

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

### **Decision notice**

**Date:** 14 February 2023

**Public Authority:** Luddington Parish Council

**Address:** luddingtonparishclerk@gmail.com

#### **Decision**

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1. The complainant requested information from Luddington Parish Council ("the Council") relating to letter which they sent to the Council.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(1) (personal information) of the FOIA to refuse to provide the withheld information.
3. The Commissioner does not require the Council to take any steps.

#### **Request and response**

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4. The complainant made the following information request to the Council on 24 May 2022 (numbering added by the Commissioner):

"As the parish Council's Responsible Officer and under the Freedom of Information Act please provide me with a copy of the following (as below) to include anything that the Council holds or processes including emails, letters, reports, file notes, notes of phone calls, video, audio or digital recordings and all comments on the pro board.

- 1) All relevant correspondence following my letter to you dated 16th March, up to and including the notes that you took for the minutes being a true and accurate record of the

meeting last Wednesday 18th May [personal information redacted].

- 2) A copy of the Code of conduct and confirmation that it has been signed by all Parish Councillors.

I understand that under the Act I am entitled to a response within 20 working days on your receipt of this request.

I would prefer to receive this information electronically.”

5. The Council provided the complainant with correspondence relating to the complainant’s letter of 16 March 2022. However, the Council withheld some information stating that the information was personal data.
6. The Council informed the complainant that a copy of the Code of Conduct and the minutes from the Council meeting that took place 18 May 2022 could be located on the Council’s website.

### **Reasons for decision**

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7. This reasoning covers whether Council is entitled to rely on section 40(1) (personal information) of the FOIA to withhold some information within the scope of part 1 of the request.
8. Section 40(1) of the FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.
9. Section 3(2) of the Data Protection Act 2018 (“the DPA”) defines personal data as:  
  
“any information relating to an identified or identifiable living individual.”
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. In part 1 of the request, the complainant requested information relating to a letter they sent to the Council on 16 March 2022. In response to part 1 of the request, the Council has provided the complainant with multiple emails in which Council staff discuss their response to the complainant’s letter of 16 March 2022. However, the Council has withheld some parts the emails as it considers the information to be personal data.

12. The Commissioner has viewed the withheld information and is satisfied that the withheld information both relates to and would identify the complainant. He therefore considers the withheld information to be the complainant's personal data.
13. The Commissioner's decision is that the Council is entitled to rely on section 40(1) of the FOIA to refuse to provide the withheld information. The Commissioner requires no further action to be taken by the Council in relation to this request.

### **Other matters**

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14. In this case, the Council failed to recognise that the complainant had requested their own personal data and did not consider the request under the Data Protection Act 2018 (DPA). Whilst the Commissioner cannot require a public authority to take action under the DPA via a FOIA decision notice, in view of his decision that the requested information is the personal data of the complainant, the Council should consider providing a response to the complainant under the DPA in respect of the information they requested.

## Right of appeal

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15. 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@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)

16. 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.
17. 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 .....**

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