

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 February 2023

Public Authority: Derbyshire County Council
Address: County Hall
Matlock
Derbyshire
DE4 3AG

Decision

1. The complainant requested information from Derbyshire County Council ("the Council") relating to contents of a file held by the Council on the complainant's business.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) (personal information) of FOIA to withhold information relating to some of the documentation it holds regarding the complainant's business. He is also satisfied that, on the balance of probabilities, the Council does not hold any further information concerning a report from 2006 which the complainant requested in their internal review request.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. The complainant made the following information request to the Council on 8 December 2021:

“Dear sirs,

I would be grateful if you would supply me with the contents of my file with you held under [BUSINESS NAME REDACTED] dating back to possibly the 1980s. [NAME REDACTED] I re named as [NAME REDACTED] in 2005.”

5. The Council provided a FOIA response to the request and also a subject access request under the Data Protection Act 2018. This decision notice will only deal with the response issued under FOIA.
6. The Council provided some information to the complainant in its response of 16 March 2022 but advised that, while it held other documentation within the scope of the request, it was withholding this as it contained the personal information of other individuals. It cited section 40(2) (personal information) of the FOIA as its basis for refusing to provide the withheld information.
7. In their internal review request the complainant expressed dissatisfaction that some information was being withheld, and also stated that the Council held a further report from 2006. The Council explained that the report in question was no longer held as it had been destroyed as per its retention scheme.

Reasons for decision

8. This decision notice covers whether the Council is entitled to rely on section 40(2) of the FOIA to withhold information relating to some of the documents concerning the complainant’s business. It will also cover whether the Council is correct when it says that it does not hold the particular report that the complainant referred to.

Section 40(2) – personal information

9. 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.
10. Section 3(2) of the Data Protection Act 2018 defines personal data as:

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

11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. In this case, the Council has withheld information relating to individuals other than the complainant. The Commissioner is satisfied that the withheld information is personal data as it relates to and identifies other people named in documents relating to the complainant's business. Therefore, the information falls within the definition of 'personal data' in section 3(2) of the DPA.
13. 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."
14. 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.
15. 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.
16. The Commissioner considers that in this case, the complainant is pursuing a legitimate interest and that disclosure of the withheld information is necessary to meet that legitimate interest.
17. The Commissioner accepts the Council's reasoning that the withheld documents contain the personal information of other individuals who will have a reasonable expectation that their personal information will not be shared without consent.
18. Therefore, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the other individuals named in the withheld documentation. 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 complainant considers the Council to hold to a copy of a particular report from 2006 in relation to their business. The complainant stated that they had received copies of older documents from 2001, so the Council should also have the report from 2006.
21. The Council explained that it no longer held a copy of the requested information. It liaised with the relevant department and confirmed that the report in question had been destroyed in line with its information retention policy. It stated that, whilst it did understand why the complainant would assume that a copy would still exist, it confirmed that the earlier documents should have also been destroyed as per the retention policy and only still existed as they had been scanned onto the relevant Council department's electronic system in error.
22. The Commissioner accepts the Council's explanation for no longer holding a copy of the 2006 report. He is satisfied that the Council has carried out adequate searches and enquiries about the deletion of 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

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

Website: 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

**Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**