

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2023

Public Authority: South Somerset District Council
Address: Council Offices
Brympton Way
Yeovil
Somerset
BA20 2HT

Decision (including any steps ordered)

1. The complainant submitted a multi-part request to South Somerset District Council (SSDC) regarding information which was published on its website, and information which was made available to the media and the police. SSDC disclosed the information for some of the request, but withheld the rest by virtue of section 40 (personal information) of FOIA.
2. The Commissioner's decision is that SSDC was correct to rely on section 40(1) of FOIA to refuse to disclose the information sought by the final two parts of the request. However, SSDC breached sections 10(1) and 17(1) of FOIA by failing to respond within 20 working days.
3. The Commissioner does not require SSDC to take any steps as a result of this decision.

Request and response

4. On 11 March 2022, the complainant wrote to SSDC and requested information in the following terms:

"It has been brought to my attention that another misleading document stating my name was issued by SSDC on it's public website,

detailing a motion by Cllr Martin Whale at the last Council meeting on 28th February 2022.

This information also appeared prior to the Council meeting in the media, with my photograph and name situated above misleading and defamatory comments from the Motion. SSDC did not dismiss me for the reasons published in this motion and no one at SSDC has had the courtesy to advise me of this further action, nor the basis of it.

Please confirm:

- a) who sanctioned the publication of this motion in its final form at SSDC?
 - b) when it was issued publicly online and to the media?
 - c) Please confirm who at SSDC agreed to hand the internal investigation case to the Police and when?
 - d) Please confirm which criminal offences you are alleging I have committed?
 - e) Please provide copies and details of the evidence that you hold against me to confirm the basis upon which this case has been passed to the Police?"
5. SSDC responded on 23 May 2022. It disclosed relevant information to parts a) and b) of the request. It withheld the information at part c) by virtue of section 40(2), and at parts d) and e) by virtue of section 40(1).
 6. The complainant requested an internal review on 28 May 2022, in which they highlighted their dissatisfaction with the responses to parts d) and e) of the request in particular.
 7. At internal review SSDC took the decision to reconsider the questions at parts d) and e) under the provisions of a Subject Access Request (SAR), rather than FOIA, due to them clearly relating to the requesters own personal data. It wrote to the complainant on 27 September 2022 and provided its SAR response.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way their request for information had been handled.

9. The Commissioner considers the scope of his investigation is to determine whether SSDC was entitled to withhold the information at parts d) and e) of the request under section 40(1) of FOIA.

Reasons for decision

Section 40 – personal information

10. Section 40(1) of FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.

Is the information personal data?

11. Section 3(2) of the DPA defines personal data as:
“any information relating to an identified or identifiable living individual”.
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. 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.
14. 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.
15. In this case, the Commissioner is satisfied that the information at parts d) and e) of the request clearly relates to the complainant themselves.
16. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the balance of public interest. Nor is he required to consider whether or not the complainant would be happy to have their personal data published to the world at large. If the exemption applies, the information is not available via FOIA.
17. The Commissioner therefore finds that section 40(1) of FOIA is engaged in respect of parts d) and e) of the request.

Other matters

18. The Commissioner notes that SSDC subsequently went on to consider parts d) and e) of this request under the provisions of a SAR, and provided some further information to the complainant in a separate response.
19. It is important to note that a disclosure of information under FOIA is a disclosure to the world at large, whereas a SAR response is a private transaction between the public authority and the requester. There are very limited circumstances where the Commissioner would find it appropriate, or in fact lawful, to order a public authority to disclose a complainant's own personal data, or that of a third party, to the world at large in response to a request under FOIA.
20. The Commissioner is satisfied that SSDC took appropriate steps in refusing the parts of the request which constituted the requester's own personal data under section 40(1) of FOIA, but then considering those parts of the request under the provisions of a SAR instead. The content of the SAR response does not form the basis of this decision, which applies only to SSDC's handling of the request under FOIA.

Right of appeal

21. 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

22. 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.
23. 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

Catherine Fletcher
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