

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 2022

Public Authority: Doncaster Metropolitan Borough Council

Address: Civic Office
Waterdale
Doncaster
South Yorkshire
DN1 3BU

Decision

1. The complainant requested information from Doncaster Metropolitan Borough Council ("the Council") relating to two specific drawings.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) (personal information) of the FOIA to refuse to provide the information requested in question 1 of the request.
3. The Commissioner is also satisfied that on the balance of probabilities, the Council does not hold the information requested in questions 2 and 3 of the request.
4. The Commissioner does not require the Council to take any steps.

Request and response

5. The complainant made the following information request to the Council on 18 February 2022 (numbering added by the Commissioner):

"1. Could you please tell me who drew this drawing?

2. What was the cost of producing this drawing*?"

3. How many staff hours were taken to produce this drawing*?

* (For the second and third questions, please include cost and time for the second drawing which details the route on Field Side)."

6. The two drawings referred to in the request are drawings titled King Edward Road General Arrangement and Field Side General Arrangement. The Commissioner notes that the drawings were created by the Council as part of a project relating to the installation of cycle lanes.
7. The Council refused to provide the information requested in question 1 of the request citing section 40(2) (personal information) of the FOIA as its basis for doing so. It denied holding the information requested in questions 2 and 3 of the request.

Reasons for decision

8. This reasoning covers whether the Council is entitled to rely on section 40(2) of the FOIA to refuse to provide the information requested in question 1 of the request. It also covers whether the Council is correct when it says that it does not hold the information requested in questions 2 and 3 of the request.

Section 40(2) – personal information

9. 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.
10. Section 3(2) of the Data Protection Act 2018 defines personal data as:
"any information relating to an identified or identifiable living individual."
11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. In question 1 of their request, the complainant has requested the name of the individual who drew the King Edward Road General Arrangement drawing. The Commissioner is satisfied that the requested information both relates to and would identify the individual who drew the drawing. The information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

13. 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."
14. 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.
15. 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.
16. The Commissioner considers that there is a legitimate interest in the accountability and transparency of the Council with regards to the Council's implementation of cycle lanes and its management of the cycle lane project. Therefore, the Commissioner considers that in this case, the complainant is pursuing a legitimate interest.
17. The Commissioner notes that whilst the Council has refused to provide the complainant with the name of the individual who drew the King Edward Road General Arrangement drawing, the Council has provided the complainant with the name and contact details of the senior Council staff member who is responsible for the cycle lane project for which the King Edward Road General Arrangement drawing was created.
18. The Commissioner considers that by disclosing the name of the senior Council staff member who is responsible for the entire cycle lane project, the Council has already fulfilled the legitimate interest identified above. He therefore considers that disclosure of the information requested in question 1 of the request is not necessary to meet the legitimate interest in this case.
19. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it would be unlawful. It therefore does not meet the requirements of principle (a) (lawful processing).
20. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to refuse to provide the information requested in question 1 of the request.

Section 1 – general right of access to information

21. The complainant believes that the Council holds the information requested in questions 2 and 3 of the request. The complainant considers the King Edward Road General Arrangement drawing and the Field Side General Arrangement drawing to have been created using CAD software which has an inbuilt time recording function that records the length of time spent working on a drawing.
22. The complainant considers that the Council could find the information requested in questions 2 and 3 of their request by examining the data recorded by the CAD software's time recording function on each of the two drawings as this data would show the amount of time that has been spent editing the drawings.
23. The Council maintains that it does not hold information within the scope of questions 2 and 3 of the request. The Council has provided the Commissioner with information to explain the searches it has conducted for the requested information.
24. With regards to question 2 of the request, the Council explained that both the King Edward Road General Arrangement drawing and the Field Side General Arrangement drawing were created using CAD software. However, whilst the CAD software does have a time recording function, the software only records the amount of time drawings are open. It does not record the amount of time spent working on drawings. Therefore, the Council concluded that the information requested in question 2 of the request is not held.
25. With regards to question 3 of the request, the Council explained that in order to provide the requested information, it would need to calculate the cost of creating the King Edward Road General Arrangement drawing and the Field Side General Arrangement drawing. In order to calculate the cost of creating the two drawings, the Council explained that it would need to know how much time was spent working on the drawings. As this information is not held, the Council is unable to calculate the cost of creating the drawings. The Council therefore concluded that the information requested in question 3 of the request is not held.
26. The Commissioner has considered the Council's position in relation to whether the Council holds the information requested in questions 2 and 3 of the request. The Commissioner is satisfied that the Council has provided reasonable explanations as to why it should not be expected to hold the requested information. Therefore, his decision is that, on the balance of probabilities, the Council does not hold the information requested in questions 2 and 3 of the request.

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: 0300 1234504

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

Ben Tomes
Group Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF