

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 September 2023

Public Authority: London Borough of Lewisham
Address: Laurence House
1 Catford Road
London
SE6 4R

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Lewisham ("the Council"), regarding the number of parking tickets issued to one motorbike.
2. The Commissioner's decision is that the Council was entitled to rely on section 40(5B)(a)(i) when refusing to confirm or deny whether the requested information was held.
3. The Commissioner does not require further steps.

Request and response

4. On 11 April 2023, the complainant wrote to the Council and requested information in the following terms:

"I would like to know the number of parking tickets which have been issued in respect of motorcycle [redacted number], which has been abandoned outside [address redacted] since approximately August 2022."
5. The Council responded on 11 May 2023. It stated that the information was exempt under section 40(2) and would constitute personal data.

Scope of the case

6. The complainant contacted the Commissioner on 20 July 2023 to complain about the way their request for information had been handled.
7. The Council contacted the complainant to revise its position and advised that it could neither confirm nor deny whether the requested information was held, as doing so would constitute a breach of personal data. It relied on section 40(5B)(a)(i) of FOIA for this.
8. The Commissioner considers that the scope of his investigation is to determine whether the Council was entitled to neither confirm nor deny whether the requested information was held under section 40(5B)(a)(i).

Reasons for decision

Section 40 – personal information

9. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR') to provide that confirmation or denial.
10. Therefore, for the Council to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request the following two criteria must be met:
 - Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
 - Providing this confirmation or denial would contravene one of the data protection principles.

Would the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?

11. Section 3(2) of the DPA 2018 defines personal data as:-

“any information relating to an identified or identifiable living individual”.
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

13. 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.
14. The Council advised that to confirm or deny whether the requested information was held, would constitute disclosure of a third party's personal data and therefore contravene one of the data protection principles.
15. The Council stated that if the requested information was held, it would relate to an individual (the owner/registered keeper of the motorbike), and though it may not be possible to identify an individual directly by the number plate alone, the keeper may be known to the public or the complainant from that number plate and the locality of the address. Therefore, by combining various pieces of information, an individual could be identified.
16. The Commissioner refers to previous decisions FS50186040¹ and FS50651941² for matters such as these. In both decisions it was acknowledged that a Vehicle Registration Mark (VRM) can be used to access further information from the Drivers and Vehicle Licensing Agency (DVLA).
17. The DVLA provides information about registered keepers, under Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002. This requires it to release the information from the vehicle register to the Police, to Local Authorities who require it for purposes connected with the investigation of an offence and to anyone else who can demonstrate 'reasonable cause' to have it. VRM details are therefore accessible to a large number and wide-ranging group of organisations and individuals.
18. There are also a number of private companies who provide access for the public to information about cars through VRM numbers. Available information includes:
 - a. the make and model of the car;
 - b. the number of former keepers;
 - c. the Vehicle Identity Number [VIN];

¹ [Freedom of Information Act 2000 \(Section 50\) \(ico.org.uk\)](https://ico.org.uk/information-practitioner/guidance/freedom-of-information-act-2000-section-50/)

² [fs50651941.pdf \(ico.org.uk\)](https://ico.org.uk/information-practitioner/guidance/fs50651941.pdf)

- d. the car's engine number and its size;
 - e. whether the car is subject to outstanding finance;
 - f. whether the car is a stolen vehicle;
 - g. whether the car has previously been stolen and recovered;
 - h. whether the car has previously been an insurance write off;
 - i. whether the car has previously been reported to be scrapped by the DVLA;
 - j. whether the car has been subject to plate transfers; and
 - k. whether the car has been subject to changes in its colour
19. In decision notice FS501860402 the Commissioner determined that it is possible to identify the owners of vehicles from registration plates, meaning the that the information was personal data. In decision notice FS50651941 the Commissioner accepted that the requested information, if held, would reveal biographical information about the registered keeper of the vehicle, who is an individual. That is to say it would reveal whether any enforcement tickets had been issued against the vehicle in question.
20. The Commissioner is satisfied that in the circumstances of this matter, if the information was held and was disclosed, this could lead to individual(s) being identified and would constitute personal data of the registered keeper of the vehicle.
21. The fact that confirmation or denial constitutes the disclosure of personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether confirmation or denial would contravene any of the DP principles.
22. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

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

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

24. In the case of a 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.

25. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
26. In addition, if the requested data is special category data, in order for disclosure to be lawful and compliant with principle (a), it also requires an Article 9 condition for processing.

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

27. Article 6(1) of the UK 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.
28. 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”³
29. In considering the application of Article 6(1)(f) of the UK 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;

³ 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 and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK 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”.

- ii) **Necessity test:** Whether disclosure of the information/confirmation or denial 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.
30. 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

31. The complainant advised that, for the best part of a year, they had to walk past an abandoned motorbike on the street. They further explained that despite the Council being informed of the motorbike, nothing was done for many months.
32. The complainant stated that two agents acting for the Council then started to issue a large number of parking tickets to the abandoned vehicle, which became a regular discussion amongst local residents. These discussions resulted in the conclusion that the Council was acting in a wasteful manner, further demonstrating inaction and a failure to communicate to residents.
33. The complainant informed the Commissioner that they were concerned with how the Council was spending taxpayers' money for services such as ticketing, and further added that some of these funds were being wasted by the Council when repeatedly issuing parking tickets.
34. The complainant concluded that knowing the exact number of tickets issued to the motorbike, would allow the public to see exactly how much taxpayers' money had been wasted and allow them to make a formal complaint.
35. The Commissioner is satisfied that the complainant has a legitimate interest in the requested information and will now consider whether disclosure is necessary.

Is disclosure necessary?

36. '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 FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

37. The Commissioner recognises that the complainant has a valid interest in the requested information, however he is not convinced that disclosure is necessary in this matter to meet the legitimate interests above.
38. The Complainant can still make a complaint regarding the handling of the abandoned motorbike, without the Council having to confirm or deny whether the requested information was held. The complainant can also find information regarding what the Council uses taxpayers' money for, on the Councils website⁴ and via their Council tax bill.

The Commissioner's Decision

39. The Commissioner is satisfied that the Council was entitled to rely on section 40(5B)(a)(i) when refusing to confirm or deny this request. He does not require any further steps.

Other matters

40. The Commissioner would like to remind the Council that although Internal Reviews are not required under FOIA, they are still considered to be good practice. The Council should ensure that internal reviews are completed ideally within 20 working days, but in no more than 40 working days as a maximum period of time.
41. In the circumstances of this case, no internal review was conducted, and this does not demonstrate good practice.

⁴ [Council Tax booklet- 2022-23.pdf](#) & [Council Tax booklet- 2023-24 29 Mar 23.pdf](#)

Right of appeal

42. 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

43. 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.
44. 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

Michael Lea
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