

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

### **Decision notice**

**Date:** 8 June 2015

**Public Authority:** Stockton-on-Tees Borough Council  
**Address:** Municipal Buildings  
Church Road  
Stockton-on-Tees  
TS18 1LD

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

---

1. The complainant has requested address information relating to those who participated in an informal consultation on a planning matter. Stockton-on-Tees Borough Council (the "Council") refused to provide it citing section 40 (unfair disclosure of personal data) and section 41 (information provided in confidence) as its basis for doing so. The complainant requested an internal review but the Council failed to conduct one in a timely manner.
2. The Commissioner's decision is that the Council is entitled to rely on section 40 as its basis for refusing to provide the requested information.
3. No steps are required.

### **Request and response**

---

4. On 29 July 2014 the complainant requested information of the following description from the Council:  
  
"Data protection may prevent you from identifying specific comments to specific addresses, but it should not preclude providing me with a list of addresses from which comments were returned."

5. This followed on from an earlier request where the complainant had requested information as follows:

"Please provide list of comments recorded as a result of these consultations annotated with date of comment and the address from which each comment was received."
6. The Council had sent him the comments recorded "to date" in response to this earlier request but not the addresses from which the comments were received. The Council did not provide an explanation as to why these addresses had been withheld. Had it done so, the complainant would have understood this response to be a refusal notice.
7. On 30 September 2014, the Council responded to the 29 July 2014 request. It refused to provide the requested information. It cited the following exemptions as its basis for doing so:
  - Section 40 (Unfair disclosure of personal data)
  - Section 41 (Information provided in confidence)
8. It also directed the complainant to its internal review process and explained his FOIA section 50 rights to complain to the Commissioner if he was unhappy with the outcome of the internal review.
9. He contacted the Council on 7 October 2014 following correspondence with the Commissioner about his information access concerns. The Commissioner had directed him to apply to the Council's internal review process and the complainant sent a copy of the Commissioner's letter about this to the Council when requesting an internal review. The Council did not undertake an internal review of its response of 30 September 2014 and the Commissioner took the complaint forward given the Council's excessive delay in responding to an internal review request.
10. The Council subsequently argued to the Commissioner that its letter of 30 September 2014 was its internal review of the way it had handled the earlier request referred to above and that this was its ultimate position on the matter. However, it acknowledged that it had not been clear to the complainant about this and explained that it had now improved its procedures in this regard.
11. The Commissioner notes that the Council's letter of 30 September 2014 was particularly misleading in that it directed the complainant to its internal review procedure if he was unhappy with that letter. It could have rectified this mistake when the complainant contacted it on 7 October 2014 and it has now acknowledged this error to the Commissioner.

12. In any event, the Council had not provided a proper response to the complainant's letter of 7 October 2014 and so the Commissioner took the complaint forward.

### **Scope of the case**

---

13. As noted above, the complainant had contacted the Commissioner about the Council's apparent failure to conduct an internal review. The complainant contacted the Commissioner again on 17 December 2014 to advise that he had still not received the outcome of the Council's internal review and the Commissioner agreed to take the complaint forward.
14. The Commissioner has considered whether the Council is entitled to rely on section 40(2) as its basis for withholding the requested information. Where the Commissioner is not satisfied the Council can rely on section 40(2), he will consider whether it can rely upon section 41.

### **Reasons for decision**

---

15. Section 40(2) provides that information is exempt from disclosure if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and it would breach one of the data protection principles of the Data Protection Act ("DPA") to disclose that personal data. The first data protection principle is the most applicable here and its detail is addressed later in this Notice.
16. The first question is therefore whether the information is the personal data of third parties.

#### Is the information personal data?

17. Personal data is information which relates to a living identifiable individual and which is biographically significant about them.
18. In this case, the withheld information is the addresses of those who have expressed an opinion on the proposed building of a crematorium and cemetery. In the Commissioner's view, living individuals can be identified from this information, the information relates to them and it is biographically significant about them. Where a person lives is, self-evidently, biographically significant about them.
19. In the Commissioner's view, a determined person with local knowledge or, for example, access to the full electoral register through their library

or via online subscription services, would be able to identify individuals from addresses. The Commissioner also notes that the number of addresses is quite small (21). It would therefore not be a particularly onerous task for a person to undertake. He has had reference to his own published guidance in reaching this view.<sup>1</sup>

20. Having concluded that the information is personal data, the next question is whether a disclosure of the information would breach any of the data protection principles of the DPA.

Would the disclosure of the information contravene any of the data protection principles?

21. For section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.
22. The relevant principle in this case is the first data protection principle.

The first data protection principle

23. The first data protection principle states:

*'Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –*

*At least one of the conditions in schedule 2 [DPA] is met....'*

24. The Commissioner considers the fairness aspect of the first principle first. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
- The reasonable expectations of the individual in terms of what would happen to their personal data,
  - The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed?

---

<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

25. Even if a disclosure would fall outside of the expectations of the individual and would cause him or her detriment it may still be fair to disclose the information if it can be demonstrated that there is a pressing social need for the information to be disclosed.
26. In this case, the individuals submitted views on the proposed crematorium. They were told when completing the form on which the information was collected that this information would not be passed on to third parties.
27. The Council has already released the number of houses consulted in a given road as well as anonymised responses. However, it has refused to provide the addresses of those providing responses.
28. The complainant has argued that what he would consider to be a proper planning consultation has not been conducted. In such a case, all those who responded would reasonably expect to have their names and comments made public. Apparently, the consultation process also included asking people for their views when they were registering a death in the area. He was also given anonymised data from this separate opinion gathering exercise. He implied that, in his view, this was inappropriate. He also disputes the veracity of all the comments noting that individuals from as far away as Norfolk expressed a view on the proposal – the Commissioner understands this to be from information volunteered by individuals registering a death in Stockton. The Council told him that people registering a death in Stockton may not necessarily come from the area and may come from, for example, Norfolk. He was sceptical about this and suggested that it cast doubt on the veracity of the entire consultation process. He commented: "A reasonable person may conclude that these service user responses are generated from within the staff of Stockton BC".
29. Noting this serious allegation, the Commissioner advised him to contact the Local Government Ombudsman if he thought that a fraud had been committed. The Commissioner would also observe that the Council's explanation as to why it has views from Norfolk is plausible. A close relative of a person who has died in the Stockton area and who is registering that relative's death may not, themselves, live in the Stockton area.
30. Returning to the information in question, namely the addresses of those who gave their views at a local event, the Commissioner believes that those individuals who gave their views did not expect the Council to release their address details. As the Commissioner has accepted above, this could well lead to them being identified as participants in the process. The Commissioner considers this expectation to be wholly

reasonable given express statements to that effect from the Council in the forms where the views were recorded.

31. The Commissioner is therefore satisfied that disclosure of the addresses would be unfair and outside the reasonable expectations of the individuals to whom they relate. For completeness, the Commissioner has considered whether there is a pressing social need for the information to be disclosed in response to the request.
32. The Commissioner recognises the complainant's concern about the way in which local residents and service users have been consulted on this matter. The complainant had expected a more formal process whereby individuals can express their views publicly and have those views attributed to them. The Commissioner would recommend he raises the matter with the Local Government Ombudsman and/or his local councillor if he is concerned about this process. However, the Commissioner does not think that the complainant needs the addresses from which the opinions were given in order to raise this concern. He does not, therefore, think there is a pressing social need to make the information available under the Act. The Council has already given considerable information to the complainant. It has disclosed which street name areas it has asked about this proposal. The Council has also disclosed some detail about the provenance of information collected as deaths were registered. The complainant is concerned this includes an opinion from a person resident in the Norfolk area. He is sceptical about the exact provenance of all the responses given.
33. Noting the complainant's allegation that the responses have been fabricated, the Commissioner would point out that the Council is not expected to provide information solely to prove a negative, where that information is otherwise exempt.

### **Section 40(2) – conclusion**

34. The Commissioner is satisfied, in the circumstances of this case, that the requested information is exempt information under section 40(2). The information is the personal data of those who completed and submitted the forms in question. The information relates to living identifiable individuals and it is biographically significant about them. The individuals have a reasonable expectation that the information would not be disclosed. The Commissioner has also concluded that there is no pressing social need for the disclosure of this information. The complainant's concerns about whether a correct or appropriate planning process has been followed and whether the views have been fabricated by the Council for their own purposes can be raised with the appropriate body using the anonymised information he already has.

35. The Commissioner has not gone on to consider the application of section 41 because of the conclusion he has reached regarding section 40(2).

## Right of appeal

---

36. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. 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 .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**