

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2017

Public Authority: Preston City Council
Address: Town Hall
Lancaster Road
Preston
PR1 2RL

Decision (including any steps ordered)

1. The complainant requested details relating to a 'liability order' associated with non-payment of council tax. Preston City Council (the 'Council') provided the information it held relevant to the request. The complainant disputed that he had been given all the information requested.
2. For part 1 of the request, the Commissioner is satisfied that the requested information does not exist because the complainant is mistaken as to the legislation which governs council tax proceedings. In respect of the remainder of the request, the Commissioner has decided that the Council should have instead relied on the 'neither confirm nor deny' provision in section 40(5)(a) of FOIA and it was not obliged to confirm whether or not it held the requested information. The Commissioner requires no steps to be taken as a result of this decision.

Background

3. This request and ensuing complaint concerns the alleged non-payment of council tax by the complainant and the resulting 'liability order'. Therefore the Commissioner asked the Council to explain what happens when an individual does not pay council tax leading to the issuing of a liability order, and what that order means.
4. In response, the Council explained that Regulation 18 of the Council Tax (Administration and Enforcement) Regulations 1992 states that each year the Council must issue a council tax demand which outlines

the amount owing, the statutory monthly instalments and the relevant payment date.

5. If an instalment is not paid as outlined by the demand notice, regulation 23 of the 1992 Council Tax Regulations states that the Council must serve a reminder notice. If an individual fails to pay the instalment due within seven days of the reminder notice being issued, the unpaid balance of the demand notice becomes payable at the end of a further period of seven days. Thereafter the Council may apply to the Magistrates' Court for a 'liability order'; the Council will then start proceedings for the liability order by making a complaint to the justices (often as part of a list of individuals in arrears) requesting a summons to be issued by the court. Once the summons is issued by the court the Council will arrange to serve it on the defendant.
6. On the day of the hearing the Council makes a bulk application for all non-attenders and the court must make the liability order if, after hearing evidence presented by the Council's officer, it is satisfied that the sum has become payable by the defendant and that it has not been paid.
7. The Commissioner also asked how an individual is notified of such a decision/liability order and what is issued. The Council said that the individual is issued with a demand notice, followed by a reminder notice. Thereafter a summons is sent to attend court, setting out the purpose, location, date, time and amount the Council will be applying for.
8. If the liability order is made, the Council will send the individual a 'notice of liability order', usually issued the day after the court hearing. This confirms the date the liability order was granted, the amount of costs incurred and the next course of action (including the possible utilisation of enforcement agents and the associated costs).
9. On the day of the hearing the Council provides the court with two updated complaint lists. If the justices are satisfied that the sums in the list have become payable, and have not been paid by those named on the list, the court will make the liability orders.
10. The making of the orders is confirmed by one of the justices signing the order noted in the updated complaint lists. There is no requirement for the liability order to be sealed by a court stamp. The court retains one signed copy of the list for its records and the original copy is handed to the Council's representative.
11. The making of the liability order imposes an obligation on the debtor to supply relevant information (employer, earnings, work ID number and other sources of income) to the Council. A request for this information is therefore issued by the Council to each person in the

list of liability orders made by the justices (notice of liability order). The notice informs the debtor that the liability order has been made. The Council, rather than the magistrates' court, provides full disclosure during the legal proceedings.

Request and response

12. On 21 October 2016 the complainant wrote to the Council via the *WhatDoTheyKnow.com* website¹ and requested information in the following terms:

"Preston City Council have previously sent me a letter (Notice of Liability Order) stating... "A Liability Order for the sum of £233.06 was issued against you by Preston Magistrate's [sic] Court on 28 September 2016 in respect of Council Tax"

Therefore a physical copy of the order addressed to myself on Court headed paper stamped signed and sealed by the court must be available.

(Although You have previously stated "There is no requirement for the liability order to be "stamped" to ensure enforceability in the magistrates court.")

1: Please provide me with documentation to prove that PCC are excluded from complying with the Civil Procedure Rules CPR40.2 that states "all court orders must be sealed by the court proceedings.")

2: I would like to give you the opportunity (once more) to provide me with a paper copy of the above order issued against me by "Preston Magistrates Court" on 28th September 2016.

(Incidentally, I have spoken at length with Preston Magistrates Court and they assure me that No liability Order was issued by "themselves" against me despite your insistance [sic] that they did.)

3: Please provide me with evidence that Preston Magistrates Court issued the order.

4: If the Courts didn't issue the order, please provide me with documentation stating who did.

¹ https://www.whatdotheyknow.com/request/council_tax_liability_orders_18

5: If it was pcc that issued the liability order please provide me with copies of the law that gives pcc the right to do so.

6: If it was pcc that issued the liability order please provide me with copies of the law that gives pcc the right to mislead people into thinking that the liability orders are issued by Preston Magistrates Court when, in fact, they are not."

13. The Council responded on 26 October 2016. It provided some information within the scope of the request (for parts 1-3) and said that parts 4-6 were 'not applicable'. Specifically it explained that a 'liability order' is not an actual physical document but is a legal term used to describe a decision by the court confirming that money is owed. It also told the complainant:

"The list that is signed by the Magistrates on the court date is the actual document that gives the Local Authority the go ahead to take further action to collect the unpaid Council Tax. A copy of this was sent to you on 11 October 2016.

Evidence that Preston Magistrates Court issued the order has already been provided with the details of the granting of the order. The list was signed by a magistrate at Preston Magistrates Court."

14. The complainant requested an internal review on 26 October 2016 stating that he had spoken with Preston Magistrates' Court and had been informed that no liability order had been issued against him; he also raised a number of related questions. The Council sent the outcome of its internal review on 28 October 2016 upholding its original position.

Scope of the case

15. The complainant contacted the Commissioner on 31 October 2016 to complain about the way his request for information had been handled.
16. The Commissioner understands that the information in scope of the request relates to a council tax liability order. The complainant disputes that he has been provided with all the information held in respect of part 1 of the request so this will be considered below. Because parts 2-6 of the request relate to the complainant personally, the Commissioner has instead considered whether the Council should have instead relied on the 'neither confirm nor deny' provision in section 40(5)(a) of FOIA. This subsection provides that it is not necessary to tell the requester whether the information requested is held if this information would be exempt under section 40(1).

17. In this case the Commissioner must decide whether confirmation or denial that the requested information is held should be in the public domain. The Commissioner recognises that the complainant has personal reasons for making his request. However, neither the identity of the applicant nor any personal reasons or private interests for wanting the requested information are relevant to the consideration of an FOIA request.

Reasons for decision

Part 1 of request

18. In relation to part 1 of the request, the Commissioner queried the complainant's view that court orders must be sealed by the court proceedings in accordance with the Civil Procedure Rules CPR40.2. The Council has explained that the Civil Procedure Rules do not apply to these proceedings; instead the process for a liability order is governed by the provisions of the Council Tax (Administration and Enforcement) Regulations 1992 and, to a very limited extent, by the Magistrates' Court Act 1980 and the Magistrates' Court Rules 1981. The Civil Procedure Rules apply to civil litigation in the civil division of the Court of Appeal, the High Court and the County Court (section 1 of the Civil Procedure Act 1997). The Commissioner is satisfied with the Council's explanation which in turn means that the documentation requested by the complainant does not exist; she has therefore not considered this matter further.

Parts 2-6 of request

19. Although some information has been disclosed by the Council in response to parts 2-6 of the request, the Commissioner is mindful of her guidance² on the application of the 'neither confirm nor deny' provision in section 40 of FOIA which states:

"Information in the public domain

In some cases, it may be already known or obvious that information must be held, and in those circumstances confirming that information is held may not cause any harm (although, technically, it

² https://ico.org.uk/media/for-organisations/documents/1166/when_to_refuse_to_confirm_or_deny_section_1_foia.pdf

may still be possible to neither confirm nor deny if a relevant exclusion applies). When considering what a confirmation or denial would reveal, a public authority isn't limited to considering what the public may learn from such a response; if it can demonstrate that a confirmation or denial would be revealing to someone with more specialist knowledge, this is enough to engage the exclusion to confirm or deny."

20. This means that even if it is already obvious that information must be held, *"technically, it may still be possible to neither confirm nor deny if a relevant exclusion applies"*. By extension, it is possible to change to 'neither confirm nor deny' if that would have been the correct response originally.

Section 40(5) neither confirm nor deny in relation to personal information

21. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
- (a) the duty to inform the applicant whether or not requested information is held and, if so,
 - (b) the duty to communicate that information to the applicant.
22. Generally, the provisions in section 40 subsections 1 to 4 FOIA exempt personal data from disclosure. Section 40(5) of FOIA states that the duty to confirm or deny whether information is held does not arise if providing the public with that confirmation or denial would contravene any of the data protection principles set out in the Data Protection Act (the 'DPA').
23. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA - confirming whether or not the requested information is held - in relation to information which, if held by the public authority, would be exempt information by virtue of subsection 40(1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny.
24. It is important to note that sections 40(1) and 40(5)(a) are class based exemptions. This means there is no need to demonstrate that disclosure (or confirmation/denial) under FOIA would breach an individual's rights under the Data Protection Act 1998 (DPA) when engaging these exemptions.

25. Section 40(1) of FOIA states that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".

26. The DPA defines personal data as:

"...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."

27. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

28. The complainant's request is for information relating to his council tax. The Commissioner considers that this is an approach for information which can be linked to a named, living individual - the complainant himself. It is therefore his personal data, and falls within the scope of section 40(1).

29. It follows from this that to comply with section 1(1)(a) of FOIA (that is, to either confirm or deny holding the requested information) would put into the public domain information about the existence or otherwise of matters which relate personally to the complainant.

30. In cases such as this, to confirm or deny whether non-personal information is held is also to confirm or deny whether the requestor's personal data is held. For the reasons set out above, the Commissioner is satisfied that under section 40(5)(a), the Council has no duty to confirm whether any such personal data is in fact held for parts 2-6 of the request.

31. Therefore, in this case, the Commissioner is satisfied that confirming or denying whether it holds any information under the terms of the FOIA means that the Council would be confirming, to the world at large, whether it holds information relating to matters associated with

this complainant's council tax. She therefore considers that the Council should instead have relied on section 40(5)(a) and should have neither confirmed nor denied whether it holds the information requested in parts 2-6 of the request.

Other matters

32. As noted above, the Commissioner finds that the Council should have relied on the exemption in section 40(5)(a) for the request with the exception of part 1, on the basis that, if held, the information would constitute the complainant's own personal data.
33. An applicant wishing to access their own personal data is able to pursue this right by submitting a subject access request under the provisions of the DPA. Furthermore, the Commissioner considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told if personal data about them is being processed should be made in accordance with the scheme of that Act.
34. In addition, the Commissioner notes that the Council's response to the request does not set out the complainant's right to an internal review. The Commissioner would remind the Council of the need to frame its future responses in accordance with the FOIA.

Right of appeal

35. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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

Carolyn Howes
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