

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2024

Public Authority: London Borough of Redbridge
Address: Lynton House
255-259 High Road
Ilford
IG1 1NN

Decision (including any steps ordered)

1. The complainant has requested from the London Borough of Redbridge ("the Council") all copies of Penalty Charge Notices ("PCN") issued by Civil Enforcement Officers on 27 and 28 February 2023 within specified timeframes around Torbitt Way and William Torbitt Primary School.
2. The Council refused to provide information within the scope of the request citing section 40(2)(personal information of third party) of FOIA.
3. The Commissioner's decision is that the Council was entitled to refuse to disclose the requested information by virtue of section 40(2) of FOIA.
4. The Commissioner does not require the Council to take any further steps.

Request and response

5. On 21 August 2023, the complainant wrote to the Council and requested the following information:

"Copies of all the PCNs issued on 27th & 28th February 2023 by Civil Enforcement Officers in and around Torbitt Way / around William Torbitt Primary School at the following times:

06:00 to 08:30

08:30 to 09:15

09:15 to 15:00

15:00 to 15:45

15:45 to 18:30

Number of PCNs issued in Torbitt Way / around William Torbitt Primary School with PCN numbers and copies of PCNs on 27th & 28th February 2023 in between times mentioned in the table.”

6. The Council responded on 21 September 2023. It confirmed that it held the information in scope of the request. It provided some information disclosing the number of Penalty Charge Notices (“PCNs”) issued within the time period indicated by the complainant in their request, namely, three PCNs in total. However, it refused to provide copies of those PCNs relying on section 40(2) of FOIA.
7. On 24 September 2023, the complainant asked for an internal review of the Council’s response. Specifically they asked again for copies of PCNs issued within the specified period of time. The complainant explained that because of two of the issued PCNs were to the complainant and therefore being in the complainant’s possession, they were primarily interested in receiving a copy of the third PCN issued to a third party. The complainant accepted that there may be redaction applied to personal information.
8. Following an internal review the Council wrote to the complainant on 30 October 2023 maintaining its original position.

Scope of the case

9. The complainant contacted the Commissioner on 24 December 2023 to complain about the way their request for information had been handled.
10. Specifically, the complainant disagreed with the Council’s decision to refuse to provide the information they asked for and requested that the Commissioner ask the Council to provide all three PCNs. They added that the Council could redact personal information if it wished to do so.
11. The Commissioner notes that the complainant acknowledged, following the response to the request from the Council, that two out of three of PCNs were issued to them and they are in the possession of that information already. The complainant said that they were mainly interested in the third PCN issued to another party.
12. The Commissioner has confirmed to the complainant that they are not entitled to access information that is their personal data under FOIA, since it would be exempt from disclosure under section 40(1) of FOIA.

He has therefore excluded from the scope of his investigation the two PCNs that were issued to the complainant.

13. In light of the above, the Commissioner considers that the scope of his investigation is to determine whether the Council was correct to rely on section 40(2) to withhold the third PCN, ie the PCN issued to a third party.

Reasons for decision

Section 40 – personal information

14. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
15. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (“the DP principles”), as set out in Article 5 of the UK General Data Protection Regulation (“UK GDPR”).
16. The first step for the Commissioner is to determine whether the remaining withheld information, ie the third PCN, constitutes personal data as defined by the Data Protection Act 2018 (“DPA”). If it is not personal data then section 40 of FOIA cannot apply.
17. Secondly, and only if the Commissioner is satisfied that the withheld information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

18. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

19. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

¹ As amended by Schedule 19 Paragraph 58(3) DPA

20. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
21. 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.
22. The Commissioner has examined the requested information. As set out above he has excluded two of the three PCNs on the basis that they comprise personal data of the complainant. Having considered the remaining information, the PCN issued to a third party, the Commissioner is satisfied that this information quite clearly relates to an identifiable individual. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
23. The Commissioner has advised the complainant of his opinion that all of the remaining withheld information comprises third party personal data. This is because the PCN was generated solely because of an alleged parking contravention involving the person on whom it was issued. The information contained in the PCN clearly relates to that individual, who is clearly identifiable.
24. The PCN does contain some generic information, such as the name of the public authority and instructions for payment. However the Commissioner is mindful that the complainant already has the generic information contained in a PCN by virtue of the fact that they have already been issued with two PCNs. The right of access under FOIA is to information rather than documents, and the complainant has already received the generic information contained in the third PCN via the other two PCNs.
25. The fact that information constitutes the personal data of an identifiable living individual, does not automatically exclude it from disclosure under FOIA. Therefore the Commissioner has gone on to consider whether disclosure of the remaining withheld information would contravene any of the DP principles.
26. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

27. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

28. 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.
29. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

30. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.²

31. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:

i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

32. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

33. The Commissioner must be mindful that disclosure under FOIA is effectively an unlimited disclosure to the public. He must therefore

² Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

consider the wider public interest issues and fairness to the persons involved when deciding whether or not the information is suitable for disclosure.

34. The Commissioner notes that it is important to acknowledge that section 40 is different from other exemptions in that its consideration does not begin with an expectation of disclosure. As section 40 is the point at which FOIA and the DPA interact, the expectation is that personal data will not be disclosed unless it can be demonstrated that disclosure is in accordance with the DP principles.

Legitimate interests

35. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sake, as well as case specific interests.
36. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
37. In this case the complainant indicated that the information requested was needed to challenge the Council in the county court to demonstrate that the PCNs were issued not in accordance with the law.
38. The Commissioner acknowledges a general legitimate interest in ensuring the Council is operating legally and fairly.
39. He is therefore satisfied that there is a legitimate interest in disclosure of information which may hold the Council to account and promote transparency in relation to its issuing of PCNs.

Is disclosure necessary?

40. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
41. However, in this particular case the Commissioner is not persuaded that disclosure of the withheld information into the public domain is in fact necessary to meet the legitimate interest set out. This is because there are other, less intrusive methods of holding the Council to account. The

complainant has made a number of allegations about the way the Council has treated them regarding the issue of PCNs. The Commissioner observes that the complainant is entitled to challenge a PCN through the Council's standard procedures. He does not accept that it is necessary to disclose another individual's personal data into the public domain in order to pursue this right of challenge.

42. Based on the above factors, the Commissioner has determined that the necessity test is not met. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful. He is not required to consider the balancing test, or whether disclosure would be generally fair or transparent.
43. Consequently, the Commissioner's decision is that the Council was entitled to rely on section 40(2) of FOIA in respect of the withheld information.

Right of appeal

44. 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

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Sarah O’Cathain
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Wycliffe House
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