

ENGLAND AND WALES / JUDGMENT

Stephen John Gullick v The Information Commissioner

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Neutral Citation Number: [2026] UKFTT 00133 (GRC) First-tier Tribunal (General Regulatory Chamber) Case Reference: Heard on: 28 November 2025 Decision given on: 27 January 2026 Before JUDGE HEALD MEMBER YATES MEMBER COSGRAVE Between STEPHEN JOHN GULLICK and THE INFORMATION COMMISSIONER Appellant Respondent Representation For the Appellant: the Appellant appeared in person. For the Respondent: no attendance. Decision

1. the appeal is allowed in part.
2. a copy of this decision and its closed annex is to be sent by the Respondent to Cottesmore Parish Council ("the Council") promptly.
3. a copy of the closed annex shall be sent by the Respondent or the Tribunal to the Appellant after 35 days has expired from the date this Decision is sent by the Respondent to the Council.
4. a copy of the closed annex to this decision shall not be sent to the Appellant after 35 days has expired if, within the time allowed or extended, an application has been made for permission to appeal to the Upper Tribunal with an application for the stay of this Decision and subject to the outcome of any such applications or further order. Substituted Decision Notice: the Council shall, within 35 days of being sent this Decision, provide to the Appellant a copy of the letter sent by Oldham Marsh Page Flavell to the Council dated 7 October 2021 but with the redactions and deletions specified in the closed annex. © CROWN COPYRIGHT 2026 '

REASONS

1. This decision relates to an appeal brought by the Appellant pursuant to section 57 Freedom of Information Act 2000. It is in respect of a Decision Notice issued by the Information Commissioner on 6 February 2023 with reference IC-194433-V2Q2 and concerns a request for information made to Cottesmore Parish Council on 28 March 2022. What follows is a summary of the submissions, evidence and our view of the law. It does not seek to provide every step of our reasoning. The absence of a reference to any specific submission or evidence does not mean it has not been considered. 2. In this decision page numbers indicated by their inclusion in brackets refer to pages of the bundle provided and if the letters CB are added it is to the closed bundle. The following definition are used:- Freedom

of Information Act 2000 Data Protection Act 2018 United Kingdom General Data Protection Regulation The Tribunal Procedure (First -Tier Tribunal) (General Regulatory Chamber) Rules 2009 Stephen John Gullick the Information Commissioner Cottesmore Parish Council the IC's decision notice Upper Tribunal & First-tier Tribunal the UT appeal ref UA-2024-000127-GIA the UT's decision in the UT appeal Oldham Marsh Page Flavell solicitors letter sent by the Solicitors to the Council dated 7 October FOIA DPA UKGDPR 2009 Rules the Appellant the IC the Council the DN UT & FtT the UT appeal the UT decision the Solicitors the Letter the client on whose behalf the Letter was sent to the Council the Data Subject meeting of the Council held on 18 October 2021 the October 21 Council Meeting Evidence and matters considered

3. For the appeal we had a bundle of 189 pdf pages and additionally, for example, a copy of the UT decision and the Appellant's document headed "Issues and Relevant law" by which we were referred to a number of legal authorities. We heard from the Appellant at the appeal and he provided a copy of the submissions made to us. '
4. We also had a 20 page closed bundle held pursuant to rule 14 2009 Rules which contained the Letter and its enclosures. It also contained a small amount of later correspondence. Background (in summary)
5. The Appellant has a tenancy of a plot at the Richard Westbrook Allotment site in Cottesmore. We were provided with detailed background information about the development of houses in a cul-de-sac called Jubilee Gardens in Cottesmore. This ends with an area off which there is a small access path between two houses then a gate into a public open green space. Beyond that are the allotments. If unable to use the small path, while it is less convenient for some, it is possible to access the allotments from Rogues Lane. 6. 7. It appears that the small path was being used to access the green space area for mowing. The Appellant said (13) that although the allotment agreement has the words "Entry to the site is from Rogues Lane Only" he and others wished to use the small path into the public space and from there to the allotments. He also said that at a meeting in April 2021 the Council agreed that plot holders would be allowed to access the green space and thus the allotment via the path. It appears that issues arose as reported at a meeting of the Council in July 2021. That resulted in the Council's agenda for a meeting to be held on 16 August 2021 including, under the heading correspondence, the question of the route to the allotments. At the meeting on 16 August 2021 the minutes record that there were seven members of the public present and questions had also been raised in writing. The minutes say that [the Chairman] "Mr Donovan confirmed that the current arrangements would be reviewed at the October meeting..."
8. The October 21 Council Meeting minutes under the heading "update on allotments" record "In view of the letter from Oldham Marsh Page Flavell it was agreed to postpone the discussion of this item until a later meeting" and the Request is for disclosure of this Letter. For completeness we also noted that:-

- (a) the minutes of a meeting on 13 December 2021 state "(f) It was proposed that Councillor Donovan and seconded by Councillor Patient that the [Council's] response be sent to [the Solicitors]"
 - (b) the allotments access issue was on the agenda again for a meeting of the Council to be held on 21 February 2022 and at that meeting "It was proposed by Councillor Barker and seconded by Councillor Clegg that entrance/access to the allotments reverts to using Rogues Lane as per the agreement. There were 4 in favour, 3 against and one abstention."
9. The Council refused to provide the Letter ultimately on the basis of section 41 FOIA. The IC in the DN said that the Council could rely on section 40(2) FOIA.
10. It was of concern to us that it appears that in the nearly three years since the Request was made and nearly two years since the appeal was commenced no one had asked the Solicitors to clarify for certainty if disclosure of the Letter had their client's (the Data Subject's) consent despite the suggestion in the IC's Guidance on section 41 that "If you're still in doubt, you could consult those affected by the disclosure of the information. If you choose to do so, this must not delay your response to the request." ' Role of the Tribunal
11. The Tribunal's role in an appeal by section 57 FOIA is set out in section 58 FOIA which provides that:-
 - (1) If on an appeal under section 57 the Tribunal considers;—
 - (a) that the notice against which the appeal is brought is not in accordance with the law, or
 - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.
 - (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.
12. In considering this appeal it was not our role to consider such matters as title to the small path, the rights or restrictions relevant to it, the right (or otherwise) of access to the open space, the Council's legal role in allowing and/or refusing and/or regulating access, or whether proper notice was given for the Council's meetings after the October 21 Council Meeting.
13. The appeal also includes concerns raised by the Appellant about the way in which the IC carried out the investigation. However the IC has referred us to the 2009 FtT decision in *Carins v IC EA/2009/0119 / 0102* and we also noted the decision in *Peter Wilson -v- The Information Commissioner [2022] UKFTT 0149* where the FtT said (and with which we agree):- "30...the Tribunal's statutory role is to consider whether there is an error of law or inappropriate exercise of discretion in the Decision Notice. The Tribunal may not allow an appeal simply because it disagrees with the Information Commissioner's Decision. It is also

not the Tribunal's role to conduct a procedural review of the Information Commissioner's decision making process or to correct the drafting of the Decision Notice."

14. We also noted *Forstater v Information Commissioner and others* [2023] UKUT 303 (AAC) where the UT at para 40 said:- "40... These principles are:
 - (1) the FTT is required under section 58 of FOIA to decide independently whether the Information Commissioner's decision was in accordance with the law. In doing so the FTT "must apply the law afresh to the request taking account of the issues presented at the hearing or identified by the First-tier Tribunal."
 - (2) the "ordinary presumption" is that it is for an appellant to prove their case. The burden will rest with the appellant except where statute expressly or impliedly provides otherwise:... Neither FOIA nor the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2008 contain any express provision about the burden of proof and neither by implication remove the 'ordinary presumption' either; and '
 - (3) however, the concept of the burden of proof is of secondary importance in tribunal proceedings which involve a full merits review, since to apply strict burdens of proof may prevent the tribunal from properly discharging its responsibility to decide the facts for itself and/or exercise any discretion afresh..."
15. The Appellant was also concerned that even though his complaint was about the use of section 41 FOIA the DN appeared to ignore it and concluded instead on section 40(2) FOIA. Although such concern is understandable the IC's view is right that (21) "6...as the regulator of the Data Protection Act 2018, to consider the engagement of the exemption in circumstances where the withheld information clearly engaged the exemption." Additionally any perceived procedural error or unfairness to the Appellant is resolved by the full rehearing appeal rights exercised by the Appellant.
16. The IC in its response to the appeal said:- "8... Should the Tribunal disagree with the Commissioner's findings with regards to the application of s.40(2) FOIA it would be necessary for the Tribunal to consider the engagement of s.41(1) FOIA as the Tribunal is seized of this matter (*Information Commissioner v Malnick & ACBA* [2018] UKUT 72 (AAC))."
17. On this point we also had regard to *NHS England -v- Information Commissioner and Dean* [2019] UKUT 145 (ACC) in which it was said as follows:- "11... as I have shown, both the Commissioner and the tribunal are under a duty to consider any exemption that might apply, regardless of whether it has been raised. Once the case is before them, that is their role, not the authority's."

12. So the tribunal was right to be concerned that there could be exemptions that had not been considered by either NHS England or the Information Commissioner. But it was wrong to deal with that issue by remitting the case back to the authority. What it should have done was to give directions to the authority to identify any other exemptions that might apply, to consider whether or not any did, and then to make a decision accordingly". Request to appeal in summary
18. The Request of 28 March 2022 said:- "I am a joint tenant of plot number 29 of the Richard Westbrook Baker Allotment Site in Cottesmore. Please could you send me a copy of the document specified below as coming from Oldham Marsh Page Flavell. In the minutes of the meeting of the Parish Council held on 18th October 2021, it is recorded at paragraph 115/21 Matters Arising, under the heading Update on Allotments and subheading – access to site through the Jubilee Gardens open space that: 'In view of the letter from Oldham Marsh Page Flavell it was agreed to postpone the discussion of this item until a later meeting.'" '
19. On 19 April 2022 the Council replied to say they could not provide the Letter as it was subject to legal privilege by section 42 FOIA. The Appellant challenged that response. On 22 June 2022 the Council wrote and indicated it considered the Request to be vexatious by section 14 FOIA. The Appellant complained to the IC who issued a decision notice on the 2 September 2022 which was that the Council had not correctly applied section 14 and should send a fresh response. Following this the Council wrote, on 22 September 2022, to say that the exemption relied on to refuse disclosure was section 41 FOIA. The Appellant requested an internal review on 10 October 2022. The Council did not change its view and the Appellant complained to the IC. Following its consideration of the complaint the IC issued the DN on 6 February 2023 and said that its decision was that the Council was entitled to rely on section 40(2) FOIA to refuse to provide the Letter.
20. This appeal is from that DN. It was commenced on 27 February 2023. The IC provided a response on 14 April 2023. The appeal was refused on 20 November 2023. The Appellant sought and was given leave to appeal and, as appears in the UT decision, his appeal was allowed on 30 September 2024. The UT directed that the appeal be remitted and decided by a freshly constituted Tribunal. FOIA
21. FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing if that information is held (section 1(1) (a) FOIA) and if that is the case to be provided with that information (section 1 (1) (b) FOIA). These entitlements are subject to a number of exemptions which can be absolute or subject to the public interest test. Central to this appeal is the exemption at section 40(2) FOIA and, if necessary, section 41 FOIA. Section 40(2) FOIA
22. Section 40(2) provides that:- Any information to which a request for information relates is also exempt information if

- (a) it constitutes personal data which does not fall within subsection (1), and (b) the first, second or third condition below is satisfied.
23. Section 40(3A)(a) FOIA sets out the first of these three conditions. This makes the provision of personal data exempt if “disclosure of this information to a member of the public otherwise than under this Act (a) would contravene any of the data protection principles...”
24. By Section 2(3)(fa) FOIA if this exemption is in relation to this first condition it is an absolute exemption.
25. Section 3(4)(d) DPA defines processing as “disclosure by transmission, dissemination or otherwise making available.” It includes publication pursuant to a FOIA request which is “to the world”.
26. Personal data is defined in section 2 DPA as “any information relating to an identified or identifiable living individual...” Section 3(3) defines “Identifiable living individual” as “...a living individual who can be identified, directly or indirectly, in particular by reference to (a) an identifier such as a name, an identification number, location data or an online identifier, or (b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.”
27. In *Information Commissioner v Magherafelt District Council* [2012] UKUT 263 (ACC) the UT referred to the “motivated intruder” test which is a person: “...who starts without any prior knowledge but who wishes to identify the individual or individuals referred to in the purportedly anonymised information and will take all reasonable steps to do so.” The question was then one of assessment by a public authority as to ‘... whether, taking account of the nature of the information, there would be likely to be a motivated intruder within the public at large who would be able to identify the individuals to whom the disclosed information relates.”
28. The data protection principles are those set out in section 34(1) DPA. They include Article 5(1)(a) UKGDPR which provides that personal data shall be processed “lawfully, fairly and in a transparent manner as regards the data subject.”
29. Article 6(1) UKGDPR provides that the processing of personal data shall only be lawful if, for example, the data subject has given consent or “(f) 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.”
30. The Supreme Court in *South Lanarkshire Council v Scottish Information Commissioner*

- [2013] UKSC 55 (29 July 2013) set out these three questions at para 18:- “(i) Is the data controller or third party or parties to whom the data are disclosed pursuing a legitimate interest or interests? (ii) Is the processing involved necessary for the purposes of those interests? (iii) Is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject?”
31. Interests to be legitimate have to be interests of more than just the requester (see the UT Decision in *Rodriguez Noza -v- the Information Commissioner & Nursing and Midwifery Council* [2015]UKUT 0499 (ACC) at para 24).
 32. In *Corporate officer of the House of Commons -v Information Commissioner* [2008]EWHC 1084 the Divisional Court said at para 43:- “..."necessary" within schedule 2 para 6 of the DPA should reflect the meaning attributed to it by the European Court of Human Rights when justifying an interference with a recognised right, namely that there should be a pressing social need and that the interference was both proportionate as to means and fairly balanced as to ends..." '
 33. The UT in *Goldsmith International Business School -v- The Information Commissioner and the Home Office* [2014] UKUT 0563 (ACC) provided a number of relevant propositions summarised as follows:- 2 the test for reasonable necessity comes before the consideration of the data subject's interests. 3 reasonable necessity means “more than desirable but less than indispensable or absolute necessity.” 5 “The test of reasonable necessity itself involves the consideration of alternative measures, and so “a measure would not be necessary if the legitimate aim could be achieved by something less”; accordingly, the measure must be the “least restrictive” means of achieving the legitimate aim in question.”
 34. As well as lawfulness by Article 5 UKGDPR processing must be carried out “...fairly and in a transparent manner as regards the data subject.” Section 41 FOIA
 35. Section 41(1) (which is an absolute exemption) provides that information is exempt if:- (a)it was obtained by the public authority from any other person (including another public authority), and (b)the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
 36. In *Coco -v- A N Clark (Engineers) Limited* [1968] F. S. R.415 Megarry J identified a three part test to determine if the obligation of confidence is brought into being. These parts are first that the information must have the necessary quality of confidence. Secondly the information must have been imparted in circumstances importing an obligation of confidence. The third element is that there must be unauthorised use of the information. It is a defence to a claim of breach of confidence to assert that disclosure was in the public interest. In effect this means that if the public authority (in this case the Council) would itself have had a public interest defence in an action for breach of confidence then the exemption is not maintained. Section 40(2) FOIA Position of the parties

37. In the DN the IC, having seen the Letter, said that it related to and identified the Data Subject and was thus personal data, the Appellant was pursuing a legitimate interest and disclosure was necessary to meet that interest. However the IC's view was that the Council could rely on section 40(2) FOIA because:-
- (a) "the solicitors' client has a strong and reasonable expectation that the letter which was sent to the Council on their behalf would remain confidential to them, their solicitor and the Council." '
 - (b) "there was insufficient legitimate interest to outweigh the fundamental rights and freedoms of the solicitors' client."
 - (c) as there was "no legal basis for the Council to disclose the requested information" to do so would be in breach of Article 5(1)(a) UKGDPR.
38. When responding to the appeal the IC, as well as dealing with points of law about the role of the Tribunal and the conduct of the IC's investigation, said that (22):- "7. The Commissioner maintains that the withheld information would identify, and represents the views of, the data subject and that there would have been a reasonable expectation that the correspondence would remain private in the context of the contentious issues regarding access to the allotments. The Commissioner maintains that there is an insufficient legitimate interest to outweigh the rights of the data subject."
39. The Appellant raised a number of grounds of appeal. While considering them all we have had as our focus those that deal with whether the DN was in accordance with the law. The Appellant challenged the DN's conclusion on section 40(2) FOIA in the grounds of appeal and at the appeal. In summary he:-
- (a) repeated that the IC had concluded that he was pursuing a legitimate interest that required disclosure.
 - (b) said that the name and address of the Data Subject is "well known to the neighbours" and the personal data is not "sensitive nor private."
 - (c) said that the Letter (which he has not seen) was probably not marked private and confidential and the assertion that the Data Subject would have a strong and reasonable expectation of confidentiality for the Letter is doubtful if the Letter was not marked private and confidential
 - (d) raised the issue for him that the IC "...provided no reasons for that bald statement, and he did not indicate (and never has, despite numerous opportunities to do so) the factual basis for this finding. His complete lack of reasoning and of fact finding in support of his conclusion singularly failed to identify and explain the evidential basis for the client's "strong and reasonable expectation" of confidentiality; confidentiality, I remind you, in the context of sending a letter as a private citizen to a public body, a Parish Council, about a public matter."

- (e) asked the Tribunal to consider "Why did the Commissioner come to that conclusion and on what material did he base his finding? How did he conclude that the resident had a strong (as opposed to say, a moderate, or indeed any other epithet) expectation? On what basis did he conclude that the expectation was "reasonable."
 - (f) made reference to the existence of the Letter in the Council's published papers suggests that neither the Solicitors or the Council at the time considered it important to ensure the confidentiality of its content and there is no suggestion that the Solicitors complained later about the reference to the Letter in the papers.
 - (g) said that if the Solicitors had wanted or required the Letter to remain confidential they could have made this clear but appear not to have done so. '
40. The Appellant concluded his grounds of appeal with:- "31. In all the circumstances I would ask the tribunal to reverse the decision of the Commissioner and to order [the Council] to disclose to me the contents of the [Letter]... as both the initiator of the letter and the writer of the letter cannot have had any belief that either its contents or any personal data contained in it were to remain confidential. As a plot holder I have a legitimate interest (recognised by the Commissioner) in the contents of the letter and there is nothing in the letter itself nor the principles of data protection which militates against disclosure". Review
41. Where disputed material is personal data then processing it is only lawful if at least one of the grounds in Article 6 UKGDPR applies. These include for example consent from a data subject (for which also see Article 7) as well as the ground referred to in this appeal namely Article 6(1)(f).
42. We considered first if the Letter itself and what it said was adequate consent for the purposes of Article 6(1)(a) UKGDPR. While it seems to us, on the facts of this case that the Solicitors will have assumed the Letter would have been dealt with openly (and advised their client accordingly) we did not have adequate evidence upon which to satisfy ourselves that the requirements of Articles 6(1)(a) and 7 had been met.
43. As regards Article 6(1)(f) UKGDPR we agree with the IC that the Appellant was pursuing a legitimate interest. By the agenda he and others were informed that at the public October 21 Council Meeting the issue of the allotments and access was to be discussed. As a local resident the Appellant and others has a clear interest in the Council's agenda, discussion and decisions. This interest is further enhanced by the Appellant's tenancy of an allotment and his rights (if any) to gain access to it using the path. When the October 21 Council Meeting was postponed "in view of" the Letter he and others had a legitimate interest in knowing what the Letter said and what had caused the postponement of that discussion. We agree with the IC that disclosure of the Letter would be necessary for the pursuit of that interest.
44. At the start of the final paragraph of the Letter (A4CB) there is arguably a brief reference to special category data. Article 9(1) UKGDPR provides that in the absence of one of the reasons set out in Article 9(2), such as the giving of explicit consent "Processing of personal

data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited." In our view there is no lawful basis for the disclosure of any such material in the Letter.

45. As regards personal data, to be lawful, disclosure of it must not be "unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject". It must also be carried out "...fairly and in a transparent manner as regards the data subject."
46. Additionally if the relevant individual can by redaction be made unidentifiable directly or indirectly (including by a motivated intruder) then the information in question (after such redaction) is not personal data as defined and can be disclosed providing, having made the required redactions, what is left has value as regards the legitimate interest of the requester.
47. In its fully unredacted form the Letter contains information, such as the Data Subject's name and address, that relates to an identified or identifiable living individual. We do not accept the relevance of the Appellant's submission that the name and address is well known to neighbours because disclosure of information based on a FOIA request is "to the world."
48. As well as explicitly providing the Data Subject's name and address other parts of the Letter, if not redacted, could result in that person's identity being discovered. This includes the photographs at A7CB to A12CB. They appear to have been taken from inside the Data Subject's private home. From them the location of that property and thus the name and address of the occupant would be easily identifiable. In addition in some of the photograph a number of individuals including children can be seen and from which their identity could, be revealed. There is no suggestion that they were aware the photographs were being taken and publication to the world would be beyond their reasonable expectation.
49. However, by appropriate redaction, information that identifies or could be used by a motivated intruder to identify the Data Subject can be removed leaving the remainder of the Letter, now without personal data, and so disclosable.
50. Finally and for the reasons set out in the closed annex we did not agree that the Data Subject had a strong and reasonable expectation that all the content of the Letter would remain confidential to them, their solicitor and the Council. However we do accept that such an expectation may reasonably have existed as regards the Data Subject's name and address.
Section 41 FOIA Position of the parties
51. On 22 September 2022 the Council told, the Appellant it now relied upon section 41 FOIA but said no more than that (66). Nothing more was said after review (68). In the Appellant's relevant complaint (74) of 30 September 2022 he recognised that without sight of the Letter he could not say much but he set out his position. He included reasoning such as:-

- (a) if the Letter was "...genuinely regarded as confidential why was that reason not the first, as opposed to the third, put forward by the Council"
 - (b) the information did not appear to be personal or private
 - (c) the information was about a topic of "more than general interest to a number of other residents of Cottesmore"
 - (d) the views in the Letter "...should not be protected by the cloak of confidentiality, as to do so would, in effect, mean the Council is dealing with matters of local public interest in secret and in direct contrast to the expressed (Local Government Association Model Councillor Code of Conduct 2020) expectation that "Councillors representing our local area take decisions fairly, openly, and transparently"
 - (e) unlike as between a patient and a doctor or a customer and a bank the relationship between a resident and the Council "is not one I would suggest which in and of itself gives rise to an obvious or implicit obligation of confidence and, I would suggest, such a relationship of confidence is only likely to be created if the provider of the information ' either verbally or in writing makes it clear that the information to be provided should be treated as being "Private and Confidential"
 - (f) his assumption is that the Letter was not marked private and confidential and its existence was made public.
52. He concluded by saying:- "I would query whether the letter was marked Private and Confidential and I would suggest that there were no circumstances either from the source of the information or from the nature of the information which could or should have suggested to any members of the council or their Clerk that a situation involving confidential information had been or should be created. Given the nature of an action for breach of confidence I would suggest that such an action is neither feasible by Oldham Marsh Page Flavell or their client and, if it is feasible, it has very low prospects of success."
53. On 7 December 2022 the IC asked the Council to set out its case on section 41 (83). The replies to the IC (97) said that "The Parish Councillors, prior to the meeting, were sent the letter with the advice, from the Clerk, that it was to be treated as 'Strictly Private and Confidential' and then said (91):- "The letter was not discussed beyond what is in the Minutes... The letter has never been discussed in public owing to the confidential nature of its content... If the letter was going to be discussed at the meeting then the Parish Council would have voted to go into 'closed session.'"
54. In the DN (2) the IC said "Whilst the Council cited section 41 of the FOIA as its basis for refusing to provide the requested information, this reasoning covers whether the Council is entitled to rely on section 40(2) (personal information) of the FOIA to refuse to provide the requested information" Review

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55. It is clearly the case, as accepted by the Appellant, that the Letter was obtained by the Council, from another person- the Solicitors.
56. In our view the Letter has the necessary quality of confidence. Despite the Appellant's submission that people know the identity of the Data Subject we are not certain that this information is in fact known and/or not generally accessible. Even if some do know the identity of the Data Subject the details set out in the Letter go beyond that and may well not be known. Much of its content would not be known to the public generally or otherwise realistically accessible. Sharing the Letter with members of the Council does not remove that quality of confidence.
57. The IC's Guidance states that "There are circumstances in which it is clear you are being given information in confidence because the confider has explicitly asked you to treat the information as confidential. For example, a contractor tendering in a public procurement exercise might share some technical information by attaching explicit restrictions on sharing it further. Similarly, you might collect or be given information based on explicit assurances you will treat it as confidential." '
58. In *Coco Megarry J* held:- "It seems to me that if the circumstances are such that any reasonable man standing in the shoes of the recipient of the information would have realised that upon reasonable grounds the information was being given to him in confidence, then this should suffice to impose upon him the equitable obligation of confidence. In particular, where information of commercial or industrial value is given on a business-like basis and with some avowed common object in mind, such as a joint venture or the manufacture of articles by one party for the other, I would regard the recipient as carrying a heavy burden if he seeks to repel a contention that he was bound by an obligation of confidence..."
59. For the reasons set out in para 3 of the closed annex it is our view that the information was provided without there being any explicit expectation that the information being communicated would be kept confidential. The expectation of confidence can also be implicit. We agree with the thrust of the submission made by the Appellant that the nature of the relationship between the Data Subject and the Council is not one where confidentiality is to be inferred by the nature of that relationship alone. We also do not consider the nature of the information in the Letter be indicative of there being an implicit expectation of confidentiality except for any special category data and anything which directly or indirectly reveals the Data Subject's personal data.
60. Accordingly, apart from any special category data, disclosure of the Letter to the public by the Council would not constitute an actionable breach of confidence. Decision
61. As regards section 40 FOIA:-
- (a) a small part of the Letter is arguably special category data for which there has been no explicit consent. Disclosure of it would have no lawful basis.

- (b) in making the Request the Appellant was pursuing a legitimate interest for which disclosure of the Letter was necessary.
- (c) the Data Subject did not have a "strong and reasonable expectation" that all the content of the Letter would remain confidential to them, their solicitor, and the Council.
- (d) in an unredacted form the Letter contains personal data i.e. information relating to an identified or identifiable living individual.
- (e) in a redacted form, as set out in the closed annex, the information relating to an identified or identifiable living individual is removed allowing for disclosure of the remaining unredacted parts.

62. As regards section 41 FOIA:-

- (a) the information was obtained from the Solicitors.
- (b) the Letter had the required quality of confidence.
- (c) the information was provided without there being any explicit or implicit expectation of confidentiality (save for any special category data where it was implicit). '
- (d) disclosure of the Letter to the public by the Council (excluding any special category data) would not constitute an actionable breach of confidence.
- (e) disclosure of any special category data would constitute an actionable breach of confidence for which the Council would not have a public interest defence.

63. For the reasons set out above (and in the closed annex) in our view the DN was not in accordance with the law and the appeal is allowed in part. Signed Judge Heald Date: 26 January 2026 14

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