

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

### **Decision notice**

**Date:** 23 June 2022

**Public Authority:** Allerdale Borough Council  
**Address:** Allerdale House  
Workington  
Cumbria  
CA14 3YJ

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

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1. The complainant requested information with regards to a specific address. Allerdale Borough Council (the council) provided some information, however the complainant believed that more information was held.
2. The Commissioner's decision is that section 40(1) of the FOIA is engaged – as the information is the complainant's own personal data, and this exemption should have been applied by the council to refuse the request under the FOIA.
3. As the Commissioner has found the exemption at section 40(1) to be engaged, the Commissioner does not require the council to take any steps.

## Request and response

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4. On 16 September 2020 the complainant made the following information request to the council:

“I formally request the copies of all correspondence (letter and emails) and phone records between anyone from the Building Control department and [builder’s name redacted] regarding the works he did at [address redacted] in 2018.”
5. The council responded on 14 October 2020 providing a copy of a letter that was sent to the builder.
6. The complainant requested an internal review on 26 January 2021, referring to a section within the letter that referenced a conversation on 23 July 2020 between [council employee name redacted] and [builder’s name redacted].
7. The council provided its internal review on 22 February 2022. It advised that the 23 July 2020 conversation was a phone conversation. However no record of the call was made.
8. The council advised that it holds no further information other than the letter it provided in its initial response.

## Scope of the case

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9. The complainant contacted the Commissioner on 16 September 2021 as he considered that the council held further information falling within the scope of his request.
10. He has also told the Commissioner that the address stated in the request is his own address.
11. Given this clarification from the complainant, the Commissioner has exercised his discretion to consider the exemption at section 40(1) of the FOIA and determine whether information falling within the scope of the request is the complainant’s own personal data.

## Reasons for decision

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### Section 40(1) of the FOIA

12. Section 40(1) of the FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.
13. Section 3(2) of the Data Protection Act 2018 ("the DPA") defines personal data as: "any information relating to an identified or identifiable living individual".
14. 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.
15. 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.
16. 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.
17. In this case, the request is for correspondence between two third parties; that is to say, neither of the parties to the correspondence is the complainant. However the Commissioner has considered whether the complainant is identifiable from the request.
18. The request specifically states the complainant's address and is in relation to building work on that property.
19. The Commissioner's view is that any such information will relate to the complainant and he will be identifiable in relation to that information. Therefore, any information falling within the scope of the request would be the personal data of the complainant.
20. As the Commissioner is satisfied that any information within the scope of the request would be the complainant's personal data, he finds that the exemption at section 40(1) of the FOIA is engaged in relation to the request.
21. As the exemption provided by section 40(1) is engaged the council was not obliged by the FOIA to disclose the requested information.

## **Other matters**

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22. In this case, the council failed to recognise that the request was for the complainant's own personal data and did not consider the request under the GDPR. Whilst the Commissioner cannot require a public authority to take action under the GDPR via a FOIA decision notice, in view of his decision above the council should reconsider the request as a subject access request for the complainant's own personal data.

## Right of appeal

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23. 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)

24. 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.
25. 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**