

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 February 2023

Public Authority: Tunbridge Wells Borough Council

Address: Town Hall
Royal Tunbridge Wells
Kent
TN1 1RS

Decision (including any steps ordered)

1. The complainant requested email correspondence from Tunbridge Wells Borough Council which it disclosed with redactions made under Section 40(2) of FOIA for the contact details of its officers.
2. The Commissioner's decision is that Tunbridge Wells Borough Council was entitled to rely on Section 40(2) of FOIA for the redactions made.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 20 December 2021, the complainant made the following request for information to Tunbridge Wells Borough Council (the Council):

'I would like to receive copies of all correspondence between TWBC parks team and TWBC enforcement team for the past 4 years. I am happy for the search to be limited to information where the word "dog" is included either in the subject line or the message body.'
5. After refusing the complainant's request twice on the grounds that it would take in excess of 18 hours to locate, identify, extract and disclose the requested information under Section 12 of FOIA, the Council issued a substantive response on 7 February 2022. In its response it disclosed the requested information comprising of the relevant emails with

redactions made under Section 40(2) of FOIA for the names and contact details of its officers.

6. The complainant requested an internal review on 9 February 2022 stating that, in his view, the redactions were disproportionate.
7. The Council responded on 4 March 2022 upholding its original decision referencing the Commissioner's guidance on 'Requests for personal data about public authority employees'¹.

Reasons for decision

Section 40 - personal information

8. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request.² The exemption was used when redacting the contact details of Council officers comprising of their names, telephone numbers and email addresses.
9. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
10. In this case, the Commissioner is satisfied that the redacted information is the personal data of Council officers.
11. In the case of a FOIA request, the 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.
12. When considering whether the disclosure of personal information would be lawful, the Commissioner must deliberate 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.
13. The Council has argued that disclosure of the redacted information into the public domain would be unfair to its officers and breach the first data

¹ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

² <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

protection principle. In considering fairness, the Council considered the reasonable expectations of its officers, the nature of those expectations and the consequences of disclosure. On the basis that the contact details of the officers identified in the requested information were not already in the public domain, the Council decided it was justified in redacting them.

14. The Council has acknowledged the complainant has a legitimate interest in the disclosure of information but has argued that the redacted emails disclosed are sufficient to meet it. It does not believe the redactions made diminish the quality of the information provided or that they would enhance the information in the email threads.
15. The Commissioner considers that the Council has acknowledged the public right to access information under FOIA and has recognised that there is an interest with the work it is involved in generally.
16. The Commissioner considers that the complainant is pursuing a legitimate interest but that disclosure of this personal information through FOIA is not necessary to satisfy it. This is because the legitimate interest has already been met through the provision of redacted emails.
17. The withheld information would add no further understanding, or context. The Commissioner considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The Council was therefore correct to apply section 40(2) of FOIA to this request.

Right of appeal

18. 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

19. 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.
20. 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

**Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**