

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 02 March 2023

Public Authority: Nottinghamshire County Council
Address: County Hall
Loughborough Road
West Bridgford
Nottingham
NG2 7QP

Decision (including any steps ordered)

1. The complainant requested information from Nottinghamshire County Council on the reasons why two highways claims initially rejected were subsequently paid out and the number of pothole investigation sheets recording that a claim had been made. Nottinghamshire County Council withheld the requested information in relation the reasons why it subsequently paid out on claims initially rejected under Section 40(2) of FOIA and stated that it did not hold any information in connection with investigation sheets recording when claims had been made.
2. The Commissioner's decision is that Nottinghamshire County Council was entitled to rely on Section 40(2) of FOIA for the information it withheld.
3. The Commissioner has also decided Nottinghamshire County Council breached Section 10 of FOIA by failing to issue a substantive response to the complainant's request within 20 working days stating why it was withholding the requested information.
4. The Commissioner does not require Nottinghamshire County Council to take any steps.

Request and response

5. On 27 February 2022, the complainant made the following request for information to Nottinghamshire County Council (the Council):

“Please give the reasons why the 2 claims originally rejected had the decision reversed and then paid out of the 30 successful. Also please advise how many pothole (sic) urgent investigations/repairs job sheet/instructions issued to officers have warning notes on them telling the officers compensation claims have been made.”
6. The Council responded on 27 April 2022. In relation to the reasons why it subsequently paid out on the 2 claims it initially rejected, it stated this was because of ‘further information being made available’. However, the details of this further information was specific to the individual claimant and their particular legal claim. It was therefore in the Council’s view, the claimant’s personal data and thereby exempt from disclosure under Section 40(2) of FOIA. Regarding the recording of the number of claims made on pothole investigation sheets, the Council stated that it did not hold this information. However, it did confirm a record of the number of claim forms requested was recorded and invited the complainant to submit a new request if he wanted this information.
7. The complainant requested an internal review on 13 May 2022 and said he wanted to know specifically what the ‘further information’ was. He also pointed out the Council took in excess of 20 working days to issue a substantive response to his request.
8. The Council responded on 10 June 2022 upholding its original decision.
9. The complainant contacted the Commissioner on 23 November 2022 to complain about the way the Council had handled his information request. In particular, he was dissatisfied with its decision to withhold the specific information as to why it subsequently paid out on two pothole claims it initially rejected under Section 40(2) of FOIA.
10. The scope of the Commissioner’s investigation will be to determine whether the Council was justified in applying Section 40(2) of FOIA to the complainant’s request.

Reasons for decision

Section 40 - personal information

11. This reasoning covers whether the Council was correct to apply Section 40(2) of FOIA to the request.¹
12. 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.
13. In this case, the Commissioner is satisfied that the redacted information, consisting of private correspondence exchanged with the Council by the two claimants who submitted legal claims in respect of damage caused by highway defects, is their personal data.
14. 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.
15. 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.
16. The Council has argued that disclosure of the redacted information into the public domain would be unfair to the two individuals concerned and breach the first data protection principle. In considering fairness, the Council considered the reasonable expectations of the two claimants, the nature of those expectations and the consequences of disclosure.
17. The Council argued that the two claimants who generated private correspondence in relation to their legal compensation claims would have a reasonable expectation that this information would not be disclosed into the public domain.
18. In an email to the complainant dated 21 November 2022, the Council provided a more detailed explanation as to why two of the legal claims initially rejected were subsequently accepted and paid. It stated this was due to new information coming to light in the private correspondence. This information related to further investigations concerning the frequency of highway inspections, the repairs completed and the quality of those repairs.

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

19. The Council has acknowledged the complainant has a legitimate interest in the disclosure of information as it relates to how it deals with legal claims but has argued that the explanation it provided is sufficient to meet it.
20. The Commissioner considers that the Council has acknowledged the public right to access information under FOIA and has recognised that there is a public interest in the way it deals with highway claims by members of the public.
21. 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 a detailed explanation.
22. 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.

Section 10 - Time for compliance with request

23. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
24. In this case the Council did not issue a substantive response to the complainant's request dated 27 February 2022 until 27 April 2022.
25. The Commissioner finds that the Council has breached section 10(1) by failing to provide a valid response to the request within the statutory time frame of 20 working days.

Right of appeal

26. 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

27. 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.
28. 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
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Wilmslow
Cheshire
SK9 5AF**