

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2023

Public Authority: Bristol City Council
Address: City Hall
PO Box 3399
Bristol
BS1 9NE

Decision (including any steps ordered)

1. The complainant requested information from Bristol City Council ("the Council") about the declared interests of the elected Mayor.
2. The Commissioner's decision is that the Council was correct to withhold some information within the scope of the request under section 40(2) of FOIA, with the exception of specified information detailed in the confidential annex.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council should provide the complainant with the information detailed in the confidential annex. The confidential annex has not been provided 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 7 April 2022, the complainant wrote to the Council and requested information in the following terms:

“Under the Freedom of Information Act 2000 I wish to see the following:

Full copies of all declarations/registers of interests forms (paper and digital) submitted by [name redacted] since May 2016.”
6. The Council responded to the request on 16 May 2022, providing a redacted copy of the Mayor’s ‘Register of Member’s Interests’ form and citing section 40(2) of FOIA (personal data) to withhold the redacted information.
7. Following an internal review, the Council wrote to the complainant on 22 June 2022. It stated that it upheld its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 22 June 2022, to complain about the way their request for information had been handled as they were unhappy about “redactions to property and land owned by the Mayor”.

Reasons for decision

Section 40 personal information

9. This reasoning covers whether the Council was correct to apply section 40(2) of FOIA to the request.¹
10. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

11. In this case, the Commissioner is satisfied that the withheld information is personal data as it is information about an identifiable living individual.
12. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
13. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
14. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
15. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
16. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
17. In the Commissioner's view, a key issue is whether the individual concerned has a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to

them as individuals, and the purpose for which they provided their personal data.

18. In its submissions to the Commissioner, the Council explained that it considered that disclosure of the information withheld from the part of the form complained about, would present a "security risk" and "risk of harassment" to the data subject if disclosed and as such, "indicates a clear risk to the Mayor's rights and freedoms".
19. The Council advised the Commissioner that, with regard to the withheld information complained about, this is:

"... outside of his scope as the Mayor and is in regards to his private life. Disclosure of this information is outside of the reasonable expectations of the Mayor as an individual. There are currently processes in place to ensure that all the Declaration of Interest forms are scrutinised by the Council's Monitoring Officer to ensure the data withheld is correctly classified as sensitive and therefore, not publicly available data."
20. Based on the above factors, the Commissioner has determined that, with regard to some of the withheld information, the fundamental rights and freedoms of the individual outweighs the legitimate interest identified above. The Commissioner therefore considers that disclosing some of the information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. Therefore, the information in question is exempt under section 40(2) of FOIA.
21. However, the Commissioner is of the opinion that, with regard to some specific parts of the withheld information (as specified in the confidential annex provided to the Council), the fundamental rights and freedoms of the individual do not outweigh the legitimate interest identified above and that accordingly it would be lawful to disclose that part of the redacted information.
22. With regard to that specific information that the Commissioner considers would be lawful to disclose, he must then consider whether to do so would be fair and transparent in relation to the data subject, as required under Article 5(1)(a) of the UK GDPR.

The Commissioner considers that the processing of the specified information detailed in Annex A would be fair for the following reasons:

- The data subject is an elected public official, who represents the interests of the city's citizens.

- The information was gathered direct from the data subject, who provided it knowing that they had an obligation, as a public official, to declare their personal interests.
 - It is justified as the purpose of the Register of Member's Interests is to facilitate openness and transparency in public life.
 - The data subject should be aware that the Register of Member's Interests is to be made publicly available.
 - Whilst it is acknowledged that some information contained within a Register of Member's Interests may be withheld from public disclosure for certain reasons, such as a public official's home address may be redacted for reasons of security/personal safety, it is considered that the data subject, in this case, should have a reasonable expectation that the information specified at Annex A would be disclosed to the public.
 - It is considered that the disclosure of the information specified at Annex A will not have an unjustified adverse effect on the data subject.
23. The Commissioner considers that the processing of the specified information detailed in Annex A would meet the UK GDPR Article 5(1) requirement of transparency as the data subject should be aware that the Register of Member's Interests declarations are available on the Council's website for the purpose of being open and transparent about elected public officials personal interests. It is further noted that the form itself includes the following statement:
- "NB : Before completing this pro forma, members are recommended to study the DCLG guidance document "Openness and transparency on personal interests""
24. The Council did not provide its initial response to the complainant within 20 working days and, therefore, breached section 10 of FOIA.

Right of appeal

25. 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

26. 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.
27. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF