

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

### **Decision notice**

**Date:** 1 March 2023

**Public Authority:** Rushmoor Borough Council  
**Address:** Council Offices  
Farnborough  
Hampshire  
GU14 7JU

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

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1. The complainant has requested information from Rushmoor Borough Council ("the Council") in relation to the current medical referee's registration number. The Council has withheld the requested information, relying on section 40(2) of FOIA – personal information.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of FOIA to withhold the requested information. However, as the Council failed to respond to the request for information within 20 working days, it has breached section 10(1) of FOIA.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

### **Request and response**

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4. On 26 July 2021, the complainant wrote to the Council and requested information in the following terms:

"Please also provide the name and GMC registration number of the medical referee that you spoke to on the afternoon of the 30/04/21 who reviewed "the original documentation completed by the Doctor"."

5. The Council responded on 16 November 2021. It stated that it held the information, however, it was being withheld under section 40(2) as it is personal information.
6. Following an internal review the Council wrote to the complainant on 22 July 2022. It stated that it upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 7 September 2022, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of this complaint is to determine if the Council is entitled to rely on section 40(2) of FOIA to withhold the information. The Commissioner will also consider the time taken for the Council to respond to the request.

### **Reasons for decision**

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#### **Section 40(2) – personal information**

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. The complainant has requested the registration number of a specific medical referee. The Commissioner is satisfied that that the requested information both relates to and would identify the individual concerned. He therefore considers that the requested 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 focused 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 a FOIA request, the 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 Council has acknowledged that the complainant has a legitimate interest in knowing whether the approval process for the cremation of the complainant's late mother was carried out with the laid down procedures and by competent officials.
17. The Commissioner considers that, whilst the complainant has a legitimate interest, it is a personal legitimate interest. Therefore, the Commissioner considers that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the medical referee.
18. The Council has also explained that it does not consider the name and General Medical Council (GMC) number of the medical referee as necessary. It advised that the complainant should be able to contact the GMC to make a complaint and from there any relevant investigations would be carried out.
19. The Commissioner notes that the complainant advises that they need specific information to contact the GMC, however, this is something that would need to be addressed with the GMC itself. It is not for the Commissioner to comment on what information is needed to submit a complaint.
20. The Council has also advised that it contacted the medical referee and they do not consent to their personal data being disclosed.
21. The Commissioner wants to note that information released under FOIA is considered to be information shared to the world at large and not just the individual(s) receiving the information. It is the equivalent to the Council publishing the information on its website.
22. Based on the above information, the Commissioner is satisfied that there is no legal basis for the Council to disclose the requested information and to do so, would be in breach of principle (a).

23. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of FOIA to refuse to provide the requested information.

**Section 10(1) – time for compliance with request**

24. Section 10 of the FOIA states that, subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
25. In this case, the complainant made their request on 26 July 2021, and did not receive a response until 16 November 2021.
26. By failing to respond to the request within the statutory time period, the public authority has breached section 10(1) of FOIA.
27. The Commissioner also reminds the Council that whilst an internal review is not a requirement under FOIA, it is considered to be good practice to issue a response within 40 working days.

## Right of appeal

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28. 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)

29. 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.
30. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**