

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 December 2022

Public Authority: Beverley Town Council
Address: 12 Well Lane
Beverley
Yorkshire
HU17 9BL

Decision (including any steps ordered)

1. The complainant has requested a report into Beverley Town Council's ('the council') failure to pay for gas for a number of years. The council withheld the information under section 40(2) (personal information) and section 41(1) (information provided in confidence).
2. The Commissioner's decision is that the council was correct to withhold the information under section 40(2).
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 1 February 2022, the complainant wrote to the council and requested information in the following terms:

“The information I require is the report from [name of councillor redacted] into the issues surrounding the Gas Supply to the council-occupied premises at 12 Well Lane, discussed in [name of councillor redacted]’s statement presented to Full Council on 10th January 2022, which was due to be completed by 31st January 2022.”
5. The council responded on 22 February 2022. It refused the request on the basis that section 40(2) and 41(1) applied (personal data of third parties and information received from a third party in confidence).
6. Following an internal review, the council wrote to the complainant on 22 March 2022. It upheld its position.

Reasons for decision

Section 40(2) - personal data of third parties

7. The following analysis explains why the Commissioner is satisfied that the council was entitled to apply section 40(2) of FOIA to withhold the requested information.
8. Section 40(2) of FOIA allows a public authority to withhold information if it is personal data, (information falling within the scope of the definitions provided in sections 3(2) and (3) of the Data Protection Act 2018), and none of the conditions listed as a lawful basis for processing listed in Article 6(1) of the UK GDPR is satisfied.
9. The Commissioner is satisfied that the requested information is personal data relating to the clerk, and to other third parties. This is because they can be identified from the information, it directly relates to them, or processes that took place which relate to them, and also the actions that have been taken that have had a direct impact on them.
10. The Commissioner has also decided that section 40(2) is satisfied because a disclosure of the information would contravene data protection principle (a).
11. The Commissioner has ascertained this by assessing whether there is a lawful basis for processing the requested information under Article 6(1)(f) of the UK GDPR.

12. He has determined that the public has a legitimate interest in disclosure, and disclosure would be necessary to satisfy that interest due to subject matter of the information in question: the council has had an unpaid gas supply for 17 years.
13. The Commissioner has balanced the legitimate interest of the public in the information being disclosed against the rights of the individuals concerned, and whether they would have a reasonable expectation that their information would be disclosed to the public.
 - The Commissioner is of the opinion that the relevant individuals would not have any reasonable expectation that their personal information would be made available to the public in situations such as this.
 - It would not be fair to disclose the personal data of council employees where it was not necessary for that to occur in order for the council to be transparent about its actions. This would be likely to be distressing to the council officers involved.
 - The council owes a duty of confidence to its employees for personnel information which it holds. Council employees, who are not in senior positions, are accountable to the council itself for their actions, not to the public generally.
 - However, the council also has to be accountable to the public for its actions, and in some cases, a greater degree of openness should be expected by its employees where this is necessary in order for the council to be transparent and accountable.
 - The council has explained the background to the situation, and clarified the major costs of this to the council. This, to a degree, is sufficient to serve the legitimate interests raised by the request.
 - The Commissioner, however, accepts that there is a further public interest in greater openness and transparency over the issues involved. The Commissioner has taken into account that it is important that the public have some reassurance that the council is taking appropriate action where necessary.
 - Whilst the council has not made entirely clear to the public why the situation arose as it did, it has provided an outline explanation of the circumstances, and the likely costs of rectifying the situation.
 - As there is already some information in the public domain about matters that relate to the issues, this goes some way in meeting the legitimate interests which have been identified.

14. Having considered all the information available, the Commissioner has decided that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms in this case.
15. As the Commissioner has concluded that disclosure would not be lawful under Article 6(1)(f) of the UK GDPR, he has not gone on to separately consider whether disclosure would be fair or transparent.
16. The Commissioner's decision is therefore that the council was able to withhold the requested information from disclosure under section 40(2) of FOIA.

Right of appeal

17. 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

18. 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.
19. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Cheshire
SK9 5AF