

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 July 2024

Public Authority: West Lancashire Borough Council

Address: 52 Derby Street
Ormskirk
Lancashire
L39 2DF

Decision (including any steps ordered)

1. The complainant requested information from West Lancashire Borough Council ("the Council") relating to Ormskirk Bus Station Toilets.
2. The Commissioner's decision is that the Council is not entitled to rely on section 41(1) (information provided in confidence) to withhold the requested information. However, he also finds that the Council is entitled to rely on section 40(2) (personal information) to withhold some information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information making appropriate personal data redactions as described in paragraph 24 of this notice.
4. The Council must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 23 February 2024, the complainant wrote to the Council and requested information in the following terms:

“Hi under the FOI act can you provide me with the correspondence that WLBC sent to LCC from October 2023 to the end of February 2024 concerning the Ormskirk Bus Station toilets.”
6. The Council responded on the same date and refused to provide the requested information stating that the information was personal information.

Scope of the case

7. The complainant contacted the Commissioner on 26 February 2024 to complain about the way their request for information had been handled.
8. During the course of the Commissioner’s investigation the Council amended its position stating that it was now relying on section 41(1) (information provided in confidence) of FOIA to refuse to provide the requested information.
9. Therefore, the Commissioner will consider whether the Council is entitled to rely on section 41(1) of FOIA to withhold the requested information.

Reasons for decision

Section 41 – information provided in confidence

10. Section 41(1) of FOIA states that information is exempt from disclosure if the information was obtained by the public authority from any other person, including another public authority, and the disclosure of the information to the public would constitute an actionable breach of confidence.
11. The Commissioner has viewed the withheld information. The Council has withheld several emails which were sent by Lancashire County Council (LCC) to the Council. However, as the request asks for correspondence sent by the Council to LCC, the Commissioner does not consider these emails to fall within the scope of the request. Therefore, he considers

that the Council is not obliged to disclose these emails in response to the request.

12. The Council has also withheld multiple emails that it sent to LCC. The Commissioner is satisfied that these emails fall within the scope of the request. However, he notes that they do not originate from another person. The Commissioner recognises that information that has not been obtained from another person can engage section 41 if its disclosure would reveal information that has been obtained from another person. However, in its submissions to the Commissioner, other than stating that the emails it sent to LCC contain information that was provided by LCC, the Council has not explained how the emails would reveal information obtained from another person and it is not obvious to the Commissioner.
13. Therefore, the Commissioner's decision is that the Council is not entitled to rely on section 41(1) of FOIA to refuse to provide the withheld information, specifically the emails that it sent to LCC.

Section 40 – personal information

14. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
15. Section 3(2) of the Data Protection Act 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. The Commissioner has viewed the emails that the Council sent to LCC and notes that they contain the names, email addresses and telephone numbers of both Council and LCC officers. He considers this information to be the personal data of the officers as clearly the information both relates to and would identify them.
18. 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.”

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 if to do so would be lawful, fair and transparent.
20. 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.
21. As the complainant has requested information relating to the closure of public toilets, specifically Ormskirk bus station toilets, the Commissioner considers that the complainant is pursuing a legitimate interest in this case. He also accepts that disclosure of the names, email addresses and telephone numbers of Council and LCC officers is necessary, to some extent, to meet that legitimate interest. However, he also considers that the officers would have a reasonable expectation that their names, email addresses and telephone numbers would not be disclosed as they are fairly junior.
22. Therefore, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the Council and LCC officer. Therefore, he considers that there is no legal basis for the Council to disclose their personal information and to do so would be in breach of principle (a).
23. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of FOIA to withhold the names, email addresses and telephone numbers of both Council and LCC officers which are contained within the emails sent by the Council to LCC.
24. The Commissioner requires the Council to disclose the emails that it sent to LCC. However, it should redact the names, email addresses and telephone numbers of Council and LCC officers from those emails.

Right of appeal

25. 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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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