

Freedom of Information Act 2000: Section 40(2)

Section 40(2) together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

'Personal data' is defined in sections 3(2) and (3) of the Data Protection Act 1998 ('the DPA 2018') and means any information relating to an identified or identifiable living individual. 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.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

"processed lawfully, fairly and in a transparent manner in relation to the data subject"

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This 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".

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

Legitimate interests

We recognise that there is a legitimate public interest in understanding how Blue Badge eligibility criteria operate, including how and why those criteria may differ from

those applied in England. This interest may arise from individuals seeking to understand their own eligibility, from stakeholders assessing fairness and consistency across jurisdictions, or from wider scrutiny of policy decisions affecting disabled people. There is also a broader interest in transparency regarding how eligibility criteria are developed and applied, particularly where differences may have practical implications for access to services or entitlements.

Necessity of disclosure

We have considered whether disclosure of the withheld personal data is necessary to meet these legitimate interests. We consider that the substantive information relating to Blue Badge criteria and the rationale for any differences has been provided through the released material. Disclosure of individual identities does not add to the public's understanding of the criteria, the policy rationale, or differences between jurisdictions. The legitimate interest in transparency can therefore be met without disclosing personal data, and redaction represents a proportionate and less intrusive means of achieving this.

Balancing test

In balancing the legitimate interests in disclosure against the rights and freedoms of the individuals concerned, we have considered the reasonable expectations of those individuals. The individuals whose names have been withheld would not reasonably expect their personal data to be disclosed into the public domain through an FOI response, particularly where they are not senior officials or their involvement is not publicly known. Disclosure in these circumstances would be likely to constitute an unfair intrusion into their privacy.

On this basis, we consider that the rights and freedoms of the individuals concerned outweigh the legitimate interest in disclosure, it has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.