

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 June 2021

Public Authority: Doncaster Metropolitan Borough Council
Address: Civic Building
Waterdale
Doncaster
DN1 3BU

Decision (including any steps ordered)

1. The complainant requested the logbook of a council vehicle relating to specific dates. The council disclosed copies of the logbook entries for the dates in question, however it redacted information under section 40(2) of FOIA (personal data). The complainant initially argued that whilst he had received some information, he considered that the council holds further information which it has not provided to him. He later sought to argue that he has not received any information from the council.
2. The Commissioner's decision is that the complainant did receive the information which was disclosed to him. She has decided that the council was correct to apply section 40(2) to withhold the identity of the drivers of the vehicle on the days requested, however sections of a status column which were redacted should be disclosed. She has also decided that, on a balance of probabilities, no further information is held by the council. She has, however decided that the council did not comply with the requirements of section 10(1) of the Act.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose a copy of the withheld sections from the 'status column' of the log books

4. The public authority must take these steps within 35 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 1 June 2020 the complainant wrote to the council and requested information in the following terms:

"1) The drivers daily log book or similar (please note that you may call this document a different name) for DMBC (Doncaster Metropolitan Borough Council) vehicle [redacted] (White Ford Transit) for the following dates:

A) Friday 29 May 2020,

B) Saturday 30 May 2020,

C) Sunday 31 May 2020, and

D) Monday 1 June 2020.

Please respond so that each individual reply is situated next to each individual request. If you do not hold this information, please provide full and unredacted details as to why this information is not held."

6. The council responded on 6 July 2020 and provided information in the form of tables highlighting the movements of the vehicle in question over time on the relevant days. The headers within the table demonstrate who was driving the vehicle, its speed, the status of the vehicle and the location of the vehicle. The council, however, redacted personal data from the information on the basis that section 40(2) applies (personal data of third parties).
7. The complainant requested that the council review its decision on 5 August 2020.
8. Following its internal review, the council wrote to the complainant on 14 August 2020. It maintained its decision that section 40(2) was correctly applied to redact sections of the information from disclosure.

Scope of the case

9. The complainant contacted the Commissioner on 19 July 2020 to complain about the way his request for information had been handled.
10. He argued that he is aware from other sources outside of the information governance department of the council that further information is held and he remains unhappy at the redaction of information under section 40(2). He also complained about the time which the council took to respond to his request.
11. During the course of the Commissioner's investigation the complainant also complained that he had not received any information from the council. He said that weblinks which had been provided to him to the information did not work. The Commissioner will therefore also consider the complainant's argument that he has received no information from the council in response to his request.
12. She will also consider the time which the council took to respond to his request for information.

Reasons for decision

Has the complainant received the council's redacted response?

13. During the course of the Commissioner's investigation the complainant wrote to the Commissioner on 4 May 2021 stating that:

"I have been unable to access any of the information that I have requested from DMBC as the online links it has provided me with do not work. I will contact DMBC about this though in the meantime I do not know what information it has disclosed to me as, to date, nothing has been provided to me by DMBC."

14. In an earlier response to the Commissioner the council confirmed that:

In response to the initial request, there was a delay in providing the information to [the complainant] as the documents were too large to send by email. The information was therefore hand delivered to his address. However, he subsequently maintained that he had not received the information and further copies were provided. We did not initially refuse to supply any information or change our position. The initial letter advised that some information would be withheld and [the complainant] misinterpreted this as stating that all the requested information would be withheld. I believe this may have been because the response letter reached him by email but the attached documents did not.

15. Although the complainant argues that he has received no information the Commissioner notes that in an earlier email to her, dated 2 September 2020, the complainant said that:

"Unfortunately I am unable to forward on any information that I am not in possession of. I can confirm that I have now received some of the information that I have requested with the drivers details now having been redacted, though there is still information that has omitted [sic] from it and/or not disclosed from it ..."

16. The Commissioner notes that this does not correspond with the complainant's statement of 4 May 2021. She also notes that the description of the information he provides matches the information which the council provided to the Commissioner as the information it had disclosed.
17. The complainant therefore initially confirmed that he had received a copy of the information which was disclosed by the council, and he has been able to provide a description of that information to the Commissioner. To clarify the point, no further information has been sent by the council to the complainant, and so the only information which was disclosed was received by the complainant at some point.
18. Given the complainant's confirmation that he has received information and given his ability to describe that information to the Commissioner, she is satisfied that the information which the council disclosed in response to the request was received by the complainant.
19. If the link which the council sent to the complainant has now expired without him downloading it to his own PC, this is not a matter for the Commissioner. The council responded to the complainant's request as required by the Act, and the complainant had access to that information.
20. The Commissioner notes the complainant's statement that he would contact the council and ask it to providing working links to him.
21. The Commissioner has therefore gone on to consider the remaining areas of concern raised by the complainant.

Section 40 personal information

22. Section 40(2) of the 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.

23. In this case the relevant condition is contained in section 40(3A)(a)¹. 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 General Data Protection Regulation ('GDPR').
24. 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 the FOIA cannot apply.
25. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

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

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

27. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
28. 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.
29. 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.
30. The redacted information in question is the identities of council drivers who were logged as driving the vehicle on the dates named. The council has also redacted small amounts of information relating to the status of the vehicle from a column in the logbook.
31. The withheld information also relates to addresses of private properties which the council argues is also personal data. Where this has occurred, the council has disclosed the name of the street, however in some cases

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

it has withheld the number of the property outside which the vehicle stopped.

32. The council argues that disclosing the addresses of those properties would allow interested parties to determine that the council drivers stopped at those houses, and therefore provide a degree of biographical information about the owners of those houses (i.e., that the council stopped outside their property and may have had dealings with the owners on those days). It argues that the owners of those properties will be identifiable and therefore the information is personal data about them.
33. The Commissioner notes that the information also provides the times which drivers spent in particular areas, thereby providing an indication as to whether the stop was a planned stop, or simply a temporary stop due to traffic, checking routes etc etc.

A) The council officers

The identities of the council officer who was driving the vehicle is personal data relating to that individual. As regards the redactions in the vehicle status column of the table, this provides a degree of biographical information about the status of the vehicle at a particular time, and as it identifies the status of the vehicle, which is in use by the identifiable individual, it is also personal data for the purposes of the DPA 2018.

34. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the council officers concerned. She is satisfied that the redacted information both relates to and identifies the officers concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

B) The property owners.

35. In the case of *Mr Colin P England and Bexley Council and the Information Commissioner* (EA/2006/0060 & 0066) the Information Tribunal considered the question as to whether a property address constitutes the personal data of the property's owner. At paragraph 98 of that decision, it said that:

"It is the Tribunal's conclusion that the addresses are personal data in the hands of the Council because the addresses are held with ownership details from the Council Tax register. The address alone, in our view, also amounts to personal data because of the likelihood of identification of the owner (or the individual who inherits from a deceased owner), as we have concluded above. In our view this information amounts to personal data because it says various things

about the owner. It says that they are the owner of property and therefore potentially have a substantial asset. It also raises issues and questions about why the owner has left the property empty and it seems to us that that very question in itself is capable of being personal data. The key point is that it says something about somebody's private life and is biographically significant. It is not as Mr Choudhury suggests the address that is the focus or the property, that analysis is based upon the question being asked, and not upon what meaning or meanings the data may have in the context of someone's private life. Does the fact that Mr X owns a property potentially worth several tens of thousands of pounds say something about Mr X? In our view it does, and the owner is the focus of that information."

36. The issue was by the considered Tribunal under the terms of the Data Protection Act 1998; however, the decision remains relevant under the terms of the 2018 Act.
37. The fact that a council driven vehicle stops outside of a particular property address, and the length of time which it stopped outside of that address provides an indicator that might suggest that the council had a reason for stopping there. However, the reasons why the vehicle stopped outside a property may also have nothing to do with the particular property, nor the property owner. The address which is marked may not be the actual address which a council officer visited, if a visit did indeed take place. The officer may simply have parked at a nearby property where there was a space available to park.
38. In the circumstances of this case the addresses only indicate that a council vehicle stopped in the vicinity of the address concerned.
39. Nevertheless, as with the *Bexley* case, where the addresses are specified within the log, the council will be able to identify the owner of that property from its records, and members of the public may know, or be able to find out quite easily who the property owner is. The address is therefore personal data within the terms of the DPA 2018.
40. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the property owners concerned. She is satisfied that the redacted information both relates to and identifies the owners concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
41. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

42. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

43. Article 5(1)(a) of the GDPR states that:

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

44. 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.

45. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

46. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that *"processing shall be lawful only if and to the extent that at least one of the"* lawful bases for processing listed in the Article applies.

47. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"².

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

48. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
- **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
49. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

50. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

The identities of the relevant council officers

51. The complainant has not explained his reasons for wishing the log books to the Commissioner. Under the terms of the FOI Act, he does not need to describe his motivation for seeking that information when making his request for information. Nevertheless, this does prevent the Commissioner from understanding the complainant's own private interests in seeking the information requested.
52. On a wider front, the public always has a general level of interest in the workings of local government and its officials, and it therefore has a legitimate interest in knowing the actions of council staff as regards the work they carry out.
53. The Commissioner recognises however that that legitimate interest is significantly weakened as regards the actions of individual officers who do not work at a senior level within the council. Individual officers at

more junior levels will generally be accountable to the council for their actions, not the public directly.

The redacted status entries

54. The public has a general legitimate interest in knowing that the usage of council vehicles is appropriate. This legitimate interest will be strengthened further if the records highlight issues with the vehicle's compliance with the highway code and other traffic laws.

The addresses concerned

55. The complainant's request specifies a particular vehicle by number plate. He is therefore fully aware of the vehicle concerned. Presumably, he must know where it was when he, or the person who provided him with that information, in order to be able to identify it. The Commissioner recognises that he may have a further private legitimate interest in knowing the whereabouts of the vehicle at particular times, however as a private interest the Commissioner will place less weight on this unless there are corresponding legitimate interests for the wider public.
56. The Commissioner has, however, identified no wider legitimate interest in the general public knowing the specific addresses of the properties concerned. The details of the specific address will be largely irrelevant to the public unless there is a suggestion of the law being broken or the information is required for the purposes of identifying where council officers were at particular times for other reasons.

Is disclosure necessary?

57. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

The identities of the council officers in the vehicle concerned

58. The Commissioner accepts the council's argument that it is not necessary for the council to disclose information on the specific identities of the drivers of the vehicle concerned.
59. It is the council as whole which is accountable for any issues which occur unless an individual driver breaks any legal requirements or fails to follow the laws of the road.

60. If the law may have been broken by a driver, the individual is personally responsible for a failure to abide by the law. Whether the law has been broken by a driver is, however, not a question for members of the public to decide, other than as part of a jury during a trial.
61. If laws have been broken, the employee is accountable for the actions they took in terms of any offence which they have committed. Initially it is for the police to investigate such issues. The drivers will also be accountable to the council for their actions when acting as a council employee, using a council vehicle. It is for the police to investigate allegations of potential criminal offences, and for the council to take action appropriate for any misconduct it identifies.
62. If members of the public note issues with particular drivers in council vehicles they are able to report this to the police, or to the council if the issue does not involve a breach of the law but relates to issues such as the behavior of the driver concerned. Neither of these require the public to know the specific identity of the driver of the vehicle in order to report any issues they have noted.
63. Disclosures under the FOI Act are considered to be to the whole world. It is not necessary for the identity of the individual council officer to be disclosed to the whole world in such circumstances. The council will take action based upon the nature and merits of the complaint it receives.
64. The Commissioner notes that there is only a very weak legitimate interest in the disclosure of the identities of the drivers of the vehicles. The Commissioner has consistently maintained in previous decision notices that, whilst it might be appropriate for senior staff to be held publicly accountable for their actions and decision-making, there is little public interest in identifying junior or mid-level staff who are ultimately responsible to the council for such matters.
65. The individuals would also not expect that their details would be disclosed in response to an FOI request in the terms of this case. Moreover, the legitimate interest in disclosure has been met by the disclosure of the remaining sections of the logbooks, identifying the whereabouts of council officers using the vehicle and the relevant times they were using it.
66. The complainant also has the number plate of the vehicle concerned. He therefore has all of the information which he requires in order to make a complaint to a relevant body (i.e., the police or the council), if that is what he wishes to use the information for.

67. On consideration of all of the above, the Commissioner's decision is that it was not necessary for the council to disclose the identities of the drivers to the complainant in order for it to meet the legitimate interests of the public.
68. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interests she has identified, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
69. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).
70. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
71. Since the end of the transition period following the UK's departure from the EU, the GDPR were replaced by the UK GDPR. As this request was received before the end of that transition period, the application of section 40(2) has been decided by reference to the GDPR. However the Commissioner is also satisfied that the disclosure of the personal data to which that exception was applied would not contravene the UK GDPR for exactly the same reasons.

The redacted entries from the status column

72. The legitimate interest of the public is to have transparency over the actions of council officials using council vehicles, and in the use of council vehicles generally. The status column entries provide an indication of events when the vehicle is in use.
73. Following the Commissioner's decision that it is not necessary to disclose the identity of drivers under section 40(2), the Commissioner has considered whether there is any remaining issue with the disclosure of the redacted sections from status column in the table concerned. With the identity of the driver redacted, the public would not be able to identify the specific officer driving of the vehicle in relation to the item currently redacted in the status column. The information would however remain personal data as the council can identify the driver with reference to the particular status entry. Nevertheless, the council would not learn anything new from such a disclosure; it already has that information available to it.

74. A disclosure of the information would however provide the public with greater detail on how the vehicle was being used at the relevant times. A disclosure of this information would create greater transparency over the use of the vehicle in the relevant period, which would help to meet the legitimate interests of the public outlined above.
75. The Commissioner is therefore satisfied that, with the redaction of the identities of the driver of the vehicle, in order to meet the legitimate interests she has identified, the information currently redacted within the status column should be disclosed.

The redacted addresses

76. The Commissioner has decided, based upon the evidence and information provided to her, that it is not necessary to disclose house numbers etc from the address column to meet the legitimate interests she has identified. The information which has already been disclosed suffices to meet the legitimate interests in transparency and accountability in this case.

Section 1(1) -Is further information held by the council?

77. The complainant argues that he is aware that further information is held by the council which was not disclosed to him in response to his request for information.
78. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
79. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
80. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority (and/or the complainant) which is relevant to her determination.
81. During the course of her investigation, the Commissioner asked the council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also

asked other questions, as is her usual practice, relating to how it established whether it held further information within the scope of the request.

The council's position

82. The council did not answer all the questions which the Commissioner asked of it. Instead, it provided an explanation as to why it did not need to carry out extensive searches for the requested information.
83. It said that the complainant requested the 'drivers daily log book' and this is the only one such log book held by the council.
84. It clarified that no further searches were conducted because the council does not use any other daily log book or tracking system for council vehicles. It said that the information is held electronically, and as only one log book is held it did not need to carry out further searches as it knew where the requested information relating to the vehicle in question could be located.

The complainant's position

85. The complainant argued that he was aware that the council held further information which had not been disclosed to him. He said that he had found this out from another source. He did not, however, clarify what that information might be.
86. The Commissioner asked the complainant to explain what information he considered may be held which the council had not disclosed to him, and, if possible, to provide any evidence he may have to demonstrate this.
87. The complainant initially asked for an extension of time to respond to this request. When the Commissioner contacted the complainant again and asked him to provide his response, it was at this point that the complainant then argued that he had not received any information from the council previously.
88. The Commissioner considers that it is difficult to establish what other information might be missing from the information which was requested and disclosed. The complainant requested the daily log book of a specific council vehicle on specific dates, and this was the information which was disclosed to him, subject to the redactions noted above.
89. Is the absence of further clarification from the complainant, and having given the complainant the opportunity to provide this information and a significant amount of time in which to provide it, she is not able to take place any great weight on the complainant's arguments in this respect.

The Commissioner's conclusion

90. The Commissioner has reviewed the submissions of both parties and the arguments put forward.
91. Under the circumstances described, the Commissioner believes that the council has provided a description of having carried out adequate searches in appropriate places to determine whether any further information is held falling within the scope of the complainant's request. The request was specific, the council confirmed that it only holds one log book, and it has explained that it already knew the location of this record.
92. The Commissioner has considered the complainant's suggestion that further information should have been provided to him in response to his request. She has taken into account the explanation provided by the council, together with the fact that the disclosed information equates to the nature of the requested information.
93. In the absence of evidence to the contrary she considers that there is no evidence demonstrating that further information is held falling within the scope of the complainant's request for information.
94. This being the case, the Commissioner's decision is that, on a balance of probabilities, no further information is held by the council falling within the scope of the complainant's request.

Section 10(1) – time for compliance

95. Section 10(1) of the Act provides that

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

96. The complainant made his request for information on 1 June 2020. The council initially responded by email, however it sought to provide the requested information by hand delivery of hard copies. The complainant said that he did not receive that information.
97. The council subsequently disclosed the information to the complainant electronically on 6 July 2020.
98. In the absence of evidence that a hard copy of the information was hand delivered the Commissioner must consider that the first evidence she has seen of the receipt of the information was on 6 July 2020. That being the case, and given that this amounts to a late disclosure of

information, the Commissioner has decided that the council did not comply with the requirements of section 10(1).

Right of appeal

99. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

100. 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.

101. 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
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