

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

### **Decision notice**

**Date:** 21 February 2023

**Public Authority:** Ribble Valley Borough Council  
**Address:** Council Offices  
Church Walk  
Clitheroe  
BB7 2RA

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

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1. The complainant has requested information held by Ribble Valley Borough Council (the council) about a complaint that may have been made against certain members of a parish council.
2. The council cited various exemptions under FOIA as its basis for refusing certain parts of the request.
3. It is the Commissioner's decision that the council should have refused to confirm or deny whether it holds any information relevant to the request under section 40(5B)(a)(i) of FOIA.
4. As the council failed to issue a refusal notice within 20 working days, the Commissioner has found a breach of section 17(1) of FOIA.
5. The Commissioner does not require the council to take any steps as a result of this decision notice.

## **Request and response**

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6. On 18 October 2021, the complainant wrote to the council and requested information in the following terms:  
  
‘Please can I receive copies of all correspondence, council notes and any records held in respect of the complaint against [name and position redacted] and latterly [name and position redacted] and the [position redacted], This will also involve an independent person and again all correspondence to and from, including notes and records.’
7. Whilst the council provided the complainant with some information, it advised that it was withholding other information under section 40(2) - personal data, of FOIA. The council also advised that it had applied section 40(5)(B) of FOIA to that part of the request which asked for information relating to the ‘independent person’.
8. At the internal review stage, the council then advised that it was now also refusing part of the request under section 36 - effective conduct of public affairs, of FOIA.

## **Scope of the case**

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9. The complainant has raised concerns about the council’s decision to refuse the request under the various exemptions cited in paragraphs 7 and 8 of this decision notice.
10. If, after consideration of a case, the Commissioner feels that an authority is at risk of disclosing personal data without a lawful basis for doing so, he will consider whether it is appropriate for him to proactively apply section 40 of FOIA to the request.
11. In this case, the Commissioner has exercised his discretion and proactively applied section 40(5B)(a)(i) of FOIA to the request in its entirety. The reasons for the Commissioner’s decision are explained below.

## **Reasons for decision**

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### **Section 40 – Personal information**

12. Section 40(5B)(a)(i) of FOIA, provides that the duty to confirm or deny whether information is held does not arise if it would contravene one of the principles relating to the processing of personal data (as set out in

Article 5 of the General Data Protection Regulation – UK GDPR) to provide that confirmation or denial.

13. The decision to use a 'neither confirm nor deny' response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for a 'neither confirm nor deny' response in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not particular information is held.
14. The Commissioner's [guidance](#) explains that there may be circumstances in which merely confirming or denying whether or not a public authority holds information about an individual can itself reveal something about that individual which, if disclosed, could result in a breach of one of the data protection principles.

Would the confirmation or denial that the requested information is held constitute the disclosure of either the complainant's or a third party's personal data?

15. Section 3(2) of the Data Protection Act 2018 (DPA 2018) defines personal data as:- "any information relating to an identified or identifiable living individual".
16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
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. The request includes information which allows certain individuals to be identified, either by name, or their position, at the parish council. The Commissioner is satisfied that if the council confirmed that it did hold the requested information, then this would reveal that these individuals had been the subject of a complaint that was investigated by the council. If the council denied that it held any information falling within the scope, then that would mean that the same individuals were not the subject of any complaint or investigation. Either response reveals personal biographical details about the individuals, and is therefore their personal data.
19. In the case of an 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 – or, as in this case, the council can only confirm whether or not it holds the requested information - if to do so would be lawful, fair, and transparent, and would not breach any of the data protection principles.

20. When considering whether confirmation or denial of the requested information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure is necessary, and whether these interests override the rights and freedoms of the individual that the personal information relates to.
21. The Commissioner accepts that there may be some legitimate interest in the council being open and transparent about information it holds regarding complaints about elected representatives, and how it handles or investigates such matters on a case by case basis; this is particularly in circumstances where allegations of potential misconduct may have been received.
22. However, it is necessary to balance the legitimate interests in confirming whether or not the requested information is held against the relevant individuals' interests, fundamental rights, and freedoms. In doing so, the Commissioner must consider the impact of the confirmation or denial.
23. The Commissioner notes that there may be situations in which it could be argued that giving the confirmation or denial to a requester would not necessarily contravene data protection principles because the requester might already know, or suspect, that the public authority holds the information.
24. In cases where a requester has had some personal involvement in a complaint about a third party, the public authority may choose to release some information about that complaint directly to them; however, in most instances this is most likely to occur as part of the public authority's complaint process, or via an alternative information access regime, such as the DPA 2018 (which provides a right of access to the personal information of the requester).
25. A request that is being considered under FOIA concerns a disclosure to the public at large, and therefore to any person (and not just to the requester). The Commissioner must therefore consider the wider public interest issues and fairness to the relevant individuals to whom the request relates when deciding whether or not to confirm or deny if the information is held.
26. It is the Commissioner's view that the individuals who can be identified from the request would not have any reasonable expectation that information about whether or not they have been the subject of a complaint, or an investigation, would be placed into the public domain.
27. In addition, in the Commissioner's opinion, to confirm or deny whether information is held may cause such individuals damage and distress.

28. The Commissioner concludes that there is insufficient legitimate interest in this case to outweigh the relevant individuals' fundamental rights and freedoms. He therefore considers that disclosure of personal information which confirms whether or not the requested information is held would not be lawful in this instance.
29. The Commissioner has therefore decided to proactively apply section 40(5B)(a)(i) of FOIA to the entirety of the complainant's request, in order to prevent the inadvertent disclosure of personal data to the public at large.

### **Procedural matters**

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30. The council confirmed that it received the request by post on 19 October 2021, but it did not provide its response until 7 April 2022.
31. Whilst the council did issue a refusal notice to the complainant, it failed to do so within the required 20 working days. The Commissioner has therefore found a breach of section 17 of FOIA.
32. The significant delay in the council's response to the request may be a matter that will be revisited by the Commissioner, should he receive complaints about other requests that have been subject to similar delays.

## Right of Appeal

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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: 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)

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 .....**

**Suzanne McKay**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**