

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 March 2012

**Public Authority:** Birmingham City Council

**Address:** Council House  
Victoria Square  
Birmingham  
England  
B1 1BB

### Decision

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1. The complainant has requested information relating to an application for discretionary relief from non-domestic rates for a specified commercial property. Information was disclosed, with names of some individuals contained in the information redacted, applying the provisions of the exemption at section 40 of FOIA to comply with the requirements of the Data Protection Act 1998 (the DPA). Further information was redacted, citing the exemption at section 31 of FOIA which relates to law enforcement. The complainant has appealed Birmingham City Council's use of the exemptions at sections 31 and 40 of FOIA.
2. The Commissioner's decision is that Birmingham City Council has correctly withheld the personal data, redacted from the information disclosed to the complainant under section 40, but the exemption at section 31 is not engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the information redacted under the provisions of section 31(1)(a) of FOIA.
4. The public authority 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 8 June 2011 the complainant wrote to Birmingham City Council (the council) and requested information in the following terms<sup>1</sup>:

*"In respect of the following property:*

*8 Ethel Street  
Birmingham  
B2 4BG*

*please provide details of any application for mandatory or discretionary relief from non-domestic rates, or renewal of such relief, which has been made since my previous FOIA request of 15 April 2010.*

*If such relief has been applied for, please provide:*

- a copy of the application and all documents supplied in support of it,*
- details of the Council's decision whether or not to apply the relief,*
- the reasons behind the Council's decision,*
- internal and external communications concerning the application and the decision.*

*Please provide the information in electronic format"*

6. The council responded on 6 July 2011. It disclosed the information it held, but redacted information, including the names of the individuals contained in the application form and supporting documentation, to comply with the Data Protection Act 1998, on the grounds that the redacted information is sensitive personal data.
7. Following an internal review the council wrote to the complainant on 3 August 2011. It stated that the information was correctly redacted under s40 of FOIA and provided more detail in explanation for its position. It clarified that one element was redacted because it relates to

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<sup>1</sup> [http://www.whatdotheyknow.com/request/scientology\\_tax\\_relief\\_update\\_pl](http://www.whatdotheyknow.com/request/scientology_tax_relief_update_pl)

a unique reference number associated with COSREC, and that this was withheld under the provisions of section 31(1)(a) (that the information would, or would be likely to prejudice the prevention of crime), as it could be used to gain access to sensitive personal data.

## Scope of the case

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8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained about the application of the exemption at s40 of FOIA and argued that there is a legitimate public interest in the disclosure of the information. He also confirmed that he wished to challenge the redaction of the reference number under s31 of FOIA.
9. The Commissioner considers that the scope of the case is to examine the council's application of the exemption at s40 of FOIA with respect to the redacted personal data, and also the redaction of the reference number refused under the provisions of s31 of FOIA.

## Reasons for decision

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### Personal information.

#### **Section 40(1) provides that –**

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

#### **Section 40(2) provides that –**

"Any information to which a request for information relates is also exempt information if-

(a) it constitutes personal data which do not fall within subsection (1),  
and

(b) either the first or the second condition below is satisfied."

**Section 40(3) provides that –**

“The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles

**Law enforcement**

**Section 31(1) provides that –**

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) the prevention or detection of crime,

**Section 40**

10. The council asserts that the personal data is, in fact, sensitive personal data because it provides information about the religious beliefs of the data subject – specifically that they are members of the Church of Scientology. This is defined as sensitive personal data under the provisions of section 2(c) of the DPA, namely *“information as to – ... (c) his religious beliefs or other beliefs of a similar nature.”*
11. The Commissioner has confirmed that the complainant is arguing the following two points in relation to s40 of FOIA:
  - firstly, that the information is not sensitive personal data; and
  - secondly, if it is simply ‘personal data’, not ‘sensitive personal data’ that there is a route to disclosure under condition 6 of Schedule 2 to the DPA. Namely that the disclosure is *“necessary for the purposes of the legitimate interests [of the public]”* and disclosure is not *“unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subjects”*.

12. The information which has been redacted under s40 consists of:
  - the named addressee at the top of the council's letter, dated 14 April 2011, sent by the council to the Church of Scientology Religious Education College Inc (COSREC);
  - the name adjacent to the Contact Name field at section 5 of page 1 of the 'Application for Discretionary Rate Relief' form submitted by COSREC; and
  - the signature and 'position in organisation' details on the last page of the same document.
13. The Commissioner is satisfied that this is personal data, as it relates to an identifiable individual. The council's argument is that it is in fact sensitive personal data as the individuals are believed to be members of the Church of Scientology. It explains that its understanding is that the church has a mandatory policy of requiring all its staff members to be members of the church. The complainant argues that this would be contrary to UK employment law, particularly as the Church of Scientology (COS) is not recognised in the UK as a religious institution. As the organisation is not recognised as a church it cannot claim any associated special status in terms of equality or other relevant legislation.
14. The Commissioner notes that the council's view, while consistent with popular understanding of the workings of the COS, does not show definitively that the redacted information is sensitive personal data. The identifiable individuals are acting in the role of administrative staff, and the information does not confirm them to be members of the COS. His own research has not led him to any definite view as to the existence of a policy of only employing members of the organisation and he accepts the complainant's argument that this would be an unlawful policy, if pursued. The council has not shown that the individuals are members of the COS.
15. However the Commissioner remains mindful of the likelihood that the individuals are members of the COS. Therefore, while he does not apply the more stringent restrictions on disclosure of sensitive personal data set out at Schedule 3 to the DPA, he will take this possibility into account when considering the matter of 'fairness' in disclosure under the first data protection principle.
16. If personal data is to be disclosed, this must be done in compliance with the DPA and, in particular, consistent with the first data protection principle which requires that personal data is processed 'fairly and lawfully'. The Commissioner is not aware of any argument that disclosure (processing) would be unlawful in this case, and has therefore considered whether disclosure would be fair.

17. The complainant argues that a public interest in disclosure arises which might therefore render the disclosure of the names fair, because of his view that Scientology is an anti-social organisation<sup>2</sup>, and:

- The Department for Communities and Local Government (DCLG) has declared that Scientology is not entitled to relief from national non-domestic rates (business rates)<sup>3</sup>, yet it is granted such tax relief by a number of local councils, in the amount of around £2m to date.
- It has in the past submitted false information<sup>4</sup> to local councils in applying for these tax reliefs.
- If an application containing false information has been signed by a professional advisor (such as a lawyer or an accountant) who has a code of conduct to follow, then they may therefore have been in breach of that code of conduct.
- As the applications relate to grants of public money due to the purported public benefit provided by Scientology, the public has a right to view the details of that application.
- A large amount of public money is at stake.

18. He argues that the documents disclosed for the present application show that COSREC repeats the assertion that the building is used "*Wholly or mainly for charitable purposes*" despite this application post-dating the ruling of the Charity Commissioners, and the DCLG finding referenced above. Therefore, if a professional person has signed or submitted such an application, knowing it to be untrue, this may be a breach of their

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<sup>2</sup> The complainant cites numerous authorities for this view, including websites which are generally critical of the practices of the Church of Scientology and some judicial expressions of concern about its practices, which the Commissioner has noted.

<sup>3</sup> <http://www.communities.gov.uk/documents/corporate/pdf/1944283.pdf>

<sup>4</sup> For example, that COSREC is a charitable organisation (and therefore entitled to tax relief on this basis), a position not upheld by the Charity Commission <http://www.charitycommission.gov.uk/Library/start/cosfulldoc.pdf> and acknowledged by the COS in a statement dated 22 June 2010 [http://l.yimg.com/ea/doc/-/100622/statement\\_for\\_today\\_tonight\\_22\\_june\\_10-1620t64.pdf](http://l.yimg.com/ea/doc/-/100622/statement_for_today_tonight_22_june_10-1620t64.pdf)

professional code of practice and disclosure of their identity would enable a formal complaint to their professional regulatory body to be submitted.

19. The Commissioner has examined the redacted information and made enquiries to the council. He is satisfied that the individuals referred to are officers of COSREC and not professional advisers, such as lawyers or accountants, who might be obliged to follow a professional code of practice. Therefore the complainant's argument, that these individuals would be in breach of a professional code of practice so that identifying them would serve some public interest, fails. The Commissioner has consequently not found it necessary to consider whether, if the application contains any material untruths, these would constitute a breach of professional standards, and his comments should not be interpreted as making any finding in this regard.
20. With regard to the other arguments for the public interest in disclosure of the names, put forward by the complainant, namely that the public has a right to view the application due to the large amounts of public money at stake, the public interest is adequately served by disclosure of the documents themselves. It is not necessary to know which individual has completed or signed the application in order to examine the material content of the application. Furthermore, this particular application was refused, therefore the matter of the use of public funds does not arise.
21. The Commissioner does not consider that the complainant has shown that the public interest in disclosure of the names is sufficiently strong that it should warrant disclosure irrespective of any prejudice to the rights and freedoms or legitimate interests of the individuals concerned. Members of the public ought to be able to expect that their names will not be disclosed under FOI purely as a result of their having dealt with a public authority, and the Commissioner considers that the individuals who submitted the application would have a reasonable expectation that their personal details would be kept secure.
22. The Commissioner recognises the associated argument, that if a person has acted improperly, they should not expect to be protected under the DPA, however he is mindful that in this case, no improper behaviour has been proven and, even if it were to be shown, any impropriety is external to the public authority. The public interest in transparency under FOIA relates to enabling public scrutiny of the way a public authority conducts itself.
23. Furthermore, the Commissioner remains alert to the possibility that disclosure of the names might reveal, or imply, membership of the COS, and consequently could lead to the disclosure of sensitive personal data. His own enquiries have not shown that, if the individuals are members

of the COS or hold beliefs related to those of COS, they have chosen to make this public.

24. He concludes that disclosure of the names of the individuals in this case would be unfair, and therefore should be withheld. He upholds the council's application of the exemption at section 40(2) of FOIA to the redacted information which has been withheld.

### **Section 31**

25. The information withheld under section 31 is a reference number written on the application for Discretionary Rate Relief and also cited at the head of the 14 April 2011 letter sent to COSREC by the council, as referred to in paragraph 12 above.
26. The council's argument is that the number is a unique reference number relating to the application. The number is used as a means of validation, ie that the person contacting the council is authorised to speak on behalf of COSREC. Its contention is, therefore, that knowledge of the reference number would enable somebody to impersonate a member of COSREC and obtain information, namely: the personal data contained in the application.
27. Its argument is therefore understood to be that use of the reference number would enable the offence of 'blagging' ie the unauthorised obtaining of personal data by deception, an offence under section 55 of the DPA, and that by enabling this offence to be committed, the disclosure of the reference number would prejudice the prevention of this crime.
28. The council further argues that principle 7 at schedule 1 of the DPA requires a data controller (the council) to have in place "*appropriate technical and organisational measures*" against unauthorised or unlawful processing of personal data and the reference number is one of the main validation tools it uses.
29. The Commissioner, however, understands that the council employs other methods, in addition to the unique reference number, in order to verify that it is dealing with suitably authorised persons. It is therefore not clear that disclosure of the reference number will, by itself, enable the offence suggested at paragraphs 26 and 27 above to be committed. The Commissioner considers it unlikely that issuing a unique reference number, by itself, would be a sufficient technical or organisational measure to prevent unauthorised processing of personal data in the circumstances.
30. Also, while the council is required to have sufficient 'technical and organisational measures' in place, there is nothing to suggest that



undermining those measures (ie by disclosure of one part of the process) would be likely to enable the offence referred to in paragraph 27, such that the disclosure could be argued to prejudice the prevention of crime. This particular limb of the council's argument, summarised at paragraph 28 above, is not pertinent to the exemption at section 31, irrespective of whether it has the stated impact on the effectiveness of the council's measures.

31. The Commissioner is not persuaded that the disclosure of the reference number, by itself, would lead to the prejudice to the prevention of crime suggested by the council. Furthermore, any such prejudice could be avoided, if necessary, by issuing a new reference number and cancelling the one which has been disclosed.
32. The Commissioner finds that the exemption at section 31 of FOIA is not engaged in the circumstances of this complaint.

## Right of appeal

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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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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.

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 .....**

**Gerrard Tracey  
Principal Policy Advisor  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**