

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

**Date:** 26 October 2022

**Public Authority:** London Borough of Lewisham  
**Address:** Laurence House  
1 Catford Road  
London  
SE6 4RU

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

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1. The complainant has requested information relating to complaints made about named Councillors.
2. The Commissioner's decision is that:
  - London Borough of Lewisham ("the Council") should have relied on section 40(5B)(a)(i) of FOIA to neither confirm nor deny it held any of the requested information.
  - The Council breached section 17(1) of FOIA as it did not refuse the request within the required timescale of 20 working days.
3. The Commissioner does not require the Council to take any corrective steps.

### **Request and response**

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4. On 7 January 2022, the complainant wrote to the Council and requested information in the following terms:
  - i. "All emails/electronic case notes relating to the investigations made by Katherine Kazantzis, Deputy Monitoring Officer Lewisham Council into my complaints against Councillors A and B.
  - ii. All emails referencing my complaint /name to Councillor B and the replies

- iii. All emails referencing my complaint/name to Councillor A and the replies
  - iv. All emails referencing my complaint /name to Councillor C and the replies
  - v. All emails referencing my complaint/name to Jeremy Chambers, Monitoring Officer at Lewisham Council and the replies.
  - vi. All electronic case notes and emails between 12th October 2021 and 7th January 2022 referencing my name/details of the complaint authored by Katherine A and Jeremy Chambers.
  - vii. All electronically held documentation that references this complaint and/or my name.”
5. Following intervention by Commissioner the Council responded on 1 March 2022 and refused to provide the requested information citing section 36 as its basis for doing so.
  6. The Council provided an internal review on 18 March 2022 and maintained its position.

## **Reasons for decision**

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### **Section 40(5) – Personal data**

7. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the requested information – this is referred to as the duty to confirm or deny.
8. However, section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether the authority holds the information does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the GDPR.
9. For the Council to be entitled to rely on section 40(5B)(a)(i) the following two criteria must be met:
  - confirming or denying whether the requested information is held would constitute the disclosure of a third party’s personal data; and
  - providing this confirmation or denial would contravene one of the data protection principles.
10. The Commissioner has a well established position in cases such as this and a full explanation of the exemption can be found in his previous

decision notice [https://ico.org.uk/media/action-weve-taken/decision-  
notices/2022/4019942/ic-93789-q5k5.pdf](https://ico.org.uk/media/action-weve-taken/decision-<br/>notices/2022/4019942/ic-93789-q5k5.pdf)

11. The Commissioner has decided that the Council should have relied on section 40(5B)(a)(i) of FOIA to neither confirm nor deny it holds information within scope of any part of the request.

### **Section 17 – refusal of request**

12. Under section 17(1) a public authority that is relying on an exemption to refuse a request must issue the applicant with a refusal notice within the same timescale for complying with section 1(1) ie promptly and within 20 working days following the date of receipt of a request.
13. In this case, the complainant submitted their request on 7 January 2022 and the Council did not provide a refusal notice within 20 working days. The Council therefore breached section 17(1) of FOIA

## Right of appeal

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14. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

15. 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.
16. 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

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**