

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2022

Public Authority: The Royal Borough Of Kingston Upon Thames
Address: The Guild Hall
High Street
Kingston Upon Thames
Surrey
KT1 1EU

Decision (including any steps ordered)

1. The complainant has requested information relating to a deceased individual. The Council withheld the requested information, citing section 21 (information reasonably accessible to the applicant by other means), section 31 (law enforcement), section 41 (information provided in confidence) and section 40(2) (personal information.)
2. The Commissioner's decision is as follows:
 - The Council has correctly applied, and correctly withheld, the withheld information under the exemptions listed above.
 - However, in failing to disclose all relevant information within twenty working days of the request the Council has breached section 10 (for compliance).
3. The Commissioner does not require the Council to take any further steps.

Request and response

4. On 1 February 2021 the complainant wrote to the Council and requested the following information:

“[Redacted]. He was believed to be a bachelor, born on [Redacted]. His death was referred to the Bona Vacantia Department by the Royal Borough of Kingston upon Thames, and these details are now listed on their website. Please provide all the information you hold (in any form) which relates to the deceased, and the deceased's estate. For each and every piece of information held, please provide details of the source(s) of that information.”
5. The Council responded on 26 February 2021. It stated that the requested information was exempt under section 21, section 22 (information intended for future publication), section 31, section 36 (prejudice to the effective conduct of public affairs) and section 41.
6. The complainant requested an internal review on 26 February 2021. The Council wrote to the complainant on 22 March 2021, upholding its previous position.

Scope of the case

7. The complainant contacted the Commissioner on 30 March 2021 to complain about the way that their request for information had been handled.
8. During this investigation, the Council withdrew its reliance upon section 36. The Council has also not explained what information it believes is exempt under section 22. Therefore, the Commissioner believes the Council's previous citing of section 22 was an error.
9. The information originally withheld in this case is six documents: the deceased death's certificate (withheld under section 21), emails exchanged between the Council and the Bona Vacantia division¹ relating to the deceased's estate (withheld under section 31), details of the funeral directors employed by the Council to carry out the funeral of the deceased (withheld under section 43), referral of the deceased to the council from the nursing home where they died (withheld under section

¹ Bona Vacantia means vacant goods and is the name given to ownerless properties which by law passes to the Crown.

41 and section 40(2)), cremation details for the deceased (withheld under section 41 and section 40(2)) and information held by the Council's Revenue and Benefits Department.

10. During the course of this investigation the Council disclosed the majority of the information held by its Revenue and Benefits department with a small amount of redactions made under section 31 and section 40(2).
11. The Council also withdrew its reliance on section 43(2) and disclosed the details of the funeral directors employed to carry out the funeral of the deceased.
12. Therefore, the Commissioner considers the scope of his investigation to be to determine if the Council is correct when it says the withheld information engages section 21, section 31, section 41 and section 40(2) and, where appropriate, the Commissioner will consider whether the public interest lies in disclosure or in maintaining the exemption.
13. The Commissioner will also consider the timeliness of the Council's response.

Reasons for decision

Section 21 – Information reasonably accessible to applicant by other means

14. Section 21 of FOIA states:

“(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

15. Section 21 acts as an incentive for public authorities to be proactive in publishing information as part of their publication schemes. It also protects the statutory right of public authorities to charge for certain information which they are bound by law to collect.
16. The purpose of section 21 is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another

established route. Therefore, unlike most exemptions, the specific circumstances of the applicant must be considered. This is in line with the Commissioner's guidance.²

17. Section 21 is an absolute exemption which means that where the exemption is engaged, a consideration of the public interest test is not necessary.
18. To reiterate, the information that is being withheld under section 21 is a copy of the deceased's death certificate. The Council has explained that this information is available at the General Register Office.³ The process for acquiring a death certificate is set out by the GRO⁴ and the fee varies, depending on whether the applicant needs the matter expedited or has the appropriate GRO reference number.
19. It is sensible for the Council to assume that information is reasonably accessible to any requestor, as a member of the general public, until it becomes aware of any particular circumstances or evidence to the contrary.
20. The Commissioner is unaware of any circumstances that might mean the complainant is unable to request a death certificate through the above route. Therefore, the exemption is engaged.

Section 31 – law enforcement

21. Section 31 of FOIA states:

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime.”

22. In order for a public authority to properly engage a prejudice based exemption such as section 31 there must be a likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects.

² [Information reasonably accessible to the applicant by other means \(section 21\) \(ico.org.uk\)](https://ico.org.uk)

³ <https://www.gov.uk/general-register-office>

⁴ [Frequently Asked Questions \(gro.gov.uk\)](https://gro.gov.uk)

23. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to avoid. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

24. Consideration of the section 31 exemption is a two-stage process. Firstly the exemption must be properly engaged and meet the three criteria listed above. Even if this is the case the information should still be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

25. The Commissioner's guidance "Law Enforcement, Section 31,"⁵ states that the exemption can be engaged by a public authority 'without any specific law enforcement responsibilities,' such as the Council.

26. To reiterate, the information that is being withheld under section 31 is emails exchanged between the Council and the Bona Vacantia division relating to the deceased's estate and details of the deceased's estate redacted from the Benefits and Revenue information disclosed (and referred to in paragraph 10.)

The applicable interests

27. The Council is concerned that disclosure would leave the deceased's estate vulnerable to fraud.

28. The Commissioner's guidance states that the term 'law enforcement' should be treated broadly but essentially 31(1)(a) can be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime.

⁵ [law-enforcement-foi-section-31.pdf \(ico.org.uk\)](http://ico.org.uk/law-enforcement-foi-section-31.pdf)

29. The Commissioner is satisfied that the first criterion as referred to within paragraph 23 has been met.

The nature of the prejudice

30. In order for the second criterion to be met, there must be a logical connection between disclosure and the prejudice envisaged.
31. In its internal review to the complainant, the Council explained that 'There are genuine concerns to be raised about disclosing the last known address of the deceased, as their property is likely to be unoccupied and may also still contain the deceased's personal papers and assets. Empty properties are an obvious target for (inter alia) vandalism, theft, arson and squatting.'
32. The Commissioner notes that the withheld information discusses the empty property, gives an indication how long it is to remain empty for and includes details of where the keys for the property are being held. The Council is concerned that disclosure of this information would 'highlight' the property to criminals.
33. The Council is concerned that any criminal activity at the empty property would affect its value and also 'would undoubtedly have a considerable impact upon property owners, occupiers, neighbours and the neighbourhood in general. Criminal activity would likely cause distress and have a detrimental effect upon property value, causing loss and damage.'

The likelihood of the prejudice

34. A prejudice based exemption such as section 31 must be engaged on either the basis of 'would' or 'would be likely to'. These terms have separate and distinct meanings in this context.
35. The higher threshold of prejudice is defined by the Commissioner's guidance as 'the chain of events is so convincing that prejudice is clearly more likely than not to arise.' The chance of prejudice has to be significant to engage this higher threshold of prejudice and greater than 50%.
36. The Council has applied the exemption on the basis of the lower threshold of prejudice, that disclosure 'would be likely' to result in prejudice.
37. The lower threshold is defined in the Commissioner's guidance as 'there must be more than a hypothetical or remote possibility of prejudice occurring; there must be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%.'

Is the exemption engaged?

38. Yes. Having reviewed the withheld information the Commissioner is satisfied that it engages section 31.
39. The complainant is concerned that 'The deceased's address is likely to be accessible to the public via the death certificate, so I do not believe Section 31 applies.'
40. The Commissioner acknowledges the complainant's concern. However, he considers there is a difference between placing information into the public domain and the GRO's process which allows individuals to request death certificates for a fee. An opportunistic criminal might not be aware of the deceased's death in order to request a copy of the death certificate. However, their interest might be piqued if information about an empty property is placed into the public domain.
41. Furthermore, a death certificate only offers basic information. However, if property is confirmed to be Bona Vacantia, it is highly likely that the owner has died with no next of kin – making the property and the estate more vulnerable.
42. The Commissioner notes that the deceased died in 2018 and the property might have sold by the time the request was made in 2021. However, delays due to the pandemic means that the property might have still been empty at the time that the request was made. Furthermore, the Council has also submitted arguments that disclosure would expose the deceased's estate, and the Land Registry, to bogus benefactor claims.
43. Since the Commissioner has established that the exemption is engaged he will move onto consider where the public interest lies, in maintaining the exemption or disclosure.

Public interest arguments

Public interest arguments in favour of disclosure

44. The Council has acknowledged that there is a public interest 'in how the Council deals with bona vacantia.'
45. The Council also believes that there is a public interest in empty residential properties being brought back into use, though it notes that disclosure would not expedite this process.
46. The Commissioner notes that there is always an inherent public interest in public authority's promoting accountability and transparency, the principles that underpin FOIA.

Public interest arguments in favour of maintaining the exemption

47. The Council assigns considerable weight to the prevention of crime; the public interest benefits of which are obvious. The Council has explained that to maintain the exemption is to maintain the efficient use of Police resources.
48. It has also explained that bona vacantia properties are becoming increasingly vulnerable to fraudulent claims of inheritance. The Commissioner notes that several websites exist that advertise unclaimed estates and instruct anyone who thinks they might be related to the deceased to get in touch.
49. The Council is concerned that 'disclosure would also impact upon the Land Registry's efforts to prevent and detect criminal activity. It would increase their requirement for anti-fraud measures and consume resources which could be better utilised elsewhere.'

Balance of the public interest test

50. The Commissioner considers that the balance of the public interest lies in maintaining the exemption. The Commissioner assigns considerable weight to protecting the deceased's estate and the Land Registry from criminal activity.
51. He notes that in the Council's internal review outcome it discusses whether disclosure would actually make the Council more accountable, or transparent, in relation to properties that it handles that are bona vacantia.
52. The Council has stated that it 'has proper procedures, policies and scrutiny functions in place to ensure propriety' but the Commissioner disagrees that disclosure would not help to increase public understanding on the process.
53. Even though disclosure would help inform this debate, the Commissioner considers the public interest lies says maintaining the exemption. He agrees with the Council when it indicates 'there are no credible allegations of misconduct or wrongdoing which may increase the public interest.' Ultimately there is no evidence of any maladministration or wrongdoing on the Council's part that might increase the public interest in disclosure.

Section 41 (information provided in confidence)

54. Section 41(1) of FOIA states:

"Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

55. To reiterate, the information that is being withheld in this instance is referral of the deceased to the council from the nursing home where they died and the cremation application for the deceased.

56. The Commissioner also notes that details related to deceased third parties have been withheld from the Revenue and Benefits department (referred to in paragraph 10). The Commissioner is going to use his discretion to proactively consider this information under section 41(1).

57. The Council's submission in relation to section 41(1) is lacking but the Commissioner will consider if it has applied the exemption appropriately.

Was the information obtained from another person?

58. Yes. The information has been provided to the Council by several individuals: staff from the care home where the deceased died and the doctor who certified the death.

59. The information provided to the Council's Revenue and Benefits department will have been provided by the next of kin, or individual responsible for reporting the death.

Would confirmation or denial that the information is held constitute an actionable breach of confidence?

60. In line with the decision reached in *Coco v A N Clark (Engineers) Limited* [1968] FSR415, a disclosure will constitute an actionable breach of confidence if it meets three criteria:

a) The information has the necessary quality of confidence.

b) The information was communicated in circumstances importing an obligation of confidence.

c) Unauthorised disclosure would cause a specific detriment to either the party which provided it or any other party.

The decision reached in *Coco v Clark* is referenced within the ICO's guidance, 'Information provided in confidence (section 41)'⁶.

Would disclosure constitute an actionable breach of confidence?

61. Information will have the necessary quality of confidence if it is more than trivial and is not otherwise accessible.
62. The complainant is clearly aware of the death of the individual to whom the request relates. That is obvious from the request itself. However, the referral from the care home discusses in detail the death of the deceased, including their health prior to their death, religion, financial status and details of their property including the items within it.
63. The cremation application includes medical certificates which outline the process of confirming death, cause of death and instructions for after the cremation.
64. The complainant may be aware of the death of the individual but the information described above is not, to the Commissioner's knowledge, otherwise accessible. Furthermore, the Commissioner considers the information to be more than trivial.
65. Furthermore, there is no evidence that the complainant is aware of the deceased individuals whose details have been redacted from the Revenue and Benefits information.

The information, if held, was communicated in circumstances importing an obligation of confidence

66. The Commissioner considers that an obligation of confidence can be expressed explicitly or implicitly. Whether there is an implied obligation of confidence will depend upon the nature of the information itself and/or the relationship between the parties.
67. The cremation referral includes a medical certificate completed by a doctor. There is guidance⁷ designed to assist the doctor filling out the form and page 6 of the guidance 'Right to Inspection' discusses the fact that the information is provided in confidence. It discusses the possibility that information included in the form might have been provided by the deceased in confidence.

⁶ [information-provided-in-confidence-section-41.pdf \(ico.org.uk\)](https://ico.org.uk/information-provided-in-confidence-section-41.pdf)

⁷ [The Cremation \(England and Wales\) Regulations 2008 Guidance to medical practitioners completing form Cremation 4 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance/the-cremation-regulations-2008-guidance-to-medical-practitioners-completing-form-cremation-4)

68. The guidance states 'To maintain confidentiality form Cremation 4 should be delivered to the intended recipient in a sealed envelope clearly addressed and marked CONFIDENTIAL, or in the case of electronic transmission they should be sent directly to the intended recipient.'
69. The death of an individual is clearly a sensitive matter and one which is reflected in the explicit obligation of confidence discussed above.
70. The information provided to the Council's Revenue and Benefits team will have similarly been provided as part of the administrative processes required when an individual dies.
71. Having considered the information, including the details of the third parties whose information is included in the Revenue and Benefits information, the Commissioner is satisfied that the information would have been communicated in circumstances importing an obligation of confidence.

Unauthorised disclosure would cause a specific detriment to either the party which provided it or any other party.

72. The Council has explained that when a person dies and 'there are no suitable arrangements for the disposal of the body the Council will arrange a funeral. Part of this exercise requires the gathering of the deceased's estate. The Council are by law able to collect all sums of money due or owing to the deceased and to sell any belongings in order to pay the funeral expenses. The residue of the estate is then passed on to the Treasury Solicitor.'
73. If the Council cannot be trusted to keep the information that it receives for this purpose confidential, individuals may be reluctant to provide the necessary information. In turn, this would hamper the Council's ability to perform its role.
74. The Council explained in its refusal notice that 'The Council has a duty of confidence, not only to the deceased but also to any surviving relatives who may not yet have been traced – and so the disclosure of the information could constitute an actionable breach of confidence.'
75. Furthermore, whilst the Commissioner recognises that the Council held a public health funeral for the deceased, this is not a guarantee that there are no surviving relatives who might be distressed by the disclosure of information provided in confidence.

76. The Commissioner has previously accepted the duty of confidence can survive the death of the confider. Furthermore, it is not necessary to establish there is a personal representative of the deceased to accept that section 41 can be engaged. The Commissioner's guidance 'Information about the deceased'⁸ states 'The important thing is to establish in principle that a personal representative might exist who can take such action. A public authority should not lay itself open to legal action simply because at the time of the request it is unable to determine whether or not a deceased person has a personal representative.'

The Commissioner's view

77. As the Commissioner has previously explained, the Council's submission in relation to section 41 is lacking. However, he is satisfied that the exemption is engaged.

78. Since the Commissioner is satisfied that section 41(1) is engaged in relation to the withheld information, he does not consider it necessary to consider the Council's application of section 40(2) to any of the information contained within the withheld information.

79. While section 41(1) of FOIA is an absolute exemption, and therefore not subject to the public interest test, the common law duty of confidence contains an inherent public interest test. The Commissioner will therefore carry out such a test which assumes that information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence.

Public interest in disclosure

80. Again, the Commissioner notes that there is always a public interest in upholding the values of transparency and accountability that underpin FOIA.

81. The Commissioner also acknowledges that disclosure would increase public understanding, to a certain extent, in how cases like these are dealt with by the Council.

Public interest in maintaining the confidence

82. The Commissioner's guidance states 'Any disclosure of confidential information will to some degree, undermine the principle of

⁸ [Document history and version control \(ico.org.uk\)](https://ico.org.uk/document-history-and-version-control)

confidentiality and the relationship of trust between public authorities and confiders of information.'

83. The extent to which this trust will be affected depends of the context and the sensitivity of the information. In this case, the Commissioner believes that trust in the Council would be eroded if it were to disclose information it processes for the purpose of arranging a public health funeral and processing the deceased's estate.
84. The principle of confidentiality is particularly important here as local authorities rely on circumstances such as this being reported to it voluntarily so it can carry out its obligations under section 46 of the Public Health (Control of Disease) Act 1984⁹ and the Council Tax (Administration and Enforcement) Regulations 1992.¹⁰
85. As previously discussed, the duty of confidence can survive the death of the confider and there is a strong public interest in protecting the privacy of individuals.

The balance of the public interest

86. In this instance, the Commissioner considers that the public interest lies in maintaining the confidence.
87. Whilst the Commissioner acknowledges that the withheld information is of importance to the complainant, he must decide whether the public interest in disclosure of the information outweighs that in maintaining the duty of confidence. To the Commissioner, this request represents a private interest and not one which would serve the greater good of the public.
88. The Commissioner recognises the public interest surrounding the transparency of processes, however he is of the view that there is no wider public interest in the information which is the subject of this request. Whilst the Commissioner recognises there is some wider public interest in how local authorities might handle Bona Vacantia cases, he doesn't consider that disclosure of the information provided in confidence would help to inform this debate.

⁹ [Public Health \(Control of Disease\) Act 1984 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1984/145)

¹⁰ [The Council Tax \(Administration and Enforcement\) Regulations 1992 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/1992/1200)

Section 40 – personal information

89. The Commissioner notes that, within the Revenue and Benefits information, the Council has redacted the signatures and names of its staff.

90. Section 40(2) of FOIA states:

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

- (a) It constitutes personal data which does not fall within subsection (1), and
- (b) The first, second or third condition below is satisfied.”

91. In this instance the relevant condition is contained in section 40(3A)(a) which states:

“The first condition is that the disclosure of the information to a member if the public otherwise than under this Act-

- (a) Would contravene any of the data protection principles.”

92. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA18'). If this is not the case then section 40 cannot be used as a basis for refusing to disclose the information.

93. Secondly, and only if the Commissioner is satisfied that the requested information constitutes personal data, he must establish whether disclosure of that information would breach any of the data protection principles.

Is the requested information personal data?

94. Part 1, Section 3(2) of the DPA18¹¹ defines personal data as:

“any information relating to an identified or identifiable living individual.”

95. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable from that information.

¹¹ [Data Protection Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

96. The Commissioner is satisfied that the names and signatures of the Council's staff represent their personal data. The fact that information constitutes personal data does not automatically exclude it from disclosure under FOIA. The Commissioner must now consider whether disclosure of the requested information would contravene any of the data protection principles.
97. The most relevant data protection principle in this case is principle (a) which states that "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"¹².

Would disclosure contravene principle (a)?

98. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an FOI request if to do so would be lawful, fair and transparent.
99. In order to be lawful, one of the lawful bases listed in Article 6(1)¹³ of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

Lawful processing: Article 6(1)(f) of the UK GDPR

100. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states: "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data."
101. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under the FOIA, it is necessary to consider the following three-part test:
102. **i) Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

¹² [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

¹³ [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interest test

103. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may represent legitimate interests; they can be the requester's own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin FOIA, or may represent the private concerns of the requestor.

104. It is important to remember that disclosure under FOIA is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).

105. In this case it is not clear why the complainant is seeking access to the information about the deceased although they are entitled to do so. However, from the request it does not appear likely that the complainant is concerned with the names of the employees of the Council. Nevertheless, bearing in mind the broad principles of accountability and transparency that underpin FOIA, the Commissioner is satisfied that there is a wider legitimate interest in disclosure of this information.

Necessity test

106. The Commissioner must consider if disclosure is necessary for the purpose that this wider legitimate interest represents.

107. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under FOIA is necessary to meet the legitimate interest identified, or whether there is another way to do so that would interfere less with the privacy of individuals.

108. The Commissioner is not convinced that disclosure of the staff names and signatures are necessary to meet what appear to be the complainant's main interests, which is any information held relating to the deceased, or any wider legitimate interest.
109. Ultimately, the Commissioner believes that any decision made by the Revenues and Benefits department will be made by an individual acting in their official capacity and representing the Council. The names and signatures of the staff in question does not make the Council any more transparent about how it processes Bona Vacantia cases or the council tax arrangements that must be made when someone dies – the latter information has in fact been disclosed to the complainant.

The Commissioner's view

110. The Commissioner has therefore decided that disclosure is not necessary to meet any legitimate interest in disclosure and he has not gone on to conduct the balancing test.
111. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a). The Commissioner has therefore decided that the Council was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Section 10 – time for compliance

112. Section 10 time (for compliance with the request) states:

“...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

113. As discussed in paragraphs 10 and 11, during the course of this investigation the Council disclosed the majority of the information held by its Revenue and Benefits department and the information it held relating to the funeral of the deceased.
114. In line with section 10, any information eligible for disclosure should be disclosed within twenty working days. Therefore, the Council has breached section 10.

Right of appeal

115. 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

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

116. 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.

117. 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

Alice Gradwell
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