

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 May 2024

Public Authority: Somerset Council
Address: County Hall
Taunton
Somerset
TA1 4DY

Decision (including any steps ordered)

1. The complainant has requested code of conduct complaint information about Yeovil Town Council from Somerset Council (the Council). The Council refused to disclose the information it held, citing section 40(1) (Personal information) of FOIA.
2. The Commissioner's decision is that the Council was entitled to rely on section 40(1) when refusing to provide the requested information.
3. The Commissioner also finds that, on the balance of probabilities, the Council does not hold any further information within the scope of the request.
4. The Commissioner does not require any further steps to be taken.

Request and response

5. On 9 August 2022, the complainant wrote to the Council and requested information in the following terms:
 - "1. Please provide complaints made by Yeovil Town Council staff against councillors over the last five years.
 2. Provide all complaints made by number

3. Provide all complaints that were validated against councillors by number and staff role
 4. Provide all unfounded claims by number by staff role
 5. Provide all complaint by type
 6. Provide all corrective action taken against the guilty party by type
 7. Provide all disciplinary action taken against false accusations from staff
 8. Provide any payments made to the staff members after a complaint by the council or councillors
 9. Provide any compensation made to the staff of YTC after such an event Provide all evidence of councillors leaving under such complaints made against them.”
6. The Council requested clarification from the complainant on 10 August 2022, in the following terms:
- “I have spoken to the Council’s Monitoring Officer regarding your request and they have asked me to seek clarity as to your request.
- For your information, South Somerset District Council¹ would only hear complaints where they relate to Code of Conduct. If complaints are not in relation to Code of Conduct, they would be dealt with by Yeovil Town Council themselves and therefore the information that is requested would need to be sought directly from them.
- Please could you clarify whether your request relates to Code of Conduct complaints or whether your request relates to other complaints?”
7. The complainant responded on 10 August 2022 and explained that they were only requesting information relating to “Code of Conduct” complaints.
 8. The Council responded on 27 September 2023. It stated that it only held information regarding one complaint and it provided a broad outline of it. It advised that it was unable to disclose a copy of the complaint as

¹ South Somerset District Council was abolished and replaced by Somerset Council in 2023

the information constituted personal data, a position which it upheld during its internal review.

Scope of the case

9. The complainant contacted the Commissioner on 12 January 2024 to complain about the way their request for information had been handled.
10. The complainant advised that they believed that further information was held and that more information could be provided without invoking section 40.
11. During the Commissioner's investigation the Council advised that it was relying on sections 40(1) and 40(2) of FOIA to withhold information. The Commissioner did not notify the complainant of this change, to forego any delays in the investigation. He does not consider that the complainant has been disadvantaged by this.
12. The Commissioner did ask the complainant to clarify the scope of their request by confirming whether they were interested in complaints against Yeovil Town Councillors or any Councillors. The complainant advised that they were only interested in complaint information submitted by Yeovil Town Council staff about Yeovil Town Councillors.
13. The Commissioner considers that the scope of his investigation is to consider, on the balance of probabilities, whether the Council holds any additional information within the scope of the request. The Commissioner has also considered whether the Council is entitled to rely on section 40(1) and/or section 40(2) when refusing to disclose the requested information.

Reasons for decision

Section 1 - general right of access

14. Section 1 of FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
15. In cases where a dispute arises over the amount of recorded information held by a public authority at the time of the request, the Commissioner - following the lead of a number of First-tier Tribunal decisions - applies the civil standard of the balance of probabilities. In essence, the

Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

16. The Council advised the Commissioner that it does not have a role in dealing with complaints made about Yeovil Town Council; the Councils are separate third party legal entities in their own right. However, the Monitoring Officer for Somerset Council had a separate statutory duty, which required them to consider Code of Conduct breach complaints made by, and about, individual Councillors sitting on local Councils within the geographical area of Somerset Council.
17. The Council advised that this allowed it to determine that any information within the scope of the request would be held only by the Monitoring Officer.
18. The Council confirmed that on receipt of the request, the Monitoring Officer's electronic records were searched for complaints relating to Yeovil Town Council. The Council advised that the search term used during the search was "Yeovil Town Council".
19. This produced all the records of Code of Conduct complaints made about Yeovil Town Council. The Council then reviewed all the complaints which matched the specified time period in the request. The Council advised that only one complaint was found which matched the requirements of the request.
20. The Council said it does not have any record of further information being destroyed or deleted and that there is a statutory purpose for the requested information to be held and normal retention policies would apply to it.
21. The Commissioner is satisfied that appropriate searches were conducted by the Council. By establishing that the Monitoring Officer would be the only person who deals with such matters, the Commissioner considers it a reasonable assumption that if any additional information within the scope of the request was held, it would be held by this individual.
22. The Council ensured that electronic searches for the requested information were conducted, and it refined its search to the specific period requested and used the search term "Yeovil Town Council". The Commissioner is satisfied that the search term used was appropriate for locating any relevant information, if held.
23. Based on the above information, on the balance of probabilities, the Commissioner is satisfied that the Council has located all the information falling within the scope of the request and that it does not hold any additional information.

Section 40 – personal data

Section 40(1) - personal data of which the applicant is the data subject

24. Section 40(1) of FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.
25. The Commissioner's guidance is clear that a requestor's own personal data should not be disclosed under FOIA or the EIR. Instead, public authorities should handle this aspect of the request as a subject access request (SAR) under the UK GDPR or the DPA, as applicable.
26. This reasoning covers why the Commissioner has determined that the requested information is the complainant's personal data and therefore, exempt from disclosure under section 40(1) of FOIA.
27. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual."
28. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
29. 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.
30. 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.
31. The Commissioner has viewed the complaint in question and is satisfied that it is information which relates to, and identifies, the complainant. It includes the complainant's name and details about the complainant and specific concerns. Disclosing this information under FOIA would identify and reveal personal information about the complainant.
32. The Commissioner is satisfied that this information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
33. As it is the complainant's own personal data, the Commissioner's decision is that the withheld information appropriately engages section 40(1) of FOIA, and the Council was correct not to disclose it under FOIA. This is because the appropriate information access regime to consider an applicant's own personal data is the Data Protection Act 2018.

34. In this case, there is no requirement to consider section 40(2) of FOIA, as the Commissioner is satisfied that the withheld information is exempt under section 40(1) of FOIA, in its entirety.
35. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the public interest. He is also not required to consider whether or not the complainant would be content to have their personal data disclosed to the world at large. If the exemption applies, the Council is entitled to rely on it to refuse the request.
36. The Commissioner's conclusion is that the information is the complainant's own personal data and it is exempt from disclosure under section 40(1) of FOIA.

Right of appeal

37. 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

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Bracegirdle
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