

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 March 2019

**Public Authority:** Peterborough City Council

**Address:** Bridge Street  
Peterborough  
PE1 1HFX

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about Peterborough City Council's Home to School Transport Service for 2017. The Council refused to supply the information, citing section 40 of the FOIA – personal data.
2. The Commissioner's decision is that Peterborough City Council has not sufficiently demonstrated how the withheld information constitutes personal data and therefore section 40 is not engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the withheld information falling within the scope of the request, save for the personal data of staff and transport firm employees.
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 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 11 June 2018 the complainant wrote to Peterborough City Council and requested information in the following terms:

*'Between the dates of 01/01/2017 and 23/5/2018 (or to the date of processing of this request whichever is later).*

*Any and all communications with Royal Taxis relating to the tendering process for both periods noted.*

*Detailed analysis of children provided Home to School transport for both 2017 and 2018 academic years to City of Peterborough Academy Special School, namely:*

- a. Total number of children provided for*
- b. Number of children provided individualised transport with an escort (including the age of child)*
- c. Number of children provided individualised transport without an escort (including the age of child)*
- d. The cost of provision for each individualised transport journey (including originating location). Note: I accept that you cannot provided detailed postcode information but high level location.*
- e. Number of children provided transport via bus (including the age of child)*
- f. The cost of provision for each bus journey (including originating location, and interim stops en-route). Note: I accept that you cannot provided detailed postcode information but high level location.*
- g. Detailed information on proposed journey timetable for each bus journey (including originating location, and interim stops en-route). Note: I accept that you cannot provided detailed postcode information but high level location.*
- h. Detailed information on actual realised journey times for each bus journey (including originating location, and interim stops en-route). Note: I accept that you cannot*

*provided detailed postcode information but high level location.'*

6. The Council responded on 11 July 2018, providing some information falling within the scope of the request but refused to provide the ages of children under question 2b and 2c citing section 40(2) of the FOIA – personal data – as it considered the numbers to be so small that it may identify the individuals concerned, and would breach the first principle of Article 5 of the General Data Protection Regulation (GDPR) – that personal data must be processed fairly, lawfully and in a transparent manner. It also redacted journey details from the information supplied in response to questions 2g but did not give a reason. It confirmed that it did not hold the information under 2h as this was collected by the taxi companies only.
7. There followed a number of follow up emails between the complainant and the Council, who then confirmed that the information under 2g (pick-up/drop-off timetables for specific locations) was being withheld as it could identify individual children if disclosed.
8. The Complainant requested a review of the Council's response on 13 July 2018. The Council responded on 23 July 2018 maintaining its reliance on section 40(2) of the FOIA and refusing to supply the requested information.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 11 September 2019 to complain about the way his request for information had been handled. He did not consider that the withheld information about children and their journeys could identify individuals, particularly as the majority of locations were not in villages or small settlements. The complainant did not challenge the withholding of Council or transport company employee personal data.
10. The Commissioner therefore seeks to determine whether the withheld information concerning the numbers and ages of children using the Hone to School transport service and their suggested pick-up/drop-off times constitutes third party personal data and if so, whether the Council can rely on section 40(2) of the FOIA.

## Reasons for decision

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### Section 40 – personal data

11. 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.
12. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. 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 set out in Article 5 of the General Data Protection Regulation ('GDPR') ('the DP principles').
13. 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.
14. 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 DP principles.

#### ***Is the information personal data?***

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

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

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. 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.

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

18. 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.
19. In this case the withheld information is the first part of the postcode where a child lives; the suggested pick up and drop off times for their transport to and from the City of Peterborough Academy Special School (COPASS); and the numbers / ages of children accessing the Home to School Transport service. The Commissioner will deal with each of these in turn.
20. First part of the postcode: The Council believes that releasing the first part of the postcode, particularly where it concerns small villages, when combined with other available information (the nature of which is not specified) could identify where vulnerable children and those with learning and / or physical disabilities live and go to school.
21. The Commissioner, and the tribunal, have already established their position regarding partial postcodes and do not consider they constitute personal data. Postcodes comprise an outbound element (the first part) and an inbound element (the second part). Whilst full postcodes, which include both the inbound and outbound elements are considered sufficient to identify specific addresses and are therefore capable of identifying the individuals linked to those addresses, partial postcodes do not identify specific addresses. It is not possible to identify individual properties from the outbound part of a postcode (e.g. PE2) and so this information does not risk identifying individuals. Consequently the Commissioner is not satisfied that the first part of the postcode that the Council has withheld in its '*guide of suggested pick up and drop off times*' constitutes personal data and therefore section 40(2) is not engaged.
22. Outside of the Commissioner's position on outbound postcode information, she highlights to the Council that as it has already supplied the name of the area where the pick-up occurs, a quick internet search immediately provides the outbound postcode identifier, and this information is therefore already publicly available.
23. Suggested pick-up and drop-off times: In its initial response to the Commissioner, the Council provided the same reasoning for withholding pick-up and drop-off times as it had for the outbound postcode identifier. However, the Commissioner could not see *how*, when combined with other available information (which again was not specified), the identities of individual children could be revealed. Given that the information, if it was personal data, would include special

category data, the Commissioner provided the Council with another opportunity to demonstrate if disclosed, how it could be used along with other available information to identify children. The Council responded with:

*'Information already available includes how many children are travelling on any one particular route, the capacity of the car, the car operator and number of adults in the vehicle. To release the particular pick-up and drop-off times could allow members of the public, in particular those who live locally, to identify the home addresses of children using this method of transport in order to attend school. Disclosure of these points would also allow the public to identify which school the child attends in light of the information already disclosed in the route information. It is accepted that school children will more often than not wear a school uniform however this may not always be visible. It should also be noted that these are not children in large groups at bus stops going to school together but rather individual children with specific needs. Additionally by releasing the ages of each child, using a particular route, would further aide identification by members of the public.'*

24. The Commissioner notes that the Council has been very keen to state that the pick-up and drop-off times are *suggested*, and not even intended, never mind actual. It has gone to significant lengths to emphasise this, to the point where as a result it maintains it that cannot supply entire route durations as it is not information it holds.
25. The Commissioner has considered the 'motivated intruder test', as outlined in her code of practice issued on 'Anonymisation: managing data protection risk'<sup>2</sup>, in order to assess the extent to which the pick-up and drop-off times could be combined with other available information to identify the individual concerned.
26. The 'motivated intruder' is taken to be a person who starts without any prior knowledge but who wishes to identify an individual from seemingly anonymous data. The motivated intruder test is meant to assess whether they would be successful. It assumes that the 'motivated intruder' is reasonably competent, has access to resources such as the internet, libraries, and all public documents, and would employ

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<sup>2</sup> <https://ico.org.uk/media/1061/anonymisation-code.pdf>

investigative techniques such as making enquiries of people who may have additional knowledge of the identity of the data subject or advertising for anyone with information to come forward. The 'motivated intruder' is not assumed to have any specialist knowledge such as computer hacking skills, or to have access to specialist equipment or to resort to criminality to gain access to data that is kept securely.

27. The question to be answered is this: Would an individual as described above, be able to identify a child who attends a named special needs school, if they know that a named transport company might be collecting them at an approximate time, from a village or town.
28. The Council has not distinguished between the size of the settlements where the children live, and the Commissioner notes that in some cases these areas have populations of several thousand. She also notes that there are significantly smaller settlements with populations in the hundreds rather than thousands. However, it is not for the Commissioner to determine the risk of identification of individuals in the context of the size of the settlement, but for the Council to demonstrate how a suggested pick-up or drop-off time could be used by a motivated intruder to identify an individual child. It has listed other information available about the children but not *how* this could be linked to identify an individual.
29. The Commissioner has herself therefore had to consider how the suggested pick-up and drop-off times might be used to identify individuals. Theoretically, a motivated intruder could drive round, in rush hour, (large) towns or villages at an approximate time which may regularly change due to a range of variables in the hope of finding a car being driven by a transport company picking up a child from an unknown address. However, if a motivated intruder wished to identify specific children using the Home to School Transport service and where they lived, or even simply attending the school, s/he could wait outside the school, spot relevant transport companies (if they are identifiable) or private cars and follow those vehicles on their route home. This activity is already possible based on information released by the Council (suggested arrival times at and departure times from the school of the vehicles, along with the route), and this would be by far the easiest way for a 'motivated intruder' to identify children. This would be much simpler, and much more reliable, than driving round somewhat randomly trying to identify children and their families using the service in question. The Commissioner is therefore not convinced that there is sufficient risk or reasonable possibility of the suggested pick-up and drop-off times being used by the 'motivated intruder' to identify children

as the Council claims, and as result does not consider this to be personal data.

30. Ages and numbers of children: The Council has stated that that age of a child using a particular route would assist with identification. However, the complainant has not requested the ages or numbers of children using a particular route, but the ages and numbers of children using Home to School Transport service, with and without an escort. The Commissioner cannot see how this information would assist in the identification of individual children in the context of the information request. The Council has not successfully demonstrated to the Commissioner how this information could be used to identify individual children and therefore she does not consider this to be personal data.
31. As the Commissioner does not consider the withheld information to constitute personal data, section 40 is not engaged.
32. The Commissioner notes that some of the withheld information includes the complainant's personal data and has been dealt with by the Council as a subject access request. She therefore does not consider it is within the scope of this complaint and so it is not addressed in this decision notice.



## Right of appeal

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33. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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**  
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