

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 6 December 2011

Public Authority: Dacorum Borough Council
Address: Civic Centre
Marlowes
Hemel Hempstead
Hertfordshire
HP1 1HH

Decision (including any steps ordered)

1. The complainant was issued a Penalty Charge Notice (a parking ticket) by the council whilst parked on a pathway which was separate to, but adjacent to a section of highway which had double yellow lines on it. She therefore asked the council for information about how the council was able to issue her with a parking ticket whilst she was not parked on the road itself. She also asked for information about another car which had been parked near to hers which she believes was not issued with a parking ticket.
2. The Commissioner's decision is that the council has disclosed the majority of the information she had requested which it holds.
3. The Commissioner has also decided that the council was correct to apply the exemption for personal data to a request for information about whether a car parked near to hers received a parking ticket.
4. He has decided however that it did not respond to one particular part of the request and did not confirm whether it holds relevant information.
5. The Commissioner further notes that one of the review responses issued by the council provided inaccurate information to the complainant.
6. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - to confirm to the complainant whether it holds information in relation to part 2(b) of the complainant's request and if so to disclose that

information to the complainant or apply a valid exemption to the information.

7. The public authority must take this step 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

8. On 1 April 2011 the complainant wrote to Dacorum Borough Council and requested information in the following terms:

in response to a letter written to her on 25 March 2011 which stated:

"The path is public highway. Yellow lines are enforceable from the centre of the road to the boundary of private land. The vehicle was not parked on private land, but on what Herts County Council confirm is public land – please see the photograph below.

She asked for:

"1. The name of the person from The Parking Service who wrote to me on 25/3/2011.

2 (a) Inform me which path is being referred to in the above.

(b) Send me a copy of the legislative document that states yellow lines are enforceable from the centre of the road to the boundary of private land.

(c) Send me a copy of the document in which Herts County Council confirms the land on which the vehicle was parked is public land.

(d) Inform me why the black car at the front of the line of vehicles in the photograph did not get a PCN.

(e) Send me a copy of the full photograph."

9. The council responded on 5 May 2011. It provided a response to the first part of the request and provided other information in respect of the other requests. It refused part 2(d) on the basis that it could not provide information concerning other vehicles on that basis that the Data

Protection Act applied. The complainant wrote back on the same day stating that she was unhappy with that response.

10. Following further correspondence and an internal review the council wrote to the complainant on 23 June 2011. It stated that all of the information had been provided to her, other than the personal data, which it confirmed was exempt under the exemption for personal data.
11. The complainant further disputed the outcome of the internal review, and a further review was carried out. The response was sent by the council on 24 June 2011 and confirmed its earlier position.

Scope of the case

12. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She clarified that the following situation had been reached for each part of the request:

1. **The name of the person from The Parking Service who wrote to me on 25/3/2011.** The complainant was provided with 2 names in 2 separate responses by the council. Initially the council provided the name of an officer however in a subsequent letter a different officer was named. The council then confirmed in its review that the initial name she had been given was correct. It explained that the second name she had been provided with was a manager preferred to be used as the point of contact. The complainant considers that the council has provided false information in response to her request, and that it should therefore apologise and clarify which officer was responsible for the letter.

2. a) **Inform me which path is being referred to in the above.** The complainant considers that this aspect has not been met by the council. She argues that the map which was disclosed to her did not respond to her actual request as it did not specify which area the council was referring to, nor state that those areas were 'public land'. The map was provided to the council by the county council and identified areas of the road and the surrounding area which it maintains. In a further response the council marked the map with a black arrow where the complainant's car was parked when the parking notice was issued to her to demonstrate which path was being referred to.

- b) **Send me a copy of the legislative document that states yellow lines are enforceable from the centre of the road to the boundary of private land.** The council provided Mrs Read with copies

of the Highway Code, and with details of the legislation under which it is authorised to issue parking notices; the Traffic Management Act 2004. The complainant argues however that this aspect of her request has not been met as the council has not provided her with what she asked for, a specific legal authority to support its statement that double yellow lines are enforceable to the boundary of private land.

c) **Send me a copy of the document in which Herts County Council confirm the land on which the vehicle was parked is public land.** The council provided a description of public land together with the map referred to above. This was from the county council and detailed the areas which it is required to maintain. The complainant argues however that the map does not relate to any official description of public land and that the council has not therefore responded to this part of her request.

d) **Inform me why the black car at the front of the line of vehicles in the photograph did not get a PCN.** This request was refused under section 40 of the FOI Act. The complainant argues that she does not wish to know the identity of the car owner. She wishes simply to know why the car was not issued with a notice. The council states that as the complainant is aware of the number plate of the car it cannot provide her with further information as doing so would breach the Data Protection Act.

e) **Send me a copy of the full photograph.** This aspect of the request was met.

13. The Commissioner considers that he therefore needs to decide whether the council's response complied with its obligations under the Act in respect of parts 1 and 2(a) – 2(d) of the request.

Reasons for decision

1.

14. The Commissioner has firstly considered the council's response to part 1 of the request. The Commissioner has considered the complainant's arguments that she was purposely provided with inaccurate information by the council and that she therefore wishes it to clarify who wrote the letter to her. She also wants the council to apologise for trying to mislead her on this issue.
15. The Commissioner has no powers to require the authority to apologise for providing her with the wrong information.

16. The Commissioner notes that the councils last letter did clarify the name of the office who had written the letter to her on 23 March 2011. It was the officer named in the councils 1st response to her request.
17. The Commissioner therefore considers that the council has complied with its obligations under the Act.
18. The Commissioner notes that the council's response which provided the name for the wrong individual was sent as the individual was the councils preferred point of contact for disputes of this nature.
19. The Commissioner recognises that the council's review response was therefore inadequate and was not correct in the circumstances. However he does not consider that this was an attempt to mislead the complainant in order to deny her rights under the Act. It was merely an attempt to channel the correspondence it might receive in response to the request. He further notes that as the correct information has been given to her in its first response that the council met its obligations under the Act at that time.

2(a)

20. In response to part 2(a) of the request the council provided the complainant with a map detailing which areas were considered to be public land for the purposes of parking enforcement. On review the council also marked the map with a black arrow, detailing where it considered the 'infringement' occurred.
21. The complainant wrote to the council on 7 June 2011 providing 5 specific areas of land and asking the council to name the area which it was referring to. The council however simply referred back to the map and the arrow indicating where the complainant's car had been parked and said that that was the land it was referring to.
22. The Commissioner is satisfied that the council complied with its obligations by disclosing the map. The complainant requested information on which path was being referred to in the councils response of 23 March 2011. Supplying a map detailing the area where she was parked responds to that request because it explains which path the council was referring to in its response.
23. Whether the council was correct to issue a parking notice to cars parked on the pathway is a separate matter to whether that was the pathway which the council was referring to in its statement. The path which the council referred to in its letter of 23 March 2011 is the path upon which the complainant's car was parked when the parking notice was issued. The council's confirmation of this was provided in the form of the map with a black arrow indicating the area in which her car was parked.

24. The council therefore considers that that path is public land which is covered by the restrictions indicated by the double yellow lines on the main roadway. Although the complainant provided arguments to the council stating that the response was inadequate, the Commissioner considers that these were in fact arguments that the council had failed to provide her with a legal justification for issuing parking notices to a cars parked on the pathway. That is not however what was requested by the complainant and so the Commissioner finds that the council's response was correct in this instance.

2(b)

25. The council provided the complainant with copies of the Highway Code and the name of the legislation under which it can issue parking notices. The Commissioner considers that this does not specifically answer the complainant's request however.
26. The council has not provided the complainant with a document detailing a specific legal authority which allows it to enforce parking restrictions on a separate pathway which is adjacent to, but some distance from the main part of the highway which has double yellow lines.
27. The Commissioner notes that the Highway Code does not specifically provide powers to the council to issue parking notices. Nor does it specifically provide the council with powers to restrict parking on specific areas of roadway. The council's powers to do that will derive from legislation rather than from the Highway Code itself. Supplying the complainant with a copy of the Highway Code did not therefore respond to the complainant's request.
28. An objective reading of this part of the request is that the complainant wishes to know which section within legislation defines that parking enforcement restrictions extend beyond the centre of the road onto verges and pathways, to the boundary of private land.
29. The council therefore needed to confirm to the complainant whether it holds a copy of any specific legislation which defines the areas within which yellow lines are legally enforceable (i.e. to the boundary of private land), and if it does hold such information to disclose that to her. Alternatively it could direct her to where that legislation can be found, (i.e. by naming the specific section of legislation in question).
30. The Commissioner's decision is therefore that the council did not comply with its obligations under the Act in respect of this part of the request.

2(c)

31. In respect of this part of the complainant's request the council again referred to the map which it had disclosed to the complainant. It pointed out that the map had been provided to it by Herts County Council.
32. The complainant sought to argue with the public authority that the map does not define that the area she was parked on is 'public land'. She argues therefore that the map does not respond to her request. She also sought to extend the request in that she subsequently sought a definition of 'public land' from the council.
33. The Commissioner has considered the wording of the request. It is clear that what the complainant asked for is a copy of the document which the council was relying upon when it made its statement as outlined in the letter of 25 March 2011. The Council has confirmed that this is the document in question. As above therefore the Commissioner considers that the council has complied with this part of the request.
34. The complainant argues that this is not all of the information which the council would hold. She argues that the map was provided by the county council specifically in relation to her informal challenge of the parking notice. She notes this from the date which is provided on the map and because she was told that the map only shows the relevant areas because a council officer had specifically asked the county council about those areas.
35. The complainant therefore argues that it was unlikely to have been supplied without correspondence between the council and the county council and therefore the council should have disclosed any correspondence from the county council which the council holds in respect of this.
36. Whilst the Commissioner recognises that the complainant may be correct about there being further correspondence, the request was for the document which the council was relying upon when writing the letter of 25 March 2011 rather than any correspondence surrounding that. The Commissioner therefore considers that the council has responded to an objective reading of request as it was written.
37. The complainant also argues that the map, on its own, does not prove that the land in question is public land. It is not the Commissioner's role to delve further into arguments as to whether the map does, or does not confirm whether the land on which the vehicle was parked on was public land. The complainant believes that the council is wrong to assert that the map proves that the land is public land. She is therefore able to seek her own legal advice, and ultimately appeal the council's decision to the

Traffic Penalty Tribunal if she remains unhappy with the decision. This is not therefore a matter for the Commissioner to concern himself with further.

38. The Commissioner therefore considers that the council has complied with its obligations under the Act in respect of this part of the request.

2(d)

39. The Commissioner has considered the council's application the exemption for personal information. This is provided in section 40 of the Act.

40. This exemption allows information to be withheld where the information is personal information of another person, and disclosing that information to a member of the public would breach one of the data protection principles of the Data Protection Act 1998.

41. The complainant considers that a car parked in front of hers was not issued with a ticket. She says that the car was already parked there when she arrived, and was still there when she left, but that no ticket was issued to it.

42. She has obtained a redacted copy of the traffic assistants log book for the relevant period. She argues that the logbook shows that not all of the vehicles parked on the pathway received a ticket at that time; that the record of the numbers booked on the pathway demonstrates that one of the vehicles did not receive a ticket. In the complainant's opinion this was the vehicle. She therefore requested the reason why that vehicle did not receive a ticket.

43. The Commissioner recognises that in all likelihood if a ticket was not issued then information as to why that is the case would not be held in any event. It would presumably have been the traffic assistant's decision as to whether a ticket was issued and if he made no record of it then the council would hold no information on it. A disclosure that no information is held would therefore show that no ticket was issued.

44. The first question which must be considered is that argued by the complainant. She argues that does not wish to know the identity of the person. All she wishes to know is why the car was not issued with a ticket, presumably on the basis that if that person's vehicle did not receive a ticket she can argue that the councils enforcement duties were being carried out unfairly.

45. The council argues that as the complainant knows the car number plate she can identify the owner of that vehicle. The complainant did not refute that she knew the number plate. The council therefore argues

that a disclosure of further information about its actions or inactions with that vehicle would also disclose personal information about the owner of the vehicle. For instance, if it discloses that the vehicle was issued with a parking ticket then it would effectively be disclosing that that person received a notice for acting unlawfully.

46. The Commissioner has previously considered whether a vehicle registration plate is personal information for the purposes of the DPA. In Decision notice FS50186040 available at http://www.ico.gov.uk/~media/documents/decisionnotices/2009/FS_50186040.ashx his decision was that as it is possible to identify the owners of vehicles from the registration plates then that information is considered to be the individual's personal data.
47. The first data protection principle requires that personal data should be processed fairly and lawfully. The first question which the Commissioner must consider is whether it would be fair for the council to confirm whether it holds information which would confirm whether the vehicle owner was issued with a ticket or not. In effect, if the council confirmed that it holds no information in respect of the request then it would be confirming that a parking ticket was not issued. Consequently if it disclosed that it did hold information then the council would disclose that it did issue a ticket.
48. The Commissioner considers that an individual would not expect that details of parking tickets which they have or have not received would be disclosed to any person who asks for that information. If a council were to routinely confirm when a ticket was not issued then it would be obvious that a ticket was issued whenever the council applied section 40 instead of confirming that no information is held. In effect confirming a ticket was issued would potentially be a disclosure of information that alleges that an individual has acted unlawfully.
49. The Commissioner recognises that parking tickets are placed in plain sight on a vehicle and that passers by would therefore be able to ascertain the exact same information which has been requested if they were in that place at that time. The individual would however have an expectation that this would occur because this is normal practice of traffic wardens when issuing parking tickets. The Commissioner also considers this to be a limited disclosure in that the ticket would only be visible for a short period of time before the individual returned to his or her vehicle.
50. There is however a significant difference between information being disclosed in this limited respect, and a specific disclosure of the information to the whole world at a later point in time.

51. The Commissioner has considered whether there is a compelling legitimate interest in the general public receiving this information which would override an individual's expectations that that information would not be disclosed to any member of the public.
52. The complainant's argument is that if it became clear that the individual was not issued a ticket then this would potentially provide evidence of unfair enforcement practices being carried out by the council. The Commissioner considers however that even if the vehicle was not issued with a ticket this does not necessarily provide evidence of unfair enforcement practices occurring. For instance it is possible that no ticket was issued as the vehicle was displaying a blue disability badge. The Commissioner does not know whether that is the case nor not, however he considers that the example demonstrates why information may not be held, or if it is, why it would be unfair to disclose it.
53. The Commissioner therefore concludes that there is no compelling reason why that information should be disclosed.
54. The Commissioner therefore considers that the council was correct to apply the exemption for personal data to the information requested by the complainant in this case.

Right of appeal

55. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

56. 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.

57. 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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