

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2018

Public Authority: Cardiff Council

Address: foi@cardiff.gov.uk

Decision (including any steps ordered)

1. The complainant requested details of parking tickets issued to a specific vehicle. Cardiff Council ('the Council') refused to confirm or deny whether the requested information is held by virtue of section 40(5) of the FOIA. The Commissioner's decision is that the Council is not entitled to rely on section 40(5) to refuse to confirm or deny whether it holds information falling within the scope of the request.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Issue a fresh response under the FOIA to the request which does not rely on section 40(5).
3. The public authority 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

4. On 26 August 2017 the complainant wrote to the Council and referred to a particular vehicle – a blue van signposted with a business name. He provided the registration mark ('VRM') for the vehicle in question and requested information in the following terms:

"Can you tell me under the FOI Act how many parking tickets have been issued to it from January 2016 to date please?"

5. The Council responded on 4 September 2017 and refused to confirm or deny whether the requested information is held by virtue of section 40(5) of the FOIA.
6. On 17 March 2017 the complainant requested an internal review of the Council's handling of the request. He referred to a previous request for information about tickets for a vehicle owned by another organisation where the Council supplied the information in question.
7. The Council provided the outcome of its internal review on 1 September 2017 and upheld its position that section 40(5) of the FOIA applied to the request.

Scope of the case

8. The complainant contacted the Commissioner on 2 September 2017 to complain about the way his request for information had been handled.

The scope of the Commissioner's investigation into this complaint is to determine whether the Council correctly applied section 40(5) to refuse to confirm or deny whether the requested information is held.

Reasons for decision

Section 40 – personal data

9. Section 40(5)(b)(i) FOIA provides that if a public authority receives a request for information which, if held, would be the personal data of a third party (or parties), it can rely on section 40(5)(b)(i) to neither confirm or deny whether or not it holds the requested information.
10. Consideration of section 40(5) involves two steps: first, whether providing the confirmation or denial would involve the disclosure of personal data and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

Is the requested information personal data?

11. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:

- from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
12. In considering whether the information requested is “personal data”, the Commissioner has taken into account her own guidance on the issue¹. The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable. The information requested in this case comprises the number of parking tickets that have been issued against a specific vehicle for which the complainant provided the VRM.
13. The complainant’s position is that the information requested is not personal data as the vehicle is owned by a corporate entity. His basis for reaching this view is that the vehicle is signposted with the name of the business near to where it is regularly parked. He referred to an earlier request he had submitted to the Council for information about penalty notices issued to a vehicle owned by a different corporate entity where the Council has disclosed the information requested. The complainant considers that the Council has set a precedent in disclosing information of the type requested.
14. In his complaint to the Commissioner the complainant suggested that the information he had requested was not personal data as *“it is impossible to identify anybody from the information requested and if I can, which I totally dispute, then I would ask Cardiff Council to tell me how”*. In terms of identifiability and section 40 considerations, the consideration in terms of whether information constitutes personal data is whether disclosure to *a member of public* (and not just the person who requested the information) would breach the data protection principles. The Commissioner accepts that the complainant himself may not be able to identify the owner of the vehicle in question. However, she considers that the point of reference when considering identifiability is whether it is above a hypothetical possibility that a determined individual could identify the registered keeper of the vehicle.

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

15. In decision notice FS50186040² the Commissioner determined that VRMs "*of individuals and sole traders constitute those individuals' personal data*" (paragraph 49). However, the Commissioner went on to determine that VRMs in respect of cars owned by corporate entities that are not sole traders did not constitute personal data and ordered disclosure of the information.
16. In this case, as the complainant indicated that he believed the vehicle in question was owned by a corporate entity, the Commissioner asked the Council to explain exactly how it determined that, if held, the information requested constitutes personal data. Due to the circumstances of this case, and the Council's representations, the Commissioner is unable to include any detailed analysis of her considerations within this notice as to do so may reveal whether or not the requested information is held in this case. However, the Commissioner can confirm that she has taken into account all representations submitted by the Council in reaching a decision in this case.
17. The Council explained to the Commissioner that it only carries out checks with the DVLA to determine the registered keeper's details in certain cases where a penalty notice is issued. For example, if a fixed penalty notice is placed on a vehicle in situ and the penalty charge is paid within a certain period of time, no checks are made with the DVLA to establish the register owner/keeper. The Council confirmed to the Commissioner that it had previously provided information to the complainant in relation to a similar requests he had made about penalty notices issued to particular vehicles in cases where it held recorded information showing the vehicle was owned by a corporate entity. The Council confirmed to the Commissioner that it does not hold any recorded information about the registered owner/keeper of the vehicle which is the subject of this notice.
18. The Commissioner notes that, if held, the information would relate to the driver of a company liveried van, parked outside the relevant company's premises in regular working hours. Whilst accepting the fact that the Council does not hold details of the registered owner/keeper of the vehicle in question, based on the all the evidence available to her, the Commissioner considers that it is likely that the vehicle is owned by a limited company and not an individual or sole trader.

² https://ico.org.uk/media/action-weve-taken/decision-notices/2009/494046/FS_50186040.pdf

19. In light of the above and in the absence of any evidence to the contrary, the Commissioner is not persuaded that information relating to parking penalty notices in respect of the vehicle in question, if held, would constitute personal data. It follows, therefore, that the Commissioner finds that section 40(5) of the FOIA is not engaged.

Right of appeal

20. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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
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