

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2022

Public Authority: West of England Combined Authority

Address: 3 Rivergate

Bristol

BS1 6ER

Decision (including any steps ordered)

1. The complainant has requested information from the West of England Combined Authority ("WECA") regarding expenses claims and full copies of declarations/registers of interests for WECA Mayor Dan Morris. WECA provided the complainant with some information, however it redacted the remainder, advising that it is the Mayor's address and therefore is personal data.
2. The Commissioner's decision is that WECA was correct to withhold the requested information, as it is personal data. However, it should have cited section 40(2) of FOIA. As it did not cite which exemption of FOIA it was relying on, WECA has breached section 17 of FOIA as the refusal notice was not issued correctly.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 23 February 2022, the complainant wrote to WECA and requested information in the following terms:

"Under the Freedom of Information Act 2000 I wish to see the following:

1. Full copies of all expenses claims by WECA Mayor Dan Norris since May 2021.

2. Full copies of all declarations/registers of interests forms completed by WECA Mayor Dan Norris since May 2021.”
5. WECA responded on 23 March 2022. It provided a link to the Register of Interest that had been completed by the Mayor and explained that no expenses had been submitted in the period since May 2021.
6. Following an internal review WECA wrote to the complainant on 22 April 2022. It stated that the remaining information should not be made public, by virtue of section 32 of the Localism Act 2011, as revealing the Mayor’s address could lead to them being subject to violence or intimidation.

Scope of the case

7. The complainant contacted the Commissioner on 7 May 2022 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of the investigation is to determine if WECA was correct to withhold the information as it is personal data.
9. As the Commissioner is also the regulator of data protection legislation, he has decided that he has sufficient information to reach a decision in this case, based on the internal review arguments and his own expertise, without seeking further arguments from WECA.

Reasons for decision

Section 40(2) – third party personal data

10. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
11. In this case the relevant condition is contained in section 40(3A)(a) . This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (“the DP principles”), as set out in Article 5 of the UK General Data Protection Regulation (“UK GDPR”).
12. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection

Act 2018 ("DPA"). If it is not personal data, then section 40 of FOIA cannot apply.

13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

14. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

16. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

17. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

18. In the circumstances of this case, having considered the nature of the withheld information (the data subject's home address), the Commissioner is satisfied that the information would relate to the data subject. The information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

19. 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 focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."

20. 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.

21. 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.

22. Whilst the complainant may have a legitimate interest in the information, the Commissioner considers that the individual concerned would have a reasonable expectation that their home address would remain confidential.
23. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individual concerned. Therefore, he considers that there is no legal basis for the WECA to disclose the requested information and to do so would be a breach of principle (a).
24. The Commissioner's decision is that WECA is correct to withhold the information, however, it should have stated that it was relying on section 40(2) of FOIA to do so.

Section 17 – refusal of request

25. Under section 17(1) of FOIA, a public authority which is relying on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which (a) states that fact, (b) specifies the exemption in question, and (c) states (if that would not otherwise be apparent) why the exemption applies.
26. In the original refusal notice of 23 March 2022, WECA advised it was treating the request for information under FOIA, however, as it provided the complainant with the bulk of the requested information, save for redactions, it did not cite an exemption of FOIA. In the internal review response of 22 April 2022, it again stated it was handling the request under FOIA, however, it failed to cite which exemption it was relying on. As WECA failed to specify which exemption it was relying on, it has not fully met the requirements of section 17(1) of FOIA.

Right of appeal

27. 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

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

28. 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.
29. 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