

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 November 2007

Public Authority: London Borough of Camden
Address: Town Hall
Judd Street
London
WC1H 9JE

Summary

The complainant asked London Borough of Camden Council (the Council) for a copy of all Community Housing Group (CHG) properties under the local authority. In a further request the complainant asked various questions in relation to evictions. The Commissioner agrees with the Council's decision not to supply the information under section 40(2) of the Act and the reasoning applied by the Council.

The Commissioner's Role

1. 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 27 December 2005 the complainant requested the following information (Request 1):

" a copy of all CHG [Community Housing Group] properties under your local authority"
3. On 29 December 2005, the complainant made another information request (Request 2) for details on:
 - a) How many tenants were evicted in total in 2000/2003?
 - b) Names and CHG addresses of these tenants?
 - c) Dates of eviction?

- d) Reason for eviction?
4. On 6 January 2006 the Council responded to both requests. In relation to request 1, it stated it did not hold the information and it would not be practical to obtain it. The Council responded to request 2 in the same letter refusing to supply the information by applying section 40(3) of the Act. The Council stated the information requested constituted personal data within the definition of the Data Protection Act 1998 (the "DPA"). Disclosure of such information would contravene the data protection principles and section 10(a) of the DPA (right to prevent processing likely to cause damage or distress). The Council put forward public interest arguments to help explain its decision, namely that the first data protection principle is that personal data must be processed fairly and lawfully. In this case, the information is such that the relevant people (the data subjects) would not expect the information to be disclosed.
 5. It further introduced the sixth principle, which is that data shall be processed in accordance with the rights of the data subjects. In this case disclosure of information requested would contravene section 11 (the right to prevent processing for the purposes of direct marketing). On balance, it is considered that disclosure to a third party of the personal information would constitute or could facilitate an unwarranted invasion of privacy.
 6. The complainant asked the Council to review its refusal to provide the information on 27 January 2006.
 7. On 6 March 2006 the complainant made a further request (Request 3). This was for copies of any and all correspondence between the London Borough of Camden and Community Housing Group, in relation to CHG's refusal to supply a copy of its list of tenants to the complainant.
 8. The Council responded to this third request in their review decision letter dated 17 March 2006, where the Council informed the complainant his review was partly successful. The reason for its decision is as follows:
 - i) In relation to request 1, the copy of all CHG properties under the Council's authority, the panel confirmed that due to previous advice received by them, it would be appropriate to release details of the properties concerned but not the identity of the occupiers.
 - ii) In relation to request 2, the questions to ask CHG listed a)-d) above, the panel agreed with the reasons and refusal in their letter of 6 January 2006.
 - iii) The panel considered request 3, copy correspondence, to be a new request and explained that this would be processed separately.
 9. On 10 April 2006, the Council wrote to the complainant again. This followed telephone calls received from him requesting the promised list of properties. The Council advised the complainant that although it had confirmed the information could be released, it had learnt that he intended to contact the tenants of the CHG by mail in order to form a campaign group. The Council stated that to disclose the information requested in light of this would breach the DPA, in

particular section 11 (the right to prevent processing for the purpose of direct marketing). The Council stated that following further consultation and legal advice, it had decided that it would be necessary to redact the information sent to the complainant, thereby providing the information without house or flat numbers.

10. The Complainant did not accept this review decision and subsequently complained to the Information Commissioner.

The Investigation

Scope of the case

11. On 20 April 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular, the complainant believed the Council was not entitled to withhold elements of the information he was seeking.
12. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. This Decision Notice will not address the third request as this was considered by the Council to be a new request and was dealt with separately.

Chronology

13. The Commissioner wrote to the Council on 16 June 2006 to request further information and to clarify the facts of the case. The Commissioner also tried to ascertain whether it would be possible to settle the matter informally.
14. On 7 July 2006 the Council responded putting forward their arguments for not disclosing the information in relation to request 1, the list of CHG properties.
15. On 12 July 2006 the Commissioner wrote to the complainant and the Council advising that it did not appear possible to resolve this case informally, and so the case would require a full investigation.
16. On 14 June 2007, the Commissioner was in a position to commence the investigation and wrote to the Council requesting copies of the withheld information and various other documents needed to investigate the complaint.
17. On 23 July 2007, the Council responded, providing the information requested. The Council further added that, in retrospect, the refusal notice should have said it did hold the information but that it would exceed the appropriate costs limit to comply with the request.
18. The Commissioner considered the matter and provided a provisional view to the complainant on the case by letter on 6 August 2007. This view upheld the Council's decision to withhold the information and invited the complainant, in the

light of this view and the explanation as to how it was reached, to consider withdrawing his request.

19. On 14 August 2007 the complainant advised he did not agree with the provisional view and would like a formal decision to be taken.

Analysis

Exemption

20. Section 40(2) of the Act provides an exemption to the duty to disclose information where the information requested constitutes the personal data of a third party, (subject to the provisions of the DPA). The full text of this section can be found in the Legal Annex attached to this Notice.
21. This exemption is absolute and therefore, there is no need to apply the public interest test under section 2 of the Act.
22. The first data protection principle requires that personal data shall be processed fairly and lawfully, and in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the Data Protection Act is met.
23. When considering compliance with the first data protection principle it is necessary to consider what the reasonable expectations of a person would be in relation to how their information would be used and to whom it may be disclosed.
24. The Commissioner has reviewed the information exempted under section 40 and determined whether the exemption is engaged in respect of the list. The Commissioner accepts that the house number of an individual property, taken together with the electoral role information and qualification criteria for nomination by the Council, is sufficient to identify individuals and also would enable identification of the same individuals as members of a group. This information therefore consists of their personal information and can therefore be treated as such under the Act.
25. Releasing the information without redaction would be unfair and unlawful. The information the complainant has requested is not simply a list of all Council properties, it is a focused subset of those properties which (even without taking into account the known intentions of a requestor) is likely to be capable of serving the purpose of allowing some action to be taken towards individuals.
26. It is clear that the individuals have no expectation that the information held by the Council would be provided to third parties in this way. In other words, the information would only be used by the Council in relation to the administration of the properties in question.
27. The Commissioner accepts that some Councils would appear to have already complied with similar requests, however he does not consider that this sets a

precedent for disclosure under the Act. Each case must be considered on its merits.

28. In the circumstances of this case, the Commissioner considers the exemption applies and the information should not be disclosed.

The Decision

29. The Commissioner's decision is that he agrees with the Council's decision to withhold the information under section 40(2) of the FOI Act 2000.

Steps Required

30. The Commissioner requires no steps to be taken.

Right of Appeal

31. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 8th day of November 2007

Signed

**Jane Durkin
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 40(2) of the Act states:

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.