

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 December 2021

**Public Authority:** Thanet District Council  
**Address:** Cecil Street  
Margate  
Kent  
CT9 1XZ

#### Decision (including any steps ordered)

---

1. The complainant has requested, from Thanet District Council (the "Council"), information relating to a planning application. The Council denied holding some of the information, said that it would exceed the cost limit at section 12 to locate some information and withheld some citing section 40(2)(Personal information) of the FOIA.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold some of the requested information. Furthermore, the Council was entitled to rely on sections 12 and 40 of the FOIA. He does however find a breach of section 16(1) (Advice and assistance) of the FOIA. The Commissioner does not require the Council to take any steps.

#### Request and response

---

3. On 29 January 2021, the complainant wrote to the Council and requested information in the following terms:

*"Subject - Planning application [address redacted]*

*Ref. No: [reference redacted] and Ref. [reference redacted]*

*I am the owner of the subject property. Two objections were registered against my initial planning application. One from Mr and Mrs [name redacted] my neighbours who reside above me at [address redacted], the second objection dated 11 April 2020 from a [name redacted] who I understand is a local resident and*

*conservationist.*

*Both objections were uploaded as documents associated to my planning application onto the Thanet council website as part of this application earlier this year, a standard practice and visible for all to see.*

*Shortly thereafter for unknown reasons both objections were physically removed from my planning application on the Thanet planning website. I am therefore requesting information pertaining to the following:*

*Who is [name redacted] and where does he live? I ask this as I paid a fee for my planning application and his objection has severely impacted on the outcome of my application. It resulted in the refusal of my initial planning application.*

*Has [name redacted] objected to any other local planning applications?*

*Is [name redacted] related to [Council officer's name redacted] the [role redacted] employed at Thanet council?*

*Who removed the objections and on what date?*

*Why were the objections removed from Thanet planning website in the first instance?"*

4. The Council responded on 26 February 2021. It advised as follows:
  - Information about the named third party was exempt from disclosure under section 40(2) (Personal information) of the FOIA.
  - It would exceed the cost limit at section 12(1) of the FOIA to establish whether or not the named party had raised any other local planning objections.
  - It did not hold any information regarding any familial relationship between the named party and its own officer.
  - Objections are automatically removed from its website when a decision has been made.
5. Following an internal review, the Council wrote to the complainant on 30 March 2021. It maintained its position.
6. At a late stage in the investigation the Council revised its position, relying on section 12(2) instead of 12(1) of the cost limit.

## **Scope of the case**

---

7. The complainant contacted the Commissioner on 31 March 2021 to complain about the way his request for information had been handled. The Commissioner required further information from him, which was provided on 7 May 2021.
8. The Commissioner advised the complainant that he would consider whether or not any information was held in respect of any familial relationship between the named party and the named council officer, the citing of sections 12 and 40 of the FOIA. The complainant was invited to provide arguments to support his position on these particular matters but none were received.
9. As the complainant had been advised that objections are automatically deleted from the Council's website when a decision has been made, he was also invited to comment on this if he disagreed that this was the case. No further comments regarding this were received so this part of the request has not been further considered.
10. In responding to the Commissioner's enquiries, the complainant raised further issues about his planning applications and dealings with the Council. The Commissioner does not have jurisdiction to consider or comment on these as they fall outside the remit of the FOIA.
11. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

## **Reasons for decision**

---

### **Section 1 – general right of access**

12. This has been considered in respect of whether or not the Council holds recorded information about any familial relationship between the named party and its own officer.
13. Section 1(1) of FOIA states that:

*"(1) Any person making a request for information to a public authority is entitled – (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him."*

14. In this case, the complainant suspects that the Council holds information regarding a familial relationship he suspects exists between two parties that share the same surname. One of these, a member of the public, objected to a planning application he made and the other works for the Council. The Council's position is that it does not hold any information about any such relationship.
15. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
16. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
17. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the Council holds any recorded information within the scope of this part of the request. Accordingly, he asked the Council to explain what enquiries it had made in order to reach the view that it did not hold the information.
18. In responding, the Council advised the Commissioner as follows:

*"... [the council officer]'s manager, ... , asked her if she had a familial relationship with [name redacted] during his investigation into a complaint about the similar issue raised by [the complainant]. [The council officer] confirmed that she is not related to [name redacted]."*

*We would not record familial relationships unless the staff member disclosed it either during a recruitment process (where there is a question on the form about relationships with anyone who already works at the Council), or if there is a conflict of interest on any*

*issue, in accordance with the Officers' Code of Conduct. Once [the council officer] confirmed the information to [her manager], no further searches were necessary. [Her manager] confirmed this information to [the complainant] in the answer to his complaint:*

*"I can confirm that the [job title redacted] officer is not related to any contributor on your planning and listed building consent applications."*

### *The Commissioner's conclusion*

19. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
20. The Commissioner considers that the Council contacted the relevant party to consider whether or not any information was held in respect of the request, ie the officer herself was asked. Based on the information provided, the Commissioner is satisfied that, on the balance of probabilities, no recorded information within the scope of the request is held. The Commissioner is therefore satisfied that the Council has complied with the requirements of section 1 of the FOIA in this case.

### **Section 12 – cost of compliance**

21. This has been cited in respect of that part of the request which seeks to ascertain whether the named party has objected to any other local planning applications.
22. The provisions of section 1(1) of FOIA are cited at paragraph 13 above.
23. Section 12(1) of FOIA states that:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit".*

24. Section 12(2) of FOIA states that:

*"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit".*

25. When considering whether section 12(2) applies, the authority can only take into account certain costs, as set out in The Freedom of

Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:

- (a) *determining whether it holds the information,*
- (b) *locating the information, or a document which may contain the information,*
- (c) *retrieving the information, or a document which may contain the information, and*
- (d) *extracting the information from a document containing it."*

26. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £450, which is equivalent to 18 hours' work.
27. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the Council was reasonable; whether it estimated reasonably that the cost of ascertaining whether or not the requested information is held would exceed the limit of £450, that section 12(2) therefore applied and that it was not obliged to comply with the request.
28. The Council has offered the complainant the following explanation:

*"To determine whether we hold this information, officers would have to manually search each planning application where we hold objection letters. We hold information for the last 7 years with an average of 1000 applications per year. At 1-5 minutes per application, determining if we hold this information would exceed the 18 hour limit".*

29. In its response to the Commissioner it added:

*"The computer system we use to store the planning records does not allow us to search for records by the name of a complainant which is why this exemption has been triggered*

*In order to find this information, the Council would need to undertake a manual checking process. To determine if [named party] objected to other local planning applications, we would need to manually search each planning application we hold where we hold objection letters, across data that spans the past 7 years.*

*The Council's Planning department receives on average 1000 applications each year therefore it has been calculated that about 7000 records would need to be manually looked through. Whilst some applications would be simple and take 1 minute, some are*

*much more complex and would take at least 5 minutes. The Planning team are clear that this manual process would take significantly over the 18 hours, over the appropriate limit".*

*The Commissioner's view*

30. By virtue of section 12(2) of FOIA a public authority is not required to comply with the duty in section (1)(1)(a) of FOIA (ie to confirm or deny whether the requested information is held) if to do so would exceed the appropriate limit
31. Having considered the estimates provided, the Commissioner finds that they are realistic and reasonable. He therefore accepts that to ascertain whether or not it holds any other planning objections made by the named party would exceed the appropriate limit.

**Section 16 – advice and assistance**

32. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
33. In this case the public authority has explained to the Commissioner:

*"Whilst I recognise that section 16 places a duty on a public authority to provide advice and assistance to someone making an information request, it would be difficult to narrow this request to even 1 year of records. If the records held for a given year were complex, and the Planning team would not know that in advance, it would be likely that a 1000 records taking 5 minutes to search through would take approximately 5000 minutes, taking it over the 18 hour limit. This is why the Council did not offer the requestor the opportunity narrow [sic] their request as it would still not be reasonable for us to respond in terms of cost limits".*

34. Whilst the Commissioner acknowledges the wide-ranging scope of this part of the request, and accepts that there is no easy way of suggesting how it could be refined, the Council should nevertheless have advised the complainant accordingly. It would have been helpful had it given the complainant the above explanation, or it should have advised him that it had considered its duties but could make no suggestions as to how he might refine his request. In failing to do so, the Commissioner finds a breach of section 16.



## **Section 40 personal information**

35. This has been cited in respect of the named party who raised an objection to the proposed works at the complainant's property, ie who he is and where he lives. The Commissioner has viewed a copy of the actual objection raised and, whilst it includes his actual address and a phone number, it does not state "who he is".
36. 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.
37. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. 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').
38. 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.
39. 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?***

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

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

41. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
42. 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.

---

<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.



43. 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.
44. The request refers to a named individual and seeks to know his full address.
45. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the named party. He is satisfied that this information both relates to and identifies the party concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
46. 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.
47. The most relevant DP principle in this case is principle (a).

#### **Would disclosure contravene principle (a)?**

48. 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".*

49. 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.
50. 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**

51. 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"<sup>2</sup>.*

---

<sup>2</sup> Article 6(1) goes on to state that:-

52. 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:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
53. 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*

54. 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.
55. The complainant has not provided any specific legitimate interest in why the third party's private address should be placed in the public domain

---

*"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".*

via the FOIA. His grounds of complaint refer to his own alleged unfair treatment by the Council, and planning issues with his property, but there is no reason given as to why disclosure of the actual address of the third party is needed or what interest it would serve.

56. The Council has explained to the Commissioner:

*"The Council's website states the following:*

*"Please note copies of your correspondence will be made available for public viewing at the Council Offices and on the Council's website with telephone number, email address, house name/number and signatures removed, it may take up to seven days to publish your comments."*

*The comment tool on the planning application portal would not specifically ask [named party] to state who they are when they offer their objections. Whilst it may be apparent from the letter or contact details who someone is, the information is not always explicitly stated.*

*It is standard procedure that whilst names are published until a decision is made on an application, we never supply the telephone number, email address, house name/number or signatures contained within an objection letter".*

57. The Council also recognised that:

*"... there is a legitimate interest in sharing the addresses of planning applications objectors where this may support transparency and accountability to contextualise the nature of the objection to the general public. It may also reduce vexatious objections where objectors cannot hide behind anonymity".*

58. The Commissioner recognises there is a legitimate interest in disclosure of information about planning objections. He also notes that a redacted version of the objection raised by the named party is still available on the Council's website, which only has minimal information removed.

*Is disclosure necessary?*

59. '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.

60. The Council has argued as follows:

*"I do not believe [the complainant] requires the full contact details of the objector in order to understand the objection comment and I maintain that it would not pass the necessity test. [The complainant] would have had access to the contents of the redacted objection letter, as would the general public up to when the planning application was made. The name of the individual and the road in which they live would be available during this time. I believe that sharing the number or name of the home where the objector lives would breach the first GDPR principle, 'lawfulness, fairness and transparency' (Article 5(1)(a)), as the objector would not reasonably expect their home name or number to be shared with [the complainant] or other people outside of the Council.*

*Furthermore, this additional data processing could have a disproportionate [sic] effect on the objector, where it may make them vulnerable to personal attacks or reprisals for their genuine planning application concerns.*

*Publishing the full addresses of objectors may lead to a reduction in meaningful public consultation and feedback due to these concerned parties feeling too intimidated to provide objections. We do not see the necessity of providing the additional information of the full address of [named party] and it would be difficult to rely on legitimate interests as the legal basis for that processing activity".*

61. The Commissioner notes that the Council's website makes it clear that it will redact certain contact details prior to publishing objections on its website. Therefore, the named party would not expect to have his full address or contact details disclosed to the general public via the FOIA.
62. The Commissioner also notes that the actual objections were published at the time and were accessible to any interested party, including the complainant, under the Council's usual planning access regime. Provision of the full address or contact details as part of that process is not considered to be lawful under the GDPR and, therefore, some details are withheld; this is the usual practice.
63. In now apparently seeking to locate the named party, the Commissioner considers that the requester is pursuing a purely private concern unrelated to any broader public interest, and he cannot envisage any necessity in disclosure of that party's actual address. The Commissioner considers that any legitimate interests, as indicated by the Council itself above, were met at the time, ie the party was named and part of his address was disclosed to ensure transparency. He can see no need to disclose any further details and none have been provided by the complainant. The objections can still be viewed.

64. 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 is unlawful. It therefore does not meet the requirements of principle (a).

**The Commissioner's view**

65. 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).

**Right of appeal**

---

66. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

67. 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.

68. 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** .....

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**