

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

### **Decision notice**

**Date:** 5 November 2019

**Public Authority:** Gedling Borough Council

**Address:** Civic Centre  
Arnot Hill Park  
Arnold  
Nottingham  
NG5 6LU

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

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1. The complainant has requested information relating to a complaint they have raised about a specific Councillor. Gedling Borough Council ("the Council") disclosed some information in response to the request but redacted the majority of the information because it considered that the information within scope was the personal data of third parties and that disclosure would breach the GDPR principles.
2. The Commissioner's decision is that, as the information concerns events involving the complainant which led to them raising the complaint, all of the information falling within the scope of the request is in fact the complainant's own personal data. She has therefore applied section 40(1) of the FOIA proactively to prevent disclosure of the withheld information.
3. The Commissioner does not require the Council to take any further steps.

## Request and response

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4. On 25 March 2019, the complainant wrote to the public authority and requested information in the following terms:

*"Please send me:*

- (i) The representations made by [name redacted] to you in response to my complaint dated [date redacted]*
- (ii) The information provided to you by the Clerk to [name redacted] Parish Council in respect of the same complaint"*

5. The public authority responded on 23 April 2019. With regard to information falling within the scope of part (i) of the request, the Council withheld this information under section 40(2) of the FOIA. The Council explained that it considered the representations made by the Councillor to amount to personal data belonging to that Councillor.
6. The Council disclosed the information it held in response to part (ii) of the request.
7. The complainant contacted the Council on 1 May 2019 and requested an internal review.
8. Following an internal review, the public authority wrote to the complainant on 16 May 2019. It disclosed a copy of the information it held within the scope of part (i) of the request but redacted the information it considered to be the Councillor's personal data and "information about other third parties".
9. At internal review the Council did not specify which information it considered to be the personal data of the Councillor and which it considered to be "information about other third parties".

## Scope of the case

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10. The complainant contacted the Commissioner on 23 May 2019 to complain about the way her request for information had been handled. With regard to the Council's response, the complainant stated:

*"The explanation given by [the Council] is that the Councillor's opinions are personal data because I already know [redacted] is the author of the letter. This is clearly a misinterpretation of*

*the legislation. The test should be – do [redacted] representations/opinions directly or indirectly identify [redacted]”*

11. At the outset of her investigation, the Commissioner asked to see the withheld information. The information in this case consists of the representations submitted by a specific Councillor in response to a complaint made about them by the complainant. The information includes the names of individuals, including that of the complainant, and various locations related to this complaint. The information also represents the views and opinions of the Councillor in response to allegations made about them.
12. Having considered the withheld information, the Commissioner was not convinced that the information could be sufficiently anonymised to protect the data protection rights of the Councillor in response to the request. However, the Commissioner notes that the Councillor is responding to a complaint submitted by the complainant in this case concerning events that involve them. The Commissioner has therefore taken the decision to apply section 40(1) proactively to the withheld information in its entirety, preventing its disclosure.

## **Reasons for decision**

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### **Section 40(1) – personal data of which the applicant is the data Subject**

13. Section 40(1) of the FOIA states 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.”*

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.
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.

Case reference: FS50851255

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.
18. In this particular case, the withheld information is a letter written by a Councillor responding to a complaint made about them by the complainant. The Councillor directly refers to the complainant, and events involving them, in the information. The Commissioner is therefore satisfied that the information constitutes the complainant's own personal data.
19. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the balance of the public interest.

## Right of appeal

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20. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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 .....**

**Mr Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**