

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 April 2012

**Public Authority:** West Sussex County Council  
**Address:** County Hall  
Chichester  
West Sussex  
PO19 1RQ

#### Decision (including any steps ordered)

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1. The complainant requested information relating to a parking matter outside his property. West Sussex County Council ("the council") supplied relevant information, although it withheld some information using the exemption under section 40(2) of the Freedom of Information Act 2000 ("the FOIA") on the basis that it was the personal data of a third party.
2. The Commissioner's decision is that the council correctly relied on the exemption under section 40(2) to withhold the information, apart from in relation to some information that was the complainant's own personal data that should have been considered separately under the Data Protection Act 1998 ("the DPA").
3. The Commissioner does not require any steps to be taken.
4. A separate confidential annex for this case has been provided to the council only.

#### Request and response

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5. On 28 January 2011, the complainant requested information from the council in the following terms:  
  
"I would like copies of all communications regarding the APL/parking/obstruction (and other similar matters) outside numbers [addresses], Worthing".

6. On 2 February 2011, the council replied and asked the complainant to clarify the time frame he was interested in.
7. On 15 February 2011, the complainant clarified that he was interested in communications from August 2009.
8. On 28 February 2011, the council replied and referred to the exemption under section 40(2) of the FOIA relating to the personal information of other people. It said that it would post the remaining relevant information to the complainant once it had the complainant's postal address.
9. The complainant replied on 1 March 2011 and supplied his address. He asked whether there was any right of appeal regarding the council's decision to withhold information using section 40(2).
10. On 30 May 2011, following receipt of information supplied by the council, the complainant replied and expressed dissatisfaction with the fact that some information had been withheld. In particular, he said that he would like a copy of any correspondence that would have instigated a letter he received from a named member of staff dated 17 November 2010 which contained the phrase "...if we have evidence of a resident abusing the existence of an APL".
11. The council completed an internal review on 27 June 2011 and said that it wished to maintain its position that some information had been correctly withheld using the exemption under section 40(2).
12. In subsequent correspondence with the council, the complainant indicated that he would accept the information if it was supplied with "personal details" such as names and addresses redacted. The council maintained its refusal.

### **Scope of the case**

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13. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council had correctly withheld information using section 40(2) of the FOIA.
14. During the Commissioner's investigation, the Commissioner identified that some of the information related to the complainant and was his personal data. The personal data of a requester is exempt from disclosure under the FOIA under section 40(1). This is because it is appropriate to consider that information under the terms of the DPA. This notice does not therefore address this particular aspect of the

complaint. The Commissioner has conducted a separate assessment under the DPA.

## **Reasons for decision**

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### **Section 40(2) – Third party personal data**

15. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of DPA.

### **Is the withheld information personal data?**

16. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
17. The Commissioner considered the withheld information and was satisfied that it represented third party personal data from which an individual could be identified.

### **Would disclosure breach the Data Protection Principles?**

18. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.
19. The Commissioner found that it is necessary in this case to consider some of the arguments made in a confidential annex.
20. Having considered the arguments presented by both the council and the complainant carefully, the Commissioner decided that disclosure in the circumstances would not be fair based on the reasonable expectations of the individual concerned. The Commissioner was not satisfied that disclosure would have been within the reasonable expectations of the individual concerned and he therefore accepts that the disclosure could cause distress.
21. In terms of the legitimate public interest in disclosure, there is always some public interest in the disclosure of any information held by public authorities as this helps to bring about transparency and accountability, as argued by the complainant. However, the

Commissioner would like to highlight here that for the purposes of the FOIA, the legislation is primarily about the disclosure of information that is in the general public interest.

22. The complainant has explained to the Commissioner that based on a letter he received from the council, he believes that a complaint was made about him. The complainant's point of view is that if there has been a complaint about him, he needs to know the nature of that complaint in order to defend himself properly and fairly. The Commissioner understands the complainant's concerns in this case and his desire to identify whether a complaint has been made about him and if so, the precise nature of that complaint, but those are nonetheless primarily personal issues and in the Commissioner's view, there is little wider public interest in disclosing the withheld information under the FOIA. The Commissioner notes that the council has taken no action beyond writing a letter to the complainant. The Commissioner considers that the disclosure of the withheld information is not necessary for the complainant to be able to make reasonable representations in response to the initial letter he has received.

## Right of appeal

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23. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

24. 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.
25. 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** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**