

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

### **Decision notice**

**Date:** 21 June 2023

**Public Authority:** Bradford City Council  
**Address:** City Hall  
Centenary Square  
Bradford  
BD1 1HY

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

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1. The complainant requested from Bradford City Council, ('the council'), information relating to its expenditure over £500. The council refused the request on the basis that the exemption in section 22 of FOIA applied (information intended for future publication).
2. The Commissioner's decision is that the council was correct to apply section 22 to withhold the information.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 15 February 2023, the complainant wrote to the council and requested information in the following terms:

"Thank you for publishing your spend data here:

[https://datahub.bradford.gov.uk/ebase/datahubext.eb?search=Bradford+Council+expenditure+greater+than&ebd=0&ebp=10&ebz=1\\_1676487214406](https://datahub.bradford.gov.uk/ebase/datahubext.eb?search=Bradford+Council+expenditure+greater+than&ebd=0&ebp=10&ebz=1_1676487214406)

However, I notice that you haven't published any spending data since December 2021...

... So, I'd like to make a request under the Freedom of Information Act for all transactions over £500 from January 2022 to at most a quarter in arrears from the date at which you publish in response to this request.

Please provide the data in a machine-readable format (preferably csv). As a minimum, please make sure to include the date, value and recipient of each transaction. Please also provide details on the procurement category of each transaction if you have it."

5. The council responded on 16 March 2023. It withheld the information, citing section 22 of FOIA (information intended for future publication).
6. The complainant requested that the council carry out a review on 20 March 2023. Following its internal review, the council provided its response to the complainant on 18 April 2023. It upheld its position that section 22 was applicable but said that it intended to publish the data by the end of April 2023.

## Scope of the case

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7. The complainant contacted the Commissioner on 9 May 2023 to complain about the way their request for information had been handled. The complainant noted that the information was intended to be published by the end of April 2023, but that that had not occurred, and therefore they wished the Commissioner to review the application of section 22 to the information.
8. The Commissioner therefore considers that the scope of his investigation is to decide whether the council was correct to apply section 22 to withhold the requested information.

## Reasons for decision

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### Section 22(1) – information intended for future publication

9. Section 22(1) of FOIA says that information is exempt information if:
- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
  - (b) the information was already held with a view to such publication at the time when the request for information was made, and
  - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
10. For the exemption in section 22 to apply, the public authority must have a settled expectation that the information will be published at some future date – even if no precise date has been set.
11. The council said that it intends to publish the data as this is required under the Local Government Transparency Code 2015<sup>1</sup> ('the code'). It clarified that it has published data of this sort since 2011. The Commissioner therefore accepts that there was a clear intention to publish the data at a point in the future at the time that the request was responded to. Point (a) of the test is therefore met.
12. Secondly, the council held the data prior to the request, the code states that the information should be published, and as noted, the council has published this sort of data previously. The Commissioner is therefore satisfied that part (b) of the test has also been met. The Commissioner accepts that the information was already held with a view to its publication at the time that the request was received.
13. As regards part (c) of the test, the council explained why it was reasonable for it to withhold the information from disclosure until such time as it is published.

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<sup>1</sup> <https://www.gov.uk/government/publications/local-government-transparency-code-2015/local-government-transparency-code-2015#part-2-information-which-must-be-published>

14. It explained that it had recognised that there is a risk that personal data may be disclosed through publication of the information. It noted that the risk was low, but that there was nevertheless a risk that its disclosures may fail to comply with its obligations under the Data Protection Act 2018 ('The DPA'). It therefore decided to remove all of the previously published data from its website and carry out an audit of its processes and introduce a reporting and validation process to ensure its reporting was compliant. It would then publish the data.
15. It said that it is in the process of introducing a new system which is intended to automatically redact personal data where payments are being made to an individual. However, the new system currently still requires manual intervention to establish whether the data is for an individual or to identify if payments have been made to a sole trader (and therefore an individual under the DPA). The council explained that the task of reviewing a significant amount of data was taking longer than it had initially expected.
16. The council said that the process is ongoing, and that disclosure of the requested information prior to the process being completed risks data breaches occurring, affecting the data protection rights of the individuals concerned. It said that it is therefore withholding publication of the data until this process has been completed, and the risk of it failing to comply with the DPA has been addressed. It confirmed that this process will be concluded shortly.
17. The complainant argued that the Commissioner has previously issued a decision notice which addressed similar issues, and where the decision was that it was not reasonable to withhold information from disclosure under similar circumstances<sup>2</sup>. They also argued that the council is under an obligation to publish the information in accordance with the code and that it is currently failing to do that.

#### The Commissioner's conclusions

18. The Commissioner is satisfied that the concerns expressed by the council are genuine, and that taking action to prevent inappropriate breaches of the DPA prior to publishing the information is warranted in this case. Data processors are required by the DPA to take steps to ensure compliance with the rights of individuals under the DPA. They are

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<sup>2</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1623742/fs\\_50591411.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1623742/fs_50591411.pdf)

also required to take steps to ensure the security of the personal data which they hold. The council is in the process of ensuring that its processes meet those requirements, and as part of that process it is reviewing the information which will be included. It is therefore reasonable for the council to withhold the information from disclosure until such time as it is able to publish the information fully, and in compliance with its obligations under DPA.

19. Unwarranted disclosures may affect the individuals' businesses and their personal lives. There is a strong onus upon authorities to prevent inappropriate disclosures of personal data, and fines can be imposed where organisations have failed to take appropriate measures to prevent personal data from being disclosed inappropriately.
20. The Commissioner has therefore decided that it was reasonable for the council to apply section 22 to the information. The exemption is therefore engaged, and the Commissioner must consider the public interest test required by section 2 of FOIA.

#### The public interest

##### The public interest in the information being disclosed.

21. The central public interest in the disclosure of the information is to ensure transparency over public spending and financial decision making by the council.
22. There is an obligation and an expectation that local councils will publish the information in line with the code. This is in order that the public can hold them to account for their spending. For the reasons outlined, however, the council has not published the data at this point.

##### The public interest in the exemption being maintained

23. The council argued that it is in the public interest that the assurance process is concluded before making the information available to the public. It has a legal obligation to ensure that the information it discloses does not include personal data which would fail to comply with its obligations under the DPA.
24. It therefore argues that the greater public interest rests in the exemption being maintained until it is confident that inadvertent data breaches would not occur as a result of a disclosure of the information.

25. There is a strong public interest in the council meeting its legal obligations and ensuring that the data of individuals which it holds is processed securely, and in accordance with its obligations under the DPA.

The Commissioner's conclusion on the public interest

26. Whilst not all disclosures of this nature would fail to comply with the requirements of the DPA, some of them may do, and where that is the case the council risks potentially unlawful disclosures of the personal data of individuals. Fines could be issued against the council for data breaches of this nature.
27. There is a strong public interest in ensuring that the council's disclosure complies with the requirements of the DPA in order to protect the rights and legitimate interests of individuals under that DPA.
28. The Commissioner's decision is therefore that the public interest rests in section 22 being maintained for the requested information. The Commissioner therefore does not require the council to take any steps.

## Right of appeal

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29. 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)

30. 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.

31. 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 .....**

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**