

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2018

Public Authority: Leaffield Parish Council
Address: Leaffield Village Hall
Lower End
Leaffield
Witney
Oxon
OX29 9QJ

Decision (including any steps ordered)

1. The complainant requested information from Leaffield Parish Council (the Council) in relation to his planning application. The Council disclosed some information relevant to the request but it withheld the remaining information under section 40(2) (third party personal data) of the FOIA.
2. Whilst it was not cited by the Council, the Commissioner has exercised her discretion and considered the exemption provided by section 40(1) (personal data of the requester) of the FOIA. The Commissioner's conclusion is that all of the information falling within the scope of the request is the complainant's own personal data and is exempt under section 40(1). Therefore, the Council was not obliged to disclose the remaining requested information to the complainant under the FOIA.

Request and response

3. On 5 December 2017 the complainant wrote to the Council and requested information in the following terms:

"Following our recent correspondence, I would now like to make a formal request for information under the Freedom of Information Act. I would like to request a copy of all written information, including emails, documents, letters and memos which have been either discussed, sent

or received by the Leaffield Parish Council in relation to my recent planning application.”

4. The Council responded on 27 December 2017. The Council disclosed some information relevant to the request but it withheld the remaining information under section 40(2) (third party personal data) of the FOIA.
5. On 18 January 2018 the complainant requested an internal review.
6. On 13 March 2018 in response to the complainant’s internal review request, the Council maintained its decision to withhold the requested information under the exemption at section 40(2) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 26 January 2018 to complain about the way his request for information had been handled. Specifically, the complainant expressed his dissatisfaction with the Council refusing to disclose any emails from local residents in regards to objections made about his planning application.
8. The complainant argued the objections about his planning application and he believed that more than one email had been withheld by the Council. The complainant stated that he expected all emails to be released with the contact details and names redacted.
9. The Commissioner has discretion to consider exemptions that are not cited by the public authority. Upon review of this case, the Commissioner’s assessment was that it was appropriate to exercise her discretion to consider whether the information requested by the complainant would constitute his own personal data and therefore would be exempt under section 40(1) of the FOIA. The following analysis covers section 40(1).

Reasons for decision

Section 40 - personal data

10. Section 40(1) of the FOIA provides an exemption for information that is the personal data of the requester. Consideration of this exemption requires a single step; if the requested information constitutes the personal data of the requester, it is exempt.

11. At the time that the request was dealt with, the Data Protection Act 1998 (DPA) remained in force. Section 1(1) of 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."

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 from that information. 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.
13. The complainant in this case is seeking information relating to his planning application to the Council. It is clear from the wording of the complainant's request that all information falling within its scope must be about his own application for planning.
14. The Commissioner's view is that there are grounds upon which this information can be seen to relate to the complainant, this is that it concerns his application for a planning project. The approach of the Commissioner is that information about an individual's property is linked to them and has biographical significance to them. The Commissioner considers it clear that information about the application in question is linked to the complainant and has biographical significance for him. For these reasons, the Commissioner is satisfied that the requested information relates to the complainant.
15. Turning to the issue of whether the information identifies the complainant, the Commission has seen the information identified by the Council. As would be expected given the purpose of that information, the complainant is identified by name. The Commissioner is also satisfied that the complainant is identifiable from the information and that, in this instance, all of the information can be said to be the personal data of the requestor.

16. Having found that the requested information relates to the complainant and that he is identifiable from this, the Commissioner's conclusion is that the requested information is the personal data of the complainant. This information is therefore exempt under section 40(1) of the FOIA and the Council was not obliged by the FOIA to comply with the complainant's request.

Other matters

17. Whilst the Commissioner cannot in this notice order the Council to reconsider the complainant's request as a subject access request made under the GDPR / Data Protection Act 2018, she does expect the Council to now take that action. The Commissioner would also stress to the Council that in any case where an individual has made a request for their own personal data, it should process that as a subject access request. This remains the case even where the complainant has ostensibly made their request under the FOIA.

Right of appeal

18. 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

19. 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.
20. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF