

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 1 November 2018

**Public Authority:** Oxfordshire County Council  
**Address:** County Hall  
New Road  
Oxford  
OX1 1ND

**Decision (including any steps ordered)**

---

1. The complainant has requested information with regards to a complaint he had made. Oxfordshire County Council (the council) provided the information it held, but redacted the names of two council employees, due their names being third party personal data. The council initially relied on regulation 13 of the EIR to refuse the request, then later amended its refusal to section 40(2) of the FOIA.
2. The Commissioner's decision is that the council is able to rely on section 40(2) of the FOIA to redact the names of its officers.
3. The Commissioner does not require the council to take any steps.

**Request and response**

---

4. On 6 April 2018, the complainant requested the following information from the council:

*"Please provide 1 copy of the statement made by both the traffic warden and the lady in the control room with regards to my complaint.*

*Please provide 1 copy of the telephone call made to NSL Services control room on 24/2/18 from phone number [redacted]"*

5. The council responded on the 20 April 2018 and provided copies of the statements, redacting the names of the two employees, who are parking operatives, under regulation 13 of the EIR – third party personal data.
6. With regards to the second part of the request, the council advised that telephone calls are not recorded, but one of the statements it provided does contain a log of the telephone call.
7. On 2 May 2018, the complainant requested that the council conduct an internal review as he disputed the redactions, he also noted that one of the statements provided had not actually been redacted revealing one of the officer's names.
8. The council provided its internal review on the 4 May 2018. It determined that the request should have fallen under the FOIA rather than the EIR, but upheld the redactions of the officers' names, amending the refusal to instead rely on section 40(2) of the FOIA – third party personal data.
9. The council asked that the complainant destroy the statement mistakenly provided with the officer's name and provided him with a redacted version.

### **Scope of the case**

---

10. The complainant contacted the Commissioner on 6 June 2018 disputing the council redacting the two officers' names.
11. The Commissioner considers the scope of the case is to determine whether the council can rely on section 40(2) of the FOIA to redact the names.
12. Even though the council inadvertently provided one of the officers' names in its initial response, it has attempted to rectify this by providing the complainant with a redacted copy and asking that he delete the other.
13. In this scenario, the Commissioner will continue to assess the council's application of section 40(2) for both of the officers' names. The inappropriate disclosure has been considered by the Commissioner separate to this decision notice under the Data Protection Act 1998.

## **Reasons for decision**

---

### **Section 40(2) of the FOIA – Third party personal data**

14. Section 40(2) of the FOIA states that:

*"Any information to which a request for information relates is also exempt if-*

*a) It constitutes personal data which do not fall within subsection (1), and*

*b) Either the first or second condition below is satisfied"*

### **Is the withheld information personal data?**

15. Personal data is defined by the Data Protection Act 1998 (the DPA) as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.

16. The redacted information in this case are the names of two council officers. This clearly falls within the definition of personal data as set out in the DPA because it 'relates to' identifiable living individuals.

### **Would disclosure contravene any of the Data Protection Principles?**

17. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's consideration below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

### **Reasonable expectations**

18. When a public authority discloses information under the FOIA, it is essentially disclosing it to the world and not just the person making the request.

19. The council has considered the Commissioner's guidance<sup>1</sup> on this in which it states:

*"It is reasonable to expect that a public authority would disclose more information relating to senior employees than more junior ones. Senior employees should expect their posts to carry a greater level of accountability, since they are likely to be responsible for major policy decisions and the expenditure of public funds...this implies that the employee has some responsibility for explaining the policies or actions of their authority; it would not apply simply because an employee deals with enquiries from the public."*

20. The council also states that the officers in this case are not senior and do not have the role of explaining to the public the operation of the council's policies. Their managers do this.
21. The council argues that it is more appropriate that the badge numbers of the officers, who are parking operatives, be disclosed rather than their names.

### **Consequences of disclosure**

22. The Commissioner is of the view that disclosure is unlikely to be fair if it would have unjustified adverse effects on the employees concerned. Although employees may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life. If an authority wishes to claim that disclosure would be unfair because of the adverse consequences on the employees concerned, it must be able to put forward some justification for this claim.
23. The council has explained that given the often unpopular nature of the job that the two officers do, disclosure of their names, and hence the identification of the individuals could lead to them being targeted directly or through correspondence, causing unwarranted distress.
24. The Commissioner is of the view that disclosure must not cause unwarranted interference with an employee's rights. This means that the

---

<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1187/section 40 requests for personal data about employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)

public authority should follow a proportionate approach; it may be possible to meet the legitimate interest concerned by disclosing some of the information, rather than all the detail that has been asked for.

25. In this case, the council has provided a copy of the requested statement bar the redactions of the employees' names, but their badge numbers have been provided.

### **Balancing the legitimate rights of the data subject with the legitimate interests in disclosure**

26. The complainant has questioned how keeping public servant names from disclosure can be seen in anyway as transparent or honest. He asks where the accountability in this is.
27. The council has told the Commissioner that it acknowledges that there is a public interest in transparency and accountability of public authorities in relation to complaints. However it also sees that this needs to be balanced with the expectations and legitimate rights of its employees.
28. Parking operatives are a necessary requirement when it comes to parking enforcement. The Commissioner recognises some decisions they make may not always be popular to members of the public.
29. The Commissioner agrees with the council's view that these officers should be able to go about their work without intimidation. Limiting their identification to a badge number seems a reasonable alternative to disclosure of their names in attempting to limit any potential threats or intimidation being directed at them.
30. The badge number allows the officer to be identifiable to the council without having to reveal the individual's personal identity to the public. The Commissioner is of the view that this satisfies any public interest in disclosure and is a genuine way to create accountability of the officers to the council.
31. After reviewing the above and on consideration that the officers are not of a senior level, the Commissioner is satisfied that any legitimate interest in disclosure does not outweigh the individuals' rights to privacy in this case.
32. The Commissioner's decision is that section 40(2) of the FOIA is engaged in this case.

## Right of appeal

---

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

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

34. 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.
35. 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**