

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2020

Public Authority: Exeter City Council
Address: Civic Centre
Paris Street
Exeter
EX1 1JN

Decision (including any steps ordered)

1. The complainant has requested from Exeter City Council (the Council) information in relation to suppliers contracted to provide goods and services to the Council. The Council provided parts of the information requested and withheld the remainder because it considered that it was exempt under section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the Council was entitled to rely on section 40(2) of the FOIA in relation to the withheld part of the requested information.
3. The Commissioner does not require any step to be taken as a result of this decision notice.

Request and response

4. On 21 October 2019, the complainant wrote to the Council and requested information in the following terms:

"I attach a spreadsheet showing payments made by the Council where the supplier name has been redacted on personal data grounds. It has been derived from the quarterly lists of payment published by the Council, and I have sought to limit those items of payment for commercial services.

I request that the redacted supplier names be published on the grounds that there is a clear public interest in knowing who is being paid from public funds for commercial services."

5. The Council responded on 13 November 2019. It updated five entries on the spreadsheet with details of the companies which received the payments. However the Council stated that it was *"unable to release the names of the individuals who received the remaining payments as the information is exempt from disclosure under Section 40 (personal information) of the Freedom of Information Act 2000."*
6. Remaining dissatisfied with the response received, on 18 November 2019 the complainant asked the Council to conduct an internal review.
7. Following an internal review the Council wrote to the complainant on 13 December 2019. It upheld the reasoning provided in its initial response to the complainant's request for information.

Scope of the case

8. The complainant contacted the Commissioner on 20 December 2019 to complain about the way his request for information had been handled. The complainant argued that the withheld information does not constitute personal data and that the Council, therefore, incorrectly applied section 40(2) of the FOIA.
9. The following analysis will determine whether the Council correctly applied section 40(2) of the FOIA to the withheld information. The withheld information consists of suppliers' names on a spreadsheet. The information already disclosed consisted of other characteristics of payments processed by the Council such as transaction dates, transaction reference numbers, net amounts, expense descriptions, service codes and categories.

Reasons for decision

Section 40 - personal information

10. Section 40(2) of the 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)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 General Data Protection Regulation ("GDPR").
12. 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 the FOIA cannot apply.
13. 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 DPA principles.

Is the information personal data?

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

"any information relating to an identified or identifiable living individual".

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable. The Commissioner's guidance on what is personal data² states that if information "relates to" an "identifiable individual" it is "personal data" regulated by the DPA.
16. 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.
17. 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.

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

² <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

https://ico.org.uk/media/fororganisations/documents/1549/determining_what_is_personal_data_quick_reference_guide.pdf

18. The Commissioner's guidance on personal information³ states:

"The DPA defines personal data as any information relating to an identified or identifiable living individual. If an individual cannot be directly identified from the information, it may still be possible to identify them. You need to consider all the means reasonably likely to be used to identify an individual"

19. In the present case, the information withheld by the Council consists of details about individuals who act as suppliers of goods and/or services paid for the Council. The Council confirmed its view was that *"all of the information withheld is personal information"*.

20. For the purpose of her investigation, the Commissioner requested from the Council a copy of the spreadsheet with the withheld information included.

21. Having examined the withheld information, the Commissioner notes that the withheld information consists of individuals' first names and last names who at some point supplied goods and/or services to the Council.

22. This information clearly identifies and relates to the named individuals, and therefore falls within the definition of "personal data" in section 3(2) of the DPA.

23. 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.

24. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

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

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

³ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-regulation-13.pdf>

26. 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.
27. In order for disclosure 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)(f) of the GDPR

28. Article 6(1) of the 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"* lawful basis for processing listed in the Article applies.
29. The Commissioner considers that the lawful basis most applicable here 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"⁴.

30. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the 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;

⁴ 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".

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

- 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 legitimate interest(s) or fundamental rights and freedoms of the data subject.

31. 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

32. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
33. 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 in the balancing test.
34. The Council stated that it has not identified any legitimate interests in disclosure.
35. The Commissioner disagrees with the Council on this point, because she considers that there is a legitimate interest in the information being disclosed. She recognises that the legitimate interests relate to creating greater accountability and transparency on the Council’s expenditure of public funds.
36. However, the Commissioner has to examine whether the publication of the withheld information is necessary in the circumstances of this case.

Is disclosure necessary?

37. “Necessary” means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
38. The complainant is of the view that *“it is not correct to apply the provision for redacting personal data in situations where the person has voluntarily entered into a contract to supply services or goods to the*

City Council. In this case, there is a public interest in knowing who is receiving public funds in exchange for services. These are business, not personal, transactions."

39. The Council maintained that disclosure of individuals' names is not necessary in this case. It considered that sufficient information has already been disclosed to demonstrate the transparency of the Council's expenditure for goods and services. The Council stated that disclosing *"the personal information which has been redacted does not add any further meaning to the information."*
40. Furthermore, the Council maintained that *"the information being withheld can be linked to the individual's income, therefore it relates to their private life."* It added that *"none of the individuals expect their names to be disclosed to the world at large."*
41. The Council confirmed that *"None of the individuals have been asked whether they are willing to consent to the disclosure of their personal information."* Consequently, the Council does not have their consent to publish their names.
42. The Commissioner has carefully examined the submissions of both parties, the disclosed and the withheld information.
43. In the Commissioner's guidance on FOIA section 40 it is explained that when considering the question of necessity it must be considered whether there is a pressing social need for the disclosure of the information (i.e. what the legitimate interests are). Further, the guidance provides that *"the fact that there is a right of access to information under FOIA and the EIR does not in itself constitute a pressing social need for disclosure."*
44. The Commissioner reiterates that public authorities must consider whether disclosure under FOIA is necessary to achieve these needs or interests, or whether there is another way to address them that would interfere less with the privacy of individuals. For example, public authorities may consider whether they could meet the legitimate aim of transparency and accountability when spending of public funds, without disclosing the personal details of individuals.
45. In the circumstances of this case, the Commissioner's view is that the published information described above at paragraph 9 contains sufficient details on payments processed by the Council, such as: transaction dates, transaction reference numbers, net amounts, expense descriptions, service codes and categories. She does not consider that disclosure of names of all suppliers would significantly contribute to the Council's transparency on how they spend public funds without risking causing an unwarranted intrusion into privacy of the named individuals.

46. In conclusion, the Commissioner considers that the publication of names of the individuals who provided certain goods and/or services to the Council is not necessary in this case.
47. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
48. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest of transparency, she does not need to go on to conduct the balancing test and has not done so.
49. The Commissioner has therefore decided that the withheld information is exempt from disclosure under section 40(2), by way of section 40(3A)(a). The Council was not, therefore obliged to disclose this information.

Right of appeal

50. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

51. 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.
52. 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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