

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

### **Decision notice**

**Date:** **6 October 2022**

**Public Authority:** **Bristol City Council**

**Address:** **City Hall  
PO Box 3399  
Bristol  
BS1 9NE**

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

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1. The complainant requested information from Bristol City Council (“the Council”) relating to the number of properties on specific roads that do not pay Council tax and have parking permits. The Council refused to provide the requested information citing section 40(2) (personal information) of the FOIA.
2. The Commissioner’s decision is that that the withheld information is not personal data and therefore, the Council is not entitled to rely on section 40(2) of the FOIA to refuse to provide the requested information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Disclose the withheld information to the complainant.
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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 29 January 2022, the complainant wrote to the Council and requested information in the following terms:  
  
"Please provide me with the following information. How many houses in each of the following streets do not pay council tax but have 1 or 2 or 3 or 4 or more residents parking permits?  
  
The streets are Clifton Wood Crescent, Southern-hay Crescent, Clifton Wood Road, Southernhay Avenue, Church Lane, Argyle Place and Randall Road -all in Cliftonwood."
6. The Council responded on 13 April 2022 and refused to provide the requested information citing section 41 (information provided in confidence) of the FOIA as its basis for doing so.
7. On 20 April 2022 the complainant requested an internal review.
8. Following an internal review the Council wrote to the complainant on 5 May 2022. The Council amended its position stating that it was now relying on section 40(2) (personal information) of the FOIA to refuse to provide the requested information.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 9 May 2022 to complain about the way their request for information had been handled.
10. The scope of this case and the following analysis is to determine whether the Council has correctly cited section 40(2) of the FOIA to refuse to provide the withheld information.

## **Reasons for decision**

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### **Section 40 - personal information**

11. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the

requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

12. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

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

15. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual."

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. In this case, the complainant has requested the number of properties on specific roads that do not pay Council tax but have parking permits. The Council considers the withheld information to be personal data as it relates to the individuals who do not pay Council tax and have parking

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA

permits and those individuals could also be identified from the information.

20. The Commissioner is satisfied that the withheld information does relate to the individuals who do not pay Council tax and have parking permits. The Commissioner will now consider whether the individuals who do not pay Council tax and have parking permits can be identified from the withheld information.
21. The Commissioner's guidance states:

"The DPA defines personal data as any information relating to an identified or identifiable living individual. If an individual cannot be directly identified from the information, it may still be possible to identify them."
22. The Commissioner recognises that different members of the public may have different degrees of access to information which may enable them to identify the individuals who do not pay Council tax and have parking permits.
23. A test used by both the Commissioner and the First-tier Tribunal in cases such as this is to assess whether a 'motivated intruder' would be able to recognise an individual if he or she was intent on doing so. The 'motivated intruder' is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test highlights the potential risks of identifying of an individual from information which, on the face of it, appears truly anonymised.
24. The ICO's Code of Practice on Anonymisation notes that:

"The High Court in [R (on the application of the Department of Health) v Information Commissioner [201] EWHC 1430 (Admin)] stated that the risk of identification must be greater than remote and reasonably likely for information to be classed as personal data under the DPA."
25. In summary, the test is whether the withheld information can identify an individual with a degree of certainty when it is combined with any additional information which is reasonably likely to be accessed and used to aid identification.
26. In its submissions to the Commissioner the Council argued that as the number of properties on each road that do not pay Council tax and have parking permits is very low, an individual property could be identified from the withheld information. The Council therefore considers that

there is a high possibility that an individual could be identified from the withheld information if it was disclosed.

27. In the circumstances of this case, however, for the reasons set out below, it is not obvious to the Commissioner how the relevant individuals would be identifiable.
28. In order to identify the specific individuals on each road who do not pay Council tax and have parking permits, an individual would have to firstly, know which individuals on the road have parking permits. The Commissioner notes that parking permits for the roads listed in the request are provided to residents digitally, and do not need to be displayed in the vehicles of the permit holders. The Commissioner therefore considers that it is highly unlikely that an individual would be able to ascertain which specific individuals have parking permits.
29. Even if an individual was able to ascertain which individuals have parking permits on the roads listed in the request, the individual would then have to work out which of those individuals do not pay Council tax. It is not obvious to the Commissioner how an individual would be able to obtain this information.
30. As it is not clear how an individual would determine the identity of individuals who have parking permits or the identity of individuals who do not pay Council tax, the Commissioner does not consider that even a motivated intruder could identify the individuals who do not pay Council tax and have parking permits from the withheld information. Therefore, as the withheld information does not relate to and identify the individuals who do not pay Council tax and have parking permits, the Commissioner considers that the withheld information does not fall within the definition of personal data.
31. The Commissioner's decision is that as the withheld information is not personal data, the Council is not entitled to rely on section 40(2) of the FOIA to refuse to provide the withheld information.

## Right of appeal

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

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

33. 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.
34. 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 .....**

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