

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2020

Public Authority: South Holland District Council
Address: Council Offices
Priory Road
Spalding
PE11 2XE

Decision (including any steps ordered)

1. The complainant has requested information from South Holland District Council ("the Council"), in relation to the valuation of a property. The Council provided a report but withheld some information from it under certain exemptions of the FOIA.
2. The Commissioner's decision is that, since the report related to the complainant's property at the time, all the information that was requested is the complainant's own personal data. She therefore finds that the Council was not obliged to supply any information under the FOIA, as any information which the Council holds within the scope of the request would attract the absolute exemption at Section 40(1) of the FOIA.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 5 June 2019, the complainant wrote to the Council and requested information in the following terms:

"Under freedom of information act/access of information I now formally require everybody's name, role, and where they have come from and how much they were paid to take part in that insult that you called an offer. I also require all paperwork regarding that thing you

called an offer, unredacted. Everything [Named Person] and his associate that trespassed on my property wrote unredacted and any document unredacted that has any reference to this matter".

5. The Council responded on 13 September 2019. It broke the request into three parts to assist with the response:
 - “1. Names of officers involved in trespass*
 - 2. Names, Job title and amount paid as part of offer.*
 - 3. Any document regarding the offer and any document in relation to trespassing: If this was done verbally, we should just say that, anything like a blue form etc we may be able to disclose, but will leave to you.”*
6. For parts 1 and 2 of the request, the Council provided the names of the officers and their job titles, and explained that the task was included in their day-to-day roles and as such, no additional payments were made.
7. For part 3 of the request, the Council provided the complainant with some redacted information. Some personal information was redacted under section 40(2) of the FOIA – third party personal information, and the remainder was redacted under section 43(2) of the FOIA – commercial interests.
8. The information that the Council provided to the complainant was a copy of a valuation report, produced by the property company that the Council was working with.
9. Following an internal review the Council wrote to the complainant on 7 October 2019. It maintained its original position.

Scope of the case

10. The complainant contacted the Commissioner on 3 September 2019 to complain about the way their request for information had been handled. At this stage, they were still waiting for the Council to respond to their request.
11. The Commissioner is aware that the complainant has several concerns regarding the Council and the way in which it has handled different complaints. However, as regulator of the FOIA, the Commissioner can only make a formal determination regarding whether the Council responded appropriately in its handling of their request. Put simply, the Commissioner has no authority to rule on the other matters of concern to the complainant.

12. The Commissioner considers that the first step in assessing this complaint is to determine the extent to which the requested information would be the complainant's own personal data. Section 40(1) of the FOIA places an absolute exemption on information which is the personal data of the requester. If that exemption is (or would be) engaged in relation to the request, the Council would not have been under any obligation to provide information, under the FOIA, in response.

Reasons for decision

Section 40(1) – personal data of the applicant

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 2(2) of the Data Protection Act 2018 defines personal data as: *"any information relating to an identified or identifiable living individual"*.
15. In this particular case, the information the Council holds is entirely related to the complainant's property at the time. It provides the address, photographs and written descriptions of the property. It is the Commissioner's well-established position that information which pertains to an individual property is the personal data of the owner and/or occupant of that property. As such, the complainant would be the subject of the report in this case. It is therefore the complainant's personal data and so would be exempt from disclosure under section 40(1) of the FOIA.
16. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the balance of public interest. As the exemption is engaged in respect of any information which came or would have come within the scope of the request, the Council is not obliged to supply any information in response, under the FOIA.

Other matters

17. In this case, the Council evidently failed to recognise that the valuation report is the personal data of the requester. The Commissioner expects the Council to consider whether to provide the complainant with the remainder of the report under the Data Protection Act 2018 and to issue a response about the matter, explaining the reasoning, if it feels that the redacted information is still exempt.

Right of appeal

18. 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

19. 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.
20. 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

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