

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 March 2015

**Public Authority:** Bradford Metropolitan Borough Council

**Address:** City Hall  
Centenary Square  
Bradford  
BD1 1HY

#### **Decision (including any steps ordered)**

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1. The complainant has requested the shotgun licences and firearms certificates of named individuals held by the council in accordance with the Deed relating to sporting rights on Ilkley Moor (2008) (the Deed). The council confirmed that the information was held in relation to some of the named individuals, but refused to provide copies of the certificates and licences as it considered that the information had been provided in confidence and so section 41 applied.
2. In his role as dual regulator of both the FOIA and the Data Protection Act 1998 (the DPA), the Commissioner has a duty to protect personal data where necessary. He finds that the information in this case is personal data, and that the council should have applied section 40(2). His decision therefore is that although the council was correct to withhold the information, the reason for doing so is section 40(2) rather than section 41. The Commissioner does not require the council to take any steps.

#### **Request and response**

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3. On 24 June 2014 the complainant requested information of the following description:

*"The information I request is:*

*2.1 Copies of certified Shotgun Licenses and / or (where applicable) Firearms Certificates for those specified under §21, Deed Relating to Sporting Rights on Ilkley Moor (2008), namely:*

*2.1.1 [redacted name and address 1]*

*2.1.2 [redacted name and address 2]*

*2.1.3 [redacted name and address 3]*

*2.1.4 [redacted name and address 4]*

*2.1.5 [redacted name and address 5]*

*2.1.6 [redacted name 6]*

*2.1.7 [redacted name 7]*

*I must stress that I am not interested in data which identifies those under the employ of The Public Authority or any third parties and wholly agree for such personal information to be redacted, within reason."*

4. On 23 July 2014 the council responded. It confirmed that it held the requested information in relation to names 5 and 6 only. It withheld this information relying on the absolute exemption at section 41 of the FOIA.

5. The complainant requested an internal review on 24 July 2014. In particular he stated the following:

*"The Request specifies the acceptability of redacting personal information. It is therefore a plausible option for The Public Authority to disclose the sought information by redacting sensitive information, such as names, or refining the requested information to the model of each firearm (by list)."*

6. The council sent the outcome of its internal review on 7 August 2014. It upheld its original position and inferred that the refined request would not be met.

## **Background**

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7. Grouse shooting had been licensed on the moor from 1974 to 1997 at which time the decision was taken not to renew the licence. From 1997 to 2008, the management of the moorland was undertaken by the council, but a fire in 2006 prompted a discussion about the best way to manage the moor.

8. The Ilkley Moor Sporting Rights Deed was agreed in 2008 between the council and the Bingley Moor Partnership. Ownership of the Moor was retained by the council but extra management input was given to the council by the Bingley Moor Partnership through the re-letting of grouse shooting to it. The Deed was set for a 10 year period.
9. The Deed is controversial, particularly with regard to the shooting rights within it. There have been anti-shoot campaigns and local media coverage in relation to this. The Deed was reviewed in July 2013, and then a review update was conducted in July 2014. Following this in September 2014, the council considered a petition from members of the public asking the council to invoke a clause in the Deed which allows it to be terminated early. The council decided that the Deed should continue to its end in 2018.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 14 August 2014 to complain about the way his request for information had been handled. He did not accept that section 41 applied and reiterated the comments in his internal review that he would accept a list of the make and model of the firearms. The Commissioner has considered this to be a refined request, and considers that this supersedes the initial request for copies of the licences and certificates.
11. The Commissioner considers the scope of the case to be to determine whether the council was correct to withhold the requested information.

### **Reasons for decision**

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12. During the Commissioner's investigation, the council identified that it held the requested information in relation to name 1, name 3, name 4 and name 6. The Council confirmed it considered this information to be exempt under section 41.
13. At the request of the Commissioner, the council has also considered in more detail whether the refined request of 24 July 2014 can be fulfilled by disclosing a list of the firearms contained on the requested certificates and licences. It explained that the certificates and licences contain the details of all firearms held by the individuals, and that there is no way of knowing which may or may not be used by them in relation to gamekeeping activities on Ilkley Moor. The council has therefore stated that it would be impossible to separate out the items used in connection with grouse shooting on Ilkley Moor from those which are

held and used for entirely unconnected and private purposes. It has therefore stated that it does not hold the information requested in the refined request.

14. The Commissioner agrees that the certificates and licences do not specify where each firearm is permitted to be used, and there is no way for the council to know which items are held by the individuals for the purposes of their gamekeeping activities on Ilkley Moor, or if they are held for other purposes such as target shooting. However, he has carefully considered the wording of the refined request in conjunction with the original request and notes that it does ask the council to provide a list of the models of firearms, but does not specify that these should only be those that are authorised for use on the moor. The Commissioner therefore finds that the information is held.
15. He has therefore gone on to consider whether the council was correct to withhold it. Although the council has specified that section 41 applies as it considers that the information was provided in confidence, in his dual regulatory role as regulator of both the FOIA and the DPA, the Commissioner has used his discretion to apply section 40 to the information on behalf of the council. As the complainant has specified the names of individuals for whom he requested copies of their certificates and licences, it is clear to the Commissioner that a list of the models of firearms contained therein, is the personal data of the named individuals. He has therefore considered that the arguments put forward by the council regarding section 41 in relation to section 40 and this decision notice will therefore make a finding as to whether section 40 applies.
16. Section 40(2) provides that:

*"Any information to which a request for information relates is also exempt information if-*

*(a) it constitutes personal data which do not fall within subsection (1), and*

*(b) either the first or the second condition below is satisfied."*

Section 40(3) provides that –

*"The first condition is (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-*

*(i) any of the data protection principles"*

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

17. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. Section 1 states that:

*“personal data” means data which relate to a living individual who can be identified –*

*(a) From those data, or*

*(b) From those data and any other information which is in the possession of, or is likely to come into the possession of the data controller.”*

18. As the complainant has specified in his request the names of the specific individuals for whom he wishes the council to disclose the firearm information, it is clear to the Commissioner that this would constitute their personal data. He acknowledges that disclosing a list of the firearms without linking them to a specific individual may not obviously be personal data, however, given the very small number of individuals about whom the information is related, the Commissioner maintains that it would be considered as personal data. In addition to this, the Commissioner considers that the simple fact that an individual has a firearm certificate or shotgun licence is personal data about them. The Commissioner is therefore satisfied that the information is personal data.

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

19. The Commissioner considers that the most relevant principle in this case is the first data protection principle. This requires that personal data is processed fairly and lawfully.
20. In determining whether a disclosure is fair under the first data protection principle for the purposes of section 40 of the FOIA, the Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency, as well as any legitimate interests which arise in the specific circumstances of the case.

### **Reasonable expectations**

21. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the individual or individuals concerned. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide

objectively what would be a reasonable expectation in the circumstances.

22. The council has explained that the individuals in question provided copies of their shotgun licences and firearms certificates to the council as part of a requirement of the Deed which states:

*"The Grantee must produce to the Owner prior to the 12th August 2008 certified copies of their Shotgun Licences and/or Fire Arms Certificates together with the Shotgun Licences and/or Fire Arms Certificates of all gamekeepers employed by the Grantee and thereafter produce such documents to the Owner at the request of the Owner on demand (not more than once each year)."*

23. In its section 41 arguments, the council stated that it considers that the information is more than trivial. It has explained that the individuals who have provided their certificates would regard the information as important. It also argues that there is an implied duty of confidence owed to the individuals because of the inherent nature of the information.
24. The Commissioner notes that it is not usual practice for local authorities to hold copies of shotgun licences or firearms certificates, as they are ordinarily held by the police. It is only by virtue of the Deed and the unique relationship the council has with the Bingley Moor Partnership to manage the council owned Ilkley Moor that the council holds this information. The Commissioner notes that the licences and certificates are not provided to the council by free choice, but that it is a requirement of the Deed.
25. The Commissioner considers that the way in which the information was provided to the council, and the reason for providing it, would shape the reasonable expectations of the individuals in terms of how the information is treated. As the information is not provided free of choice, but by virtue of a legal agreement between the council and the Bingley Moor Partnership, the Commissioner considers that it is a reasonable expectation of the individuals that the information would not be disclosed to the world at large.
26. In addition to this, the Commissioner is aware that the criteria for obtaining shotgun licences and firearm certificates will often entail a visit from a police firearms officer to the prospective licensee's home to ensure that the items are held and stored securely. The Commissioner has seen guidance issued by some police forces which explicitly advises individuals against publicising their gun ownership in order to prevent and limit such items falling into the wrong hands and being used illegally. For example, Hampshire Constabulary's website states:

*"the guns, if not secured properly, could fall into the hands of criminals or persons such as young children or inexperienced persons. In all cases where a gun falls into the wrong hands, the consequences could and have proved fatal... Don't advertise the possible presence of firearms in your car."*

27. The 'Guidance on Firearms Licencing Law' issued by the Home Office states that it is a requirement that firearms must be secured when not in use, and that any security cabinet etc. should be sited out of view both inside and outside the building<sup>1</sup>.
28. Therefore, the Commissioner considers these to be further reasons as to why the individuals would not reasonably expect the council to disclose the requested information about them to the world at large.

### **Consequences of disclosure**

29. The Commissioner considers that a possible consequence of disclosure is that the wider public will become aware that the named individuals own firearms. As noted above, the possible consequences if firearms were to fall into the wrong hands could be fatal.
30. This links to a possible consequence of disclosure for the individuals about whom the information relates. As the request contained the addresses of most of the specified individuals, placing information about their firearm ownership into the public domain could be argued to place them at risk of targeted burglary.
31. Although the refined request asks for a list of firearms without reference to specific individuals, the Commissioner does not find that this diminishes the consequences of disclosure as the fact of which individual owns which firearm would not appear to alter the risk of the firearms falling into the wrong hands.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

32. The complainant has put forward his arguments as to why the public interest is in the disclosure of the information.
33. Firstly, his view is that the information is required for the safety of the public who use the moor. He has stated *"that disclosing details of the firearms used on public land would protect the health or safety of other*

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<sup>1</sup> <https://www.gov.uk/government/publications/firearms-law-guidance-to-the-police-2012>

*individuals. Users of Ilkley Moor would be alerted to the types of weapons used, their range, and if necessary, request further measures are put in place to protect life and limb."*

34. Secondly, he argues that *"the disclosure of the firearms register for Ilkley Moor would reduce potential danger by raising awareness about the types of guns used on the public land, how the public must react if they see somebody shooting and similar measures. Further, should the firearms be unsuitable for use on public land – given the frequency of recreational use – it would allow greater scrutiny."*
35. Thirdly he suggests that *"by refusing to disclose the information it is likely to give the impression that there is something to hide that could undermine public trust. The Public Authority has been very vocal in the media to state "[S]hooting presents no danger to other users of the moor", but will not disclose the register of guns used. Consequently, public trust in The Public Authority will be undermined as conclusive decisions cannot be drawn as to how, or even if, safety is upheld."*
36. Finally, he has argued that by withholding the information, the council *"is not permitting users of the moor to make an informed choice."* He considers that many people would choose not to use the moor for recreational purposes for safety reasons if they knew the details of the guns being used.
37. The Commissioner accepts that there may be some members of the public and particularly some parties to the controversy over the Deed who would welcome the disclosure of the requested information. However, it is not clear how knowledge of the specific firearms which could be used on the moor would protect individuals using the land any further than simply knowing that firearms are used for pest control and on a small number of shoot days during the shooting season. The Commissioner is not convinced that knowing which particular model of rifle is licenced by one of the gamekeepers, and therefore could be used on the moor, would change the behaviour of those using the moor for recreation. The Commissioner notes that the council has reviewed the Deed recently and he has found that it is working with Bingley Moor Partnership to find an agreeable way forward for all parties to ensure that whenever a shoot occurs, there is adequate warning for walkers and other moor users.
38. The Commissioner acknowledges that whilst there is a legitimate interest in the disclosure of the information, the rights and freedoms of the individuals outweighs this. The Commissioner finds that the information is exempt under section 40(2). He has therefore not gone on to consider section 41.



## Right of appeal

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39. 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: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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**  
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**SK9 5AF**