

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

### **Decision notice**

**Date:** 10 November 2021

**Public Authority:** Cambridgeshire County Council

**Address:** Scott House  
5 George Street  
Huntingdon  
PE29 3AD

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

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1. The complainant requested information with regards to a complaint. Cambridgeshire County Council (the council) initially refused to provide the information as it considered it to be exempt under section 42(1) of the FOIA (legal professional privilege). During the Commissioner's investigations it applied section 40(1) of the FOIA to refuse the information – the requestor's own personal data.
2. The Commissioner's decision is that section 40(1) is engaged and the council was correct to refuse to provide the information. The Commissioner also found that the council breached section 17(1) of the FOIA as it failed to issue a valid refusal notice.
3. As the Commissioner has found section 40(1) to be engaged, she does not require the council to take any steps.

## Request and response

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4. The complainant provided the Commissioner with a copy of a document dated 7 September 2020 that listed the following five documents:

*"Email Head of Insurance Services to Chief Executive 28 August 2002*

*Email Head of Legal Services to Chief Executive 23 August 2002*

*Memo Acting Head of Legal Services to Chief Executive 11 July 2001*

*Memo Head of Legal Services to Lead Member (of what?) 30 September 2003*

*Memo solicitor to Transport Development Officer 24 April 2001"*

This document appeared to refer to a request having been made for these materials at some prior point.

5. The Council advised the Commissioner that it received the following information request from the complainant on the 19 August 2020 and that this referred to the five documents listed above:

*"I again make application for disclosure of these 5 documents"*

6. On 10 September 2020 the council responded refusing to provide the information as it considered it to fall under legal professional privilege and hence was exempt from the requirement to disclose under the General Data Protection Regulations (the GDPR), indicating that the council viewed the complainant's request as a subject access request for his own personal data.

7. The council has clarified to the Commissioner that it received an internal review request from the complainant on 13 and 14 September 2020. It noted that in the 14 September 2020 communiqué the complainant stated:

*"This application, however, is based on the Freedom of information legislation"*

8. Following this, the council provided an internal review response, titled as such, on the 15 December 2020 advising that the requested documents were privileged under legal advice privilege and would not be provided. No exemption was cited.

## Scope of the case

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9. The complainant contacted the Commissioner on 18 February 2021 to complain about his information request being refused. He has made it clear that he is complaining to the Commissioner under the FOIA, stating:

*"This is the first proper application under the FOI legislation"*

10. The Commissioner contacted the council to seek clarity on its position with regards to this request.
11. It responded stating that it considers the initial request of 19 August 2020 was made under the GDPR and it responded accordingly.
12. Noting that the complainant stated on 14 September 2020 that the request was being made under the FOIA, the Council has reconsidered its position and told the Commissioner it is now relying on section 40(1) of the FOIA to refuse the request – personal data of the requestor.
13. The scope of the following analysis is to determine whether section 40(1) of the FOIA is engaged.

## Reasons for decision

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### Section 40(1) of the FOIA – Personal data of the requestor

14. 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."*

15. Section 2(2) of the Data Protection Act 2018 defines personal data as:-

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

16. The two main elements of personal data are therefore 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 or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
18. Information will relate to a person if it is about them, linked to them, has biological significance for them, used to inform decisions affecting them or has them as its main focus.
19. The council has told the Commissioner that the requested information is contained within a complaint file relating to the complainant, and the content of the five items specified in the request relate to the complainant and his potential claims for financial settlement.
20. These very same emails were requested by the complainant in 2015 as a subject access request made under the Data Protection Act 1998. That request was refused on the grounds that the requested materials were subject to legal professional privilege. The Commissioner considered that refusal at that time and upheld the council's position.
21. The information requested is in relation to a legal claim made by the complainant and gives advice on that claim and also advises on how to respond accordingly to the complainant. The Commissioner is therefore satisfied that this information 'relates' to the complainant.
22. As this information is about the complainant's legal claim to the council, specifically giving advice on his claim and how to respond to him, the Commissioner is satisfied that the information would 'identify' the complainant.
23. The requested information is, therefore, the personal data of the complainant. As such, the Commissioner finds that section 40(1) of the FOIA is engaged and the council was correct to refuse the complainant's information request.

## Right of appeal

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24. 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: 0203 936 8963

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)

25. 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.
26. 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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**