

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 April 2024

Public Authority: Liverpool City Council
Address: Cunard Building
Water Street
Liverpool
L3 1AH

Decision (including any steps ordered)

1. The complainant requested information from Liverpool City Council (“the Council”) relating to Councillors who have received a court summons for council tax arrears.
2. The Commissioner’s decision is that the Council is not entitled to rely on section 40(2) (personal information) of FOIA to refuse to provide the withheld information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 October 2023, the complainant wrote to the Council and requested information in the following terms:

“I am asking for the names of any sitting elected councillor in Liverpool who has received a court summons regarding the non-payment of Council Tax for the financial years of:

2019/2020
2020/2021
2021/2022
2022/2023
2023/2024”
6. The Council responded on 15 December 2023. It confirmed that two sitting Councillors had received a court summons for council tax arrears, but that their identities were exempt from disclosure under section 40(2).
7. Following an internal review the Council wrote to the complainant. It stated that it was upholding its original position.

Reasons for decision

8. This reasoning covers whether the Council is entitled to rely on section 40(2) of FOIA to refuse to provide the withheld information.
9. 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.
10. Section 3(2) of the Data Protection Act 2018 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. In this case, the Council has withheld the names of two sitting councillors who have received a court summons for council tax arrears. The Commissioner is satisfied that this information would relate to and identify the individuals and so he considers the withheld information to be personal data.

13. 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."
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 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.
16. The Commissioner appreciates that there is a legitimate interest in the public knowing when councillors have failed to pay council tax and who those councillors are. This was considered in the Upper Tribunal ("the UT") decision *DH v Information Commissioner and Bolton Council*¹, which found that the name of a councillor who had failed to pay council tax should be disclosed. The view of the UT was that there is a legitimate interest in the public being aware of this information as councillors are responsible for the expenditure of public money and the administration of council tax; if a councillor is in arrears of more than two months, they cannot vote on matters that concern council tax.
17. In the circumstances of this case, the Commissioner notes that the request doesn't seek the identities of those councillors in arrears, but specifically those who will have received a court summons due to the extent of those arrears.
18. The Commissioner therefore considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that interest.
19. The UT decision referred to above stated that:

¹ [DH v Information Commissioner and Bolton Council: \[2016\] UKUT 139 \(AAC\) - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

“There may be exceptional cases in which the personal circumstances of a councillor are so compelling that a councillor should be protected from such exposure.”

20. Given the comments set out in the UT decision, the Commissioner accepts that there will be circumstances where a public authority will be entitled to withhold the name of a councillor who has failed to pay council tax.
21. The Council has explained to the Commissioner that it considers the personal circumstance of the councillors are such that they should be protected from disclosure. The Council has provided a summary of these personal circumstances to the Commissioner. He has reviewed these circumstances but has not replicated them here as doing so would reveal personal data.
22. Whilst the Commissioner has noted the personal circumstances of the councillors, he notes that the Council has been unable to provide any compelling arguments, beyond the general loss of privacy, why disclosure of the information would have an excessive or disproportionate adverse effect on the councillors' rights and freedoms. In this context, he is not persuaded that the circumstances described by the Council in this case meet the threshold of 'exceptional'.
23. With regard to the rights and freedoms of the individuals, the UT case cited above determined that Councillors should expect to be scrutinised and be accountable for their actions in so far as they are relevant to their public office.
24. It is also relevant for the Commissioner to note, as in paragraph 17, that the request specifically relates to individuals who have received a court summons due to the extent of arrears; the Commissioner perceives that there should be an even greater expectation of scrutiny in such a context.
25. Having considered the UT's comments, and the circumstances of this case, the Commissioner is of the view that the legitimate interest in disclosure of the withheld information outweighs the rights and freedoms of the individuals in this instance.
26. Therefore, the Commissioner's decision is that the Council is not entitled to rely on section 40(2) of FOIA to refuse to provide the withheld information.

Procedural matters

27. The Council failed to issue a refusal notice in response to the request within the statutory time period, the Commissioner has therefore found a breach of 17(1) of FOIA.

Right of appeal

28. 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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Perry
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Wycliffe House
Water Lane
Wilmslow
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SK9 5AF