

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 6 February 2023

**Public Authority:** Cottesmore Parish Council

**Address:** clerk@cottesmoreparishcouncil.org.uk

#### **Decision**

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1. The complainant requested information from Cottesmore Parish Council ("the Council") relating to a letter which has been sent to the Council.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) (personal information) of the FOIA to refuse to provide the withheld information.
3. The Commissioner does not require the Council to take any steps.

#### **Request and response**

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4. The complainant made the following information request to Cottesmore Parish Council on 28 March 2022:

"I am a joint tenant of [address redacted].

Please could you send me a copy of the document specified below as coming from Oldham Marsh Page Flavell.

In the minutes of the meeting of the Parish Council held on 18th October 2021, it is recorded at paragraph 115/21 Matters Arising, under the heading Update on Allotments and subheading – access to site through the Jubilee Gardens open space that:

'In view of the letter from Oldham Marsh Page Flavell it was agreed to postpone the discussion of this item until a later meeting.'

I look forward to hearing from you."

5. The Council refused to provide the requested information citing section 41 (information provided in confidence) of the FOIA.

### **Reasons for decision**

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6. Whilst the Council cited section 41 of the FOIA as its basis for refusing to provide the requested information, this reasoning covers whether the Council is entitled to rely on section 40(2) (personal information) of the FOIA to refuse to provide the requested information.
7. 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.
8. Section 3(2) of the Data Protection Act 2018 defines personal data as:  
"any information relating to an identified or identifiable living individual."
9. 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 Council has withheld a copy of a letter which was sent by a solicitors to the Council on behalf of their client. The Commissioner has viewed the withheld information and is satisfied that it both relates to and would identify the solicitors' client. He therefore considers that the withheld information falls within the definition of 'personal data' in section 3(2) of the DPA.
11. 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."
12. In the case of an 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.

13. 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.
14. The Commissioner considers that in this case, the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that interest.
15. The Commissioner notes that the withheld letter is referenced in the minutes from a public Council meeting held on 18 October 2021. However, the Council has explained to the Commissioner that whilst it referred to the withheld letter in the Council meeting on 18 October 2021, the content of the letter was not discussed. Therefore, the Commissioner understands that the withheld information is not already within the public domain.
16. Furthermore, the Commissioner considers that the solicitors' client has a strong and reasonable expectation that the letter which was sent to the Council on their behalf would remain confidential to them, their solicitor and the Council.
17. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the solicitors' client. Therefore, he considers that there is no legal basis for the Council to disclose the requested information and to do so would be in breach of principle (a).
18. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to refuse to provide the requested information. The Commissioner requires no further action to be taken by the Council in relation to this request.

## Right of appeal

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19. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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 .....**

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