

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 2017

Public Authority: Cardiff Council
Address: County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Decision (including any steps ordered)

1. The complainant requested the number of tickets issued to two specific vehicle registration numbers. Cardiff Council ('the Council') withheld the information under section 40(2) of the FOIA. During the course of the Commissioner's investigation, the Council disclosed information relating to one of the vehicles. The Commissioner considers that the Council incorrectly applied section 40(2) to the request. The Commissioner has decided that under section 40(5)(b)(i) of the FOIA, the Council is not obliged to confirm or deny that it holds the requested information as to do so would release the personal data of a third person.

Request and response

2. On 9 September 2016 the complainant wrote to the Council and requested information in the following terms:

"Under the Freedom of Information Act could you supply me with the number of tickets that have been issued to the vehicle registration numbers below from the 01/01/16 please?

[Vehicle registration number redacted] White Vauxhall Van

[Vehicle registration number redacted] Black Honda car".

3. The Council responded on 22 September 2016 and stated that the information requested was exempt under section 40(2) of the FOIA.
4. On 28 September 2016 the complainant requested an internal review of the Council's refusal to disclose the information requested. He indicated that he considered section 40 did not apply as the information he had requested was not personal data.
5. The Council provided the outcome of its internal review on 11 October 2016 and upheld its decision that the information was exempt under section 40(2) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 22 October 2016 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation the Council disclosed information relating to one of the vehicles, in light of the fact that the registered keeper was a corporate entity as opposed to an individual.
8. Although the Council refused this request by virtue of section 40(2) of the FOIA, the Commissioner will consider whether the Council should have neither confirmed nor denied holding the requested information by virtue of section 40(5)(b)(i) (third party personal information).

Reasons for decision

Section 40 – the exemption for personal data

9. Section 1 of the FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities:
 - a) the duty to inform the applicant whether or not requested information is held and, if so
 - b) the duty to communicate the information to the applicant.
10. Section 40(2) of the FOIA, which the Council applied to the request, says that information is exempt from release if it is the personal data of a third person (ie someone other than the applicant) and if one of the conditions under section 40(3) or section 40(4) are met.

11. By applying section 40(2) to the request the Council appears to indicate that it holds information relating to a particular individual, namely the registered owner of the vehicle which is the subject of the request. In the Commissioner's view, the Council should have applied section 40(5)(b)(i) to the request.
12. Section 40(5)(b)(i) says that a public authority is not obliged to confirm or deny that it holds information if, by confirming or denying it is held, the authority would breach one of the data protection principles. This subsection is about the consequences of confirming or denying whether information is held, and not about the content of the information. The criterion for engaging it is not whether disclosing the information would contravene data protection principles, but whether the simple action of confirming or denying that it is held would do so.
13. The Commissioner's guidance on section 40(5) explains that there may be circumstances, for example for information about criminal investigations or disciplinary records, in which simply to confirm whether or not a public authority holds that information about an individual can itself reveal something about that individual. To either confirm or deny that information is held could indicate that a person is or is not the subject of a criminal investigation or a disciplinary process. In this case, appearing to confirm that the requested information is held indicates that an individual has received penalty tickets in respect of a vehicle for which they are the registered owner/keeper.
14. For section 40(5)(b)(i) to apply to a request the following conditions must be met:
 - confirming or denying whether information is held would reveal the personal data of a third person; and
 - confirming or denying whether information is held would contravene one of the data protection principles.
15. The Commissioner has first considered whether confirming or denying relevant information is held would reveal the personal data of a third person as defined by the Data Protection Act (DPA).

Is the requested information personal data?

16. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
 - from that data,

- or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
17. In considering whether the information requested is “personal data”, the Commissioner has taken into account her own guidance on the issue¹. The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable. The information requested in this case comprises the number of enforcement tickets that have been issued against a specific vehicle for which the complainant provided the VRM.
 18. In his complaint to the Commissioner the complainant suggested that the information he had requested was not personal data as he personally is unable to identify the owner of a vehicle through disclosure of the number of tickets issued to a vehicle. During the course of her investigation the Commissioner advised the complainant that the consideration in terms of FOIA requests is whether information should be disclosed into the public domain. In terms of identifiability and section 40 considerations, the consideration in terms of whether information constitutes personal data is whether disclosure to *a member of public* (and not just the person who requested the information) would breach the data protection principles.
 19. As the Council suggested, the Commissioner accepts that VRMs, if linked to an identifiable individual, constitutes the personal data of the registered keeper, where the registered vehicle keeper is an individual or sole trader. In decision notice FS50186040² the Commissioner determined that, as it is possible to identify the owners of vehicle from registration plates then that information is personal data.
 20. In the circumstances of this case the Commissioner accepts that the requested information, if held, would reveal biographical information about the registered keeper of the vehicle, who is an individual. That is to say it would reveal whether any enforcement tickets had been issued against the vehicle in question.

1

http://ico.org.uk/for_organisations/guidance_index/~//media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

² https://ico.org.uk/media/action-weve-taken/decision-notices/2009/494046/FS_50186040.pdf

21. The Commissioner accepts that the complainant himself may not be able to identify the owner of the vehicle in question. However, she considers that the point of reference when considering identifiability is whether it is above a hypothetical possibility that a determined individual could identify the registered keeper of the vehicle. She believes that the chance is indeed above a hypothetical possibility in this instance. The Commissioner is therefore satisfied that the information requested in this case, if held, would constitute the personal data of the registered keeper of the vehicle.

Would confirming or denying the information is held contravene one of the data protection principles?

22. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether confirming or denying the requested information is held would breach the first data protection principle. She considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:

- personal data shall be processed fairly and lawfully; and
- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

23. The Council contends that the individual in this case would not reasonably expect details of any enforcement tickets notices issued to them to be released into the public domain. Enforcement tickets do not contain any information to suggest that such information would be made public. The Council considers that there is no legitimate interest in disclosure which would override the prejudicial effect on the fundamental rights and interests of the individual in question.

24. In considering whether confirming or denying the requested information is held would comply with the first data protection principle, the Commissioner has first considered whether to do so would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. She has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

25. The Commissioner has considered whether the individual would have expected details of their vehicle, together with confirmation as to whether any enforcement tickets had been issued against them to be disclosed to the public in response to an FOIA request. An individual's

affairs in relation to possible motoring/traffic offences are a private and personal matter. The Commissioner accepts that a reasonable person would not expect details concerning any penalty notices which may have been issued against their vehicle to be available to a member of the public who requests it. In addition, the Commissioner considers that confirming whether the requested information is held would effectively "name and shame" an individual for having committed a vehicle/traffic offence and this would be an unwarranted intrusion into their private lives.

26. The Commissioner accepts that there is a general public interest in terms of the transparency and accountability of public sector organisations and in accessing information about the way a public authority manages its enforcement activities. However, the Commissioner does not consider that any legitimate interest of the public extends to confirming or denying whether any penalty notices have been issued to specific vehicles linked to a living identifiable individual.
27. The Commissioner has noted that, by applying section 40(2) to the request, the Council appeared to confirm that it holds related information. The Commissioner is satisfied that, under section 40(5)(b)(i) of the FOIA, the Council was not obliged to confirm or deny that it holds the information the complainant has requested.
28. In light of the nature of the information, the reasonable expectations of the data subject and the consequences of disclosure, the Commissioner is satisfied that confirming or denying if the requested information is held could potentially cause unnecessary and unjustified distress to the data subject. She considers that these arguments outweigh any legitimate interest in disclosure. She has therefore concluded that confirmation or denial in this case would breach the first data protection principle and finds the exemption at section 40(5) is engaged and the duty to confirm or deny does not arise.

Right of appeal

29. 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

30. 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.
31. 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

David Teague
Regional Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF