

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 March 2023

Public Authority: Newry, Mourne and Down District Council
Address: Monaghan Row
County Down
BT35 8DJ

Decision (including any steps ordered)

1. The complainant requested information from Newry, Mourne and Down District Council (the public authority). The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to withhold some of the requested information.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 7 December 2021, the complainant made the following request for information to the public authority:

"I am writing to make an open government request for all the information to which I am entitled under the Freedom of Information Act 2000.

Please send me the following information regarding dual signage on roads and streets in the NM&D Council area.

information request 1

list of roads for which requests have been made

information request 2

who submitted each request to Council i.e. councillors, the general public, other. Names are not required. In the case of councillors, specify the number from each political party or individual

Information request 3

a list of the roads that had polls carried out, as well as a list of those which did not have polls, including the reason for that decision

information request 4

list of roads which have had bilingual signs erected

information request 5

list of results of all polls carried out to include, in each case, the number of households polled, numbers voting for and numbers against. Also please specify, in each case, whether these numbers are based on one per household or whether they include multiple individuals within households

information request 6

list any roads for which polls were re-run, and the reason for rerunning the poll

information request 7

total number of requests per language and numbers of successful and on successful requests per language"

4. The public authority refused to provide some of the requested information citing section 40(2) (personal information) of FOIA as its basis for doing so.

Reasons for decision

Section 40 - personal information

5. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request.¹
6. 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.
7. In this case, the Commissioner is satisfied that the withheld information is personal data because it relates to the number of Councillors and their political parties, and the results of polls by number of participating households. Due to the level of detail requested, disclosing the requested information may identify third party personal data.
8. The Commissioner recognises that small numbers carry a greater risk of identification than larger ones – but that does not mean that every small number identifies any individual. Whether individuals can be identified will depend on the particular facts, such as the size of the overall dataset, the number of data points that have been requested and the information, already in the public domain, that could potentially be cross-referenced with the disclosed information. It is not sufficient for there to be only a hypothetical risk of identification. If there is no realistic route to identification, the information is not personal data, regardless of its sensitivity.
9. When considering the possibility of identification, the Commissioner applies the “Motivated Intruder Test.” This test starts with a hypothesis that there exists a person who wishes to identify the individuals covered by the disputed information. The person is willing to devote a considerable amount of time and resources to the process of identification. They may have some inside knowledge (i.e. information not already in the public domain) but will not resort to illegality – they are determined but not reckless. The Commissioner looks to see how such a person would go about identifying the individuals involved.
10. The Council has explained how the individuals could be identified from the withheld information. As the individuals can be identified, the information is personal data.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

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 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.
13. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
14. It is necessary to balance the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects. In doing so, it is necessary to consider the impact of disclosure.
15. In the Commissioner's view, a key issue when considering the balancing test is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals, taking into account whether or not they have consented to its disclosure.
16. In this case, the Commissioner considers that disclosing the withheld information may lead to the indirect identification of any person on whose behalf an application was made. With regards to poll results and numbers of households, this information, combined with possible local knowledge, may also lead to the indirect identification of a third party. Therefore, the Commissioner considers that the third party has a strong and reasonable expectation that their personal information will remain confidential.
17. Based on the above factors, the Commissioner has determined that the fundamental rights and freedoms of the individuals outweigh the legitimate interest identified above. The Commissioner therefore 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 public authority 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

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