

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 November 2022

Public Authority: Central Bedfordshire Council

Address: Priory House
Monks Walk
Chicksands
Shefford
Bedfordshire
SG17 5TQ

Decision

1. The complainants requested information from Central Bedfordshire Council ("the Council") relating to the qualifications of specific council officers and the location of scaffolding.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) (personal information) of the FOIA to withhold information relating to the qualifications of council officers. He is also satisfied that on the balance of probabilities, the Council does not hold any information which confirms where the scaffolding referred to in the request will be located.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. The complainants made the following information request to the Council on 7 March 2022:

"So far, I have had comebacks and correspondence from yourself [name redacted], [name redacted], [name redacted], [name redacted] and now [name redacted], so I ask who of the named above are qualified in Planning, who would know the Planning / Building laws and ask for certificates to be shown.

The plans I send show there is no overhanging guttering. We have not received a plan of scaffolding. If would like to make a formal request and challenge that position, please follow this link.

When I put through an Access Request you say it is private and refuse to answer it, this being against the law and must be answered. I have asked about scaffolding where it will be situated, the overhanging guttering etc, but by your reckoning to be a civil matter and not a planning issue (wrong as this fall under the planning application). I therefore want you to show firm confirmation of where the positioning of the scaffolding will be erected and clear visual drawing of the positioning. [Name redacted] this is or should be taken into account when the Architect put in drawings of the planning application."

5. The Council confirmed that one of the officers named in the request is a qualified planning officer but refused to confirm whether the other four officers named in the request have planning qualifications. The Council also refused to provide copies of qualification certificates. It cited section 40(2) (personal information) of the FOIA as its basis for refusing to provide the withheld information.
6. The Council also denied holding information which confirmed where the scaffolding referred to in the request would be located. In their request, the complainants are referring to some scaffolding which was due to erected at a property which neighbours the complainants' property.

Reasons for decision

7. This reasoning covers whether the Council is entitled to rely on section 40(2) of the FOIA to withhold information relating to the qualifications of specific council officers. It will also cover whether the Council is correct when it says that it does not hold information which confirms where the scaffolding referred to in the request will be erected.

Section 40(2) – personal information

8. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
9. Section 3(2) of the Data Protection Act 2018 defines personal data as:
“any information relating to an identified or identifiable living individual.”
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. In this case, the Council has withheld information relating to the qualifications of specific council officers. The Commissioner is satisfied that the withheld information is personal data as it relates to and identifies the specific council officers named in the request. Therefore, the information falls within the definition of ‘personal data’ in section 3(2) of the DPA.
12. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:
“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
13. In the case of an FOIA request, personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
14. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
15. The Commissioner considers that in this case, the complainants are pursuing a legitimate interest and that disclosure of the withheld information is necessary to meet that legitimate interest.
16. Whilst the Commissioner notes that the Council has confirmed that one of the council officers named in the request is a qualified planning officer and has a planning qualification, the Council has explained that it confirmed that the council officer is a qualified planning officer as that officer is employed in a role that requires a specific planning

qualification. It explained that the other four council officers named in the request are not employed in roles that require a specific planning qualification and therefore it considers that it would not be lawful to disclose whether those council officers have any planning qualifications.

17. The Commissioner accepts the Council's reasoning for confirming that one of the council officers named in the request is a qualified planning officer and have a planning qualification but refusing to confirm whether the other four council officers named in the request have planning qualifications. The Commissioner considers that all the council officers named in the request have a strong and reasonable expectation that information relating to their qualifications will remain confidential to them and their employer.
18. Therefore, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the council officers. He considers that there is no legal basis for the Council to disclose the withheld information and to do so would be in breach of principle (a).
19. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to refuse to provide the withheld information. He requires no further action to be taken by the Council in relation to this request.

Section 1 - general right of access to information

20. The complainants consider the Council to hold information, such as a plan, that confirms where the scaffolding referred to in the request will be located. The complainants consider that this information would be held within the relevant planning file.
21. The Council considers that it does not hold any information which confirms where the scaffolding referred to in the request will be erected. The Council stated that if it did hold the requested information it would be located within the relevant planning file. The Council explained that it has conducted a search of all the documents within the relevant planning file using the search term 'scaffolding'. Whilst this search did result in some information relating to scaffolding being located, the information did not confirm where the scaffolding referred to in the request will be located.
22. In its submissions to the Commissioner, the Council explained that whilst some scaffolding was due to be erected at a property that neighbours the complainants' property, the scaffolding is no longer being erected. The Council explained that in order to erect the scaffolding referred to in the request, builders required access to the

complainants' property. However, as the complainants' refused to grant access to their property, the builders modified their plans so that it was no longer necessary to erect scaffolding. Therefore, as scaffolding is no longer being erected, the Council does not hold any information which confirms where that scaffolding will be located.

23. Furthermore, the Council explained that generally, the location of scaffolding is not relevant to a planning decision and therefore, it is not included in a planning application. The Council stated that the location of scaffolding is not usually determined until after a planning application has been approved and construction has begun.
24. The Commissioner accepts the Council reasoning for not holding information which confirms where the scaffolding referred to in the request will be located. He is satisfied that the Council has carried out adequate searches for the requested information and therefore, his decision is that on the balance of probabilities, the Council does not hold the requested information.

Right of appeal

25. 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

26. 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.
27. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF