

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2023

Public Authority: City of Bradford Metropolitan District Council
Address: Britannia House
Hall Ings
Bradford
BD1 1HX

Decision (including any steps ordered)

1. The complainant requested information from the City of Bradford Metropolitan District Council ("the Council") relating to the Council's current and previous Data Protection Officers (DPO).
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) (personal information) of the FOIA to refuse to provide the names of previous DPOs.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. The complainant made the following information request to the Council on 5 March 2023:

"Under the Data Protection Act 2018, Chapter 4, Section 69, paragraph 4 you are required to provide the contact details of the Data Protection Officer.

Data Protection Act 2018

69. Designation of a data protection officer

(4)The controller must publish the contact details of the data protection officer and communicate these to the Commissioner

<https://www.legislation.gov.uk/ukpga/201...>

I further take note that you have been registered with the Information Commissioner's Office (ICO) since 19 April 2002 under registration number Z6583017

<https://ico.org.uk/ESDWebPages/Entry/Z65...>

Therefore, I would like the named individuals whom have been acting as the DPO for Bradford City Council from the 19th of April 2002 until the 1st of March 2023. These contact details, which the law requires you to publish under DPA 2018, should include the DPO's full name and duration holding the post of DPO at Bradford City Council over the specified time period."

5. The Council responded on 17 March 2023 and informed the complainant that as the Council has only been required to have a DPO since 25 May 2018, it does not hold any information within the scope of the request from before that date. It provided the complainant with the name, start date and contact details of the current DPO.
6. It also provided the complainant with dates that its previous DPOs started and left the role as well as the contact details of those DPOs. However, the Council refused to provide the names of its previous DPOs citing section 40(2) (personal information) of the FOIA as its basis for doing so.
7. On 22 March 2023, the complainant requested an internal review. The Council provided the complainant with the outcome of its internal review on 24 March 2023 in which it upheld its position.

Reasons for decision

8. This reasoning covers whether the Council is entitled to rely on section 40(2) of the FOIA to withhold the names of its previous DPOs.
9. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
10. Section 3(2) of the Data Protection Act 2018 defines personal data as:

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

11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. In this case the Council has withheld the names of its previous DPOs. The Commissioner is satisfied that this information would relate to and identify the Council's previous DPOs. He therefore considers that the withheld information falls within the definition of 'personal data' in section 3(2) of the DPA.
13. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
14. In the case of an FOIA request, 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.
15. 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.
16. The Commissioner considers that in this case, the complainant is pursuing a legitimate interest as the request relates to the Council's compliance with the Data Protection Act (DPA), specifically the requirement to have a DPO.
17. However, the Commissioner considers that by disclosing the contact details of its previous DPOs and the dates that each DPO started and left the role, the Council has already fulfilled the legitimate interest. The Council has demonstrated that it has had a DPO in place since 25 May 2018 and has therefore met its obligations under the DPA. Therefore, the Commissioner does not consider that disclosure of the names of the Council's previous DPOs is necessary to meet the legitimate interest in this case.
18. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest identified, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it would be unlawful. It therefore does not meet the requirements of principle (a) (lawful processing).

19. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to withhold the names of the Council's previous DPOs.

Right of appeal

20. 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

21. 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.
22. 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

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF