to the complainant and provided him with information relevant to his request.
13. The Council maintained its position that the requested information engaged section 30(2) of the FOIA. However, following its reassessment of the public interest considerations, and based on the fact that since its previous response to the complainant there had been further dialogue with the complainant in relation to his "separate complaints to the Council" on this issue, the Council decided that the balance of the public interest had changed in favour of disclosure.
14. The Commissioner understands the Council's position in respect of the complainant's request for information but considers that it is wrong. In the Commissioner's opinion the complainant's request should not have been considered under the provisions of the FOIA from the outset for the following reasons:

The nature of the requested information

15. Under section 1 of the Data Protection Act 1998, personal data is defined as data which relates to a living individual who can be identified from those data or from those data and other information which is in the possession of the data controller, or likely to come into the possession of the data controller. It includes any expression about an individual and any indication of the intentions of the data controller in respect of that individual.
16. Here, the complainant has asked the Council to tell him how many complaints it has received about himself or his company in the past 5 to 10 years, in his capacity as an Out of Hours Arboricultural Contractor.
17. The complainant's company is known by the complainant's name and the complainant is a sole trader. The information which the complainant seeks under the terms of his request, is such that the complainant is clearly linked to that information which is caught by those terms and can be he can be identified through that linkage.

18. The Council knows that the complainant is a sole trader, trading under his own name, and it has acknowledged in its letter of 11 July 2017 that it holds information relevant to the complainant's information request: The Council's refusal notice must be taken to mean that the Council has received at least one complaint about the complainant.
19. In the Commissioner's opinion, the information which the complainant seeks constitutes the complainant's personal data: That information fully satisfies the definition of personal data under section 1 of the Data Protection Act.
20. The fact that the complainant has asked for his own personal data should have been immediately apparent to the Council as it is writ large on the face of his request. As such, the Council should have refused the complainant's request under section 40(1) of the FOIA – where the requested information is the personal data of the applicant.
21. The Council should then have advised the complainant that his request would be dealt with under the subject access provisions of the Data Protection Act.
22. In the circumstances described above, the Council should never have gone on to consider whether the information requested by the complainant engaged any of the other exemptions contained in Part II of the FOIA and certainly it should not have relied on section 30(2).
23. The Council's failure to process the complainants request under the appropriate information access regime has caused a great deal of distress to the complainant and to his family which the Council should acknowledge. This is because the Council's inappropriate reliance on section 30(2) of the FOIA has led the complainant to believe that he has committed an act which could lead to the Council instituting criminal proceedings against him. In the Commissioner's opinion, if this is or was the case, it would not be appropriate to learn of that fact by virtue of making a request for information.
24. The Commissioner's decision is that Warwickshire County Council inappropriately applied section 30(2) of the FOIA to the complainant's request.
25. The Council's reference to the complainant being able to "identify the identity of confidential sources" [at paragraph 9] suggests that the Council was also relying on section 40(2) of the FOIA as an additional reason for withholding the information requested by the complainant. For the reasons given above and based on the fact that the Council has now disclosed relevant information to the complainant, the Commissioner has also decided that the Council inappropriately applied section 40(2).

Right of appeal

26. 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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF