

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2024

Public Authority: Cheltenham Borough Council
Address: Municipal Offices
Promenade
Cheltenham
GL50 9SA

Decision (including any steps ordered)

1. The complainant requested information from Cheltenham Borough Council ("the Council") relating to Civil Enforcement Officers and secondary employment.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(5B) (personal information) to refuse to confirm or deny whether the information requested in parts 2 and 3 of the request is held.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 6 September 2023, the complainant wrote to the Council and requested information in the following terms (numbering added by the Commissioner):

"I should be obliged if you would respond to the following questions, under the above legislation:

1. Are Civil Enforcement Officers employed by you council allowed, under their contract of employment, to take on a secondary employment, in addition to their role as CEOs with the council?

2. Are any Civil Employment Officers [sic] employed by your council also the holders of licences to drive taxis, issued by your council?
3. Is Civil Enforcement Officer [identification number redacted] also the holder of a licence to drive taxis, issued by your council?"
5. The Council responded on 12 September 2023 and provided the complainant with information in response to part 1 of the request. However, it refused to confirm or deny whether it held the information requested in parts 2 and 3 of the request citing section 40(5B) (personal information) of FOIA as its basis for doing so.
6. On 5 October 2023, the complainant requested an internal review. The Council provided the complainant with the outcome of its internal review on 2 November 2023 in which it maintained its position.

Reasons for decision

7. This reasoning covers whether the Council is entitled to rely on section 40(5B) to refuse to confirm or deny whether the information requested in parts 2 and 3 of the request is held.
8. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny that it holds particular information if the mere act of confirming or denying that information is held would, in itself, reveal personal data about an identifiable individual and would contravene one of the data protection (DP) principles.
9. Section 3(2) of the Data Protection Act 2018 defines personal data as:

"any information relating to an identified or identifiable living individual."
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. The Commissioner considers that the Council would disclose the personal data of the Civil Enforcement Officer referred to in part 3 of the request if it were to confirm or deny that it held the information requested in part 3 of the request. By confirming or denying that it held the information requested in part 3 of the request, the Council would confirm whether or not the Civil Enforcement Officer had a taxi licence. This would be the personal data of that individual as the information relates to them and they are identifiable.

12. The Commissioner also considers that the Council would disclose the personal data of the Civil Enforcement Officer referred to in part 3 of the request if it denied holding the information requested in part 2 of the request. If the Council denied holding the information requested in part 2 of the request it would confirm that the Civil Enforcement Officer does not have a taxi licence. As outlined above, that information would be the personal data of the Civil Enforcement Officer.
13. The next step is to determine whether such a confirmation or denial would contravene any of the data protection principles. In this case, the Commissioner considers the most relevant data protection principle to be principle (a).
14. Article 5(1)(a) of the UK GDPR, which concerns this principle, states the following:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
15. In the case of a FOIA request, personal data is processed when it is disclosed in response to a request. This means that the information can only be disclosed, or as in this case the public authority can only confirm whether or not it holds the requested information, if to do so would be lawful, fair, transparent.
16. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether a legitimate interest is being pursued, whether confirming or denying that the requested information is held is necessary to meet that legitimate interest, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
17. In this case the Commissioner accepts that there is a legitimate interest in the general transparency of the Council. He accepts that it is necessary, to some extent, for the Council to confirm or deny whether the information requested in parts 2 and 3 of the request is held in order to meet this legitimate interest.
18. However, the Commissioner considers that if the Council were to confirm that it held the information requested in parts 2 and 3 of the request it would cause distress to the Civil Enforcement Officer referred to in part 3 of the request. The Civil Enforcement Officer would have a reasonable expectation that the Council would not disclose whether or not they have a taxi licence as this information relates to their private life and is their personal data.

19. Therefore, the Commissioner's decision is that the Council is entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether the information requested in parts 2 and 3 of the request is held.

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.

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