

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 June 2023

Public Authority: Bristol City Council
Address: The Council House
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant has requested information from Bristol City Council (the Council) about a community order against named dog owners.
2. The Commissioner's decision is that the Council should have relied on section 40(5B) of FOIA to refuse to confirm or deny whether any information was held and has applied this exemption himself proactively. The Commissioner also finds that the Council breached section 10(1) of FOIA as it failed to provide its response within the statutory 20 working days.
3. The Commissioner does not require the Council to take any further steps.

Request and response

4. On 12 February 2023, the complainant wrote to the Council and requested information about a Community Protection Notice which had allegedly been served on a named dog owner under the Anti-social Behaviour, Crime and Policing Act 2014.

5. The Council responded on 14 March 2023. It refused to comply with the request, citing section 40(2) (personal information) of FOIA.
6. Following an internal review the Council wrote to the complainant on 5 April 2023. It maintained its reliance on section 40(2) of FOIA.

Reasons for decision

7. In this case, the Commissioner has exercised his discretion and proactively applied section 40(5B) of FOIA to the request. The reasons for the Commissioner's decision are explained below.

Section 40 – personal information

8. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny does not arise in relation to third party personal information, if providing that confirmation or denial alone would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
9. The decision to use a 'neither confirm nor deny' response will not be affected by whether a public authority does or does not in fact hold the requested information. The starting point and main focus for a neither confirm nor deny response in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not particular information is held. The Commissioner's guidance explains that there may be circumstances in which merely confirming or denying whether or not a public authority holds information about an individual can itself reveal something about that individual, which otherwise would not be readily available in the public domain.

Would the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?

10. Section 3(2) of the Data Protection Act 2018 (DPA) 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. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
13. In the circumstances of this case the Commissioner is satisfied that, if held, any information within the scope of the request would clearly be the personal information of the identified individuals named within the request. Therefore, he is satisfied that if the Council were to confirm or deny whether it holds the requested information, this would in turn be confirming to the world at large any action which it has, or has not, taken against the named dog owners – information which is not already available to the world at large.
14. It is also appropriate for the Commissioner to consider if confirming or denying whether it holds the requested information would result in the Council's disclosure of criminal offence information relating to the named individuals.
15. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA personal data relating to criminal convictions and offences includes personal data relating to:-
 - (a) the alleged commission of offences by the data subject; and
 - (b) proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings, including sentencing.
16. From the wording of the request, along with the background information provided by the complainant, the Commissioner is satisfied that the requested information clearly relates to alleged offences.
17. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming or denying whether the information is held in response to a request for information under FOIA, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.
18. The Commissioner has considered each of these conditions and whether any of them could be relied on by the Council to confirm or deny whether it holds criminal offence data falling within the scope of this request. The Commissioner is not aware that the data subject has either given consent to the disclosure of this information (if held) or that they have manifestly made it public. He therefore considers that, having regard for the restrictive nature of the Schedule 1, Parts 1 to 3 conditions, none of the conditions can be met.

19. As none of the conditions required for processing criminal offence data are satisfied there can be no legal basis for confirming whether or not the requested information is held; providing such a confirmation or denial would breach data protection principle (a).
20. The Commissioner therefore concludes that the Council should have cited section 40(5B) of FOIA to neither confirm nor deny holding information within the scope of the request, as it could not do so without disclosing personal information relating to the individuals named within the request. He now applies this exemption himself in order to prevent any further disclosure of personal information.

Right of appeal

21. 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

22. 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.
23. 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF