

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 2022

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant requested information supplied to the Police in respect of criminal allegations against his neighbour. The above public authority ("the public authority") relied on section 40(5B) of FOIA to refuse to confirm or deny that information was held.
2. The Commissioner's decision is that the public authority was entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether any information was held.
3. The Commissioner does not require further steps.

Request and response

4. At some point prior to 26 May 2022, the complainant asked the public authority whether a particular employee had contacted West Midlands Police regarding allegations of criminality against his neighbour.
5. The public authority refused to confirm or deny that it held any information – a position it upheld at internal review.

Reasons for decision

6. The following analysis explains why the Commissioner is satisfied that the public authority was entitled to neither confirm nor deny holding the information that had been requested.
7. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny that it holds particular information if the mere act of confirming (or denying) that information is held would, in itself, reveal personal data about an identifiable individual – unless there is a lawful basis for doing so.
8. The original wording of the request stated the specific address where both the complainant and his neighbour reside. The Commissioner therefore considers that the neighbour would be identifiable – both directly by the complainant and indirectly by others via cross-referencing with publicly-available records, such as the electoral register.
9. If the public authority were to confirm that it did hold information it would be confirming that it had contacted the police in respect of the neighbour – the only reason for doing so being an allegation that the neighbour had committed a criminal offence. The public authority therefore cannot confirm or deny that it holds information within the scope of the request without disclosing criminal offence data about the complainant's neighbour.
10. It is important to note that criminal offence data can also relate to allegations that are unproven. It is not necessary to prove that the data subject has committed a criminal offence, only that the information relates to a criminal offence of which they have been accused.
11. The only lawful basis on which criminal offence data can be disclosed to the world at large would be if the data subject had either provided their consent to such disclosure or had manifestly made the criminal offence personal data public themselves. There is no indication that either of these activities has taken place.
12. The Commissioner is therefore satisfied that the public authority could not confirm or deny holding information without also disclosing criminal offence data about the complainant's neighbour. As there is no lawful basis for doing so, confirming or denying would be unlawful and therefore the public authority is entitled to rely on section 40(5B) of FOIA to neither confirm nor deny that the requested information is held.

Right of appeal

13. 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

14. 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.
15. 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

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