

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2022

Public Authority: Fareham Borough Council

Address: Civic Offices
Civic Way
Fareham
PO16 7AZ

Decision (including any steps ordered)

1. The complainant has requested information from Fareham Borough Council ("the Council") relating to information about a complaint they submitted regarding a specific Councillor. The Council provided the complainant with some information within the scope of their request, however it refused to disclose the remainder, citing section 40(2) as a basis for non-disclosure.
2. The Commissioner's decision is that the Council has correctly applied section 40(2) to the withheld information, therefore the Commissioner requires no steps to be taken.

Request and response

3. On 28 November 2021 the complainant wrote to the Council and requested information in the following terms:

"I refer to your finding dated 19 November 2021 in favour of [specified Councillor]. You state you sought the views of the Designated Independent Person (DIP) appointed by Fareham Council. Under a Freedom of Information Request could you please supply me the name

and contact details of the DIP you claimed to have sought the views of in my complaint against [specified Councillor] and a copy of the views of the DIP supplied to you.”

4. The Council responded on 17 December 2021. It provided the complainant with some information in response to his request, namely the name of the DIP. It refused to disclose the remaining information requested in the first part of the request, i.e. the contact details of the DIP (“the withheld information”), citing section 40(2) of FOIA as a basis for non-disclosure.
5. In relation to the complainant’s request for copies of the views of the DIP, the Council treated this as a Subject Access Request under section 40(1) of FOIA as it related to a complaint they had made regarding the specified Councillor.
5. The complainant requested an internal review on 17 January 2022 and received the result of this on 25 April 2022. The Council stated that it was maintaining its position regarding the first part of the complainant’s request and that it had reconsidered its position regarding the second part. It was now applying sections 40(2) and 36(2) of FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 18 January 2022 to complain about the way their request for information had been handled.
7. The Commissioner has considered the Council’s handling of the complainant’s request, in particular its application of the specified sections of FOIA.

Reasons for decision

8. The following analysis explains why the Commissioner is satisfied that the public authority was entitled to apply section 40(2) of FOIA to the relevant part of the complainant’s request.
9. Section 40(2) of FOIA allows a public authority not to disclose information if it is personal data, i.e. information from which individual(s) could be identified and if one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

10. The Commissioner from his reading of the complainant's request is satisfied that the requested information is personal data as it relates to the contact details of a specified individual. The condition at section 40(3A)(a) is satisfied here as disclosure would contravene data protection principle (a).¹
11. The Commissioner has ascertained this by assessing whether there is a lawful basis for processing the requested information under Article 6(1)(f) of the UK GDPR. He has determined that, whilst the complainant has a legitimate interest in disclosure, and disclosure would be necessary to satisfy that interest, there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms.
12. The Commissioner has determined this by balancing the legitimate interest of the complainant against the fact that the individuals concerned would have a reasonable expectation that their information would not be disclosed to the public. The individual provided the Council with their opinion as a Designated Independent Person and would reasonably expect their contact details and the recorded views they expressed to be kept confidential by the Council.
13. As the Commissioner has concluded that disclosure would not be lawful under Article 6(1)(f) of the UK GDPR, he has not gone on to separately consider whether disclosure would be fair or transparent.
14. As the Commissioner considers that section 40(2) of FOIA has been correctly applied in this case, he has not considered the Council's application of section 36(2).

¹ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-regulation-13.pdf>)

Other matters

15. The complainant requested an internal review from the Council on 17 January 2022 and did not receive a response until 25 April 2022, following correspondence from the Commissioner.
16. The Commissioner would remind the Council that internal reviews should reasonably be completed within 20 working days after they are requested, and within an maximum of 40 working days should the matter prove complex, require extensive consultation with third parties, or if the request covers a high volume of relevant information.

Right of appeal

17. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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

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