

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2011

Public Authority: Exeter City Council

Address: Civic Centre
Paris Street
Exeter
Devon
EX1 1JN

Decision (including any steps ordered)

1. The complainant requested information concerning housing jobs carried out by the council's Housing Department. Exeter City Council ("the council") refused to provide the information, relying on the exemption relating to personal information and the exclusion relating to costs under the Freedom of Information Act 2000 ("the FOIA"). During the Commissioner's investigation, the council also introduced an exemption under the FOIA relating to the prevention of crime and alternatively sought to rely on exceptions under the Environmental Information Regulations 2004 ("the EIR").
2. The Commissioner's decision is that the request should be considered under the FOIA. He decided that the council correctly withheld information that could identify individual tenants using the exemption relating to personal information, however, the Commissioner decided that the council should have disclosed the other information requested because the costs exclusion did not apply. It was not necessary to consider the application of the exemption relating to crime.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - It should disclose the withheld spreadsheet to the complainant but it should redact the addresses of the properties and any other information that could identify the individual tenants such as names and contact details.

4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 5 April 2011, the complainant requested information in the following terms:

"Your decision party made formal request under Freedom of Information to receive the list of Expenditure for all jobs made by the Housing department that goes from job number 150000 to the job number done on the 05 April 2011.

The Party is aware that the information are available in digital format for this reason a CD or DVD with a Microsoft Access database containing all the information will be welcome".

6. On 28 April 2011, the council replied and said that it would like the complainant to clarify whether he wanted the address of the properties concerned.
7. He replied on 13 May 2011. He said that he wanted a list of expenditure that was composed of:

Address
Description of the work carried out
Date of order
Order number
Date completed
Amount paid

8. The council responded on 27 May 2011. It said that it was impossible to remove all of the personal data from the database that it held whilst keeping within the appropriate limit set out in the FOIA. It said that the personal data was exempt under section 40(2) of the FOIA.
9. Following a request for an internal review, the council replied on 9 August 2011. It said that it wished to maintain its position.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the

Commissioner whether the council had correctly refused to provide the information he had requested.

Reasons for decision

Are the EIR relevant?

11. The council initially considered the request under the FOIA. During the Commissioner's investigation, the council said that it believed that the request should have been considered under the EIR. It said that information about housing repairs represented written material about "built structures" and therefore fell within the scope of the EIR.
12. Having considered the council's comments and the relevant part of the EIR (regulation 2), the Commissioner was not persuaded that it was relevant to consider the EIR in this case. Regulation 2(1)(f) refers to the state of built structures only "inasmuch as they are or may be affected by the elements of the environment".

Section 12(1) – Appropriate limit

13. This exclusion states that a public authority does not have to comply with a request if the cost of complying would exceed the "appropriate limit". For local authorities, this is £450 which is the equivalent of 18 hours work.
14. The council's estimate of the costs to be incurred focused solely on the time it would take to redact personal details from the relevant section of the database. The council said that where it had written the details of the repair, it had on occasion included personal information such as names, contact details or addresses of the tenants and it would have to manually check that all this information had been removed prior to disclosure which would exceed the appropriate limit.
15. The Commissioner explained to the council that it is only permitted to take into account the time it reasonably expects to incur in undertaking certain named activities for the purpose of arriving at an estimate under section 12(1). It cannot take into account the time it would take to redact information where the information to be redacted has been requested by the complainant. The line to take below, taken from the Commissioner's published guidance, sets out in detail the reasons for the Commissioner's position on this issue.

<http://icoportal/foikb/FOIPolicyRedactionandtheFeesRegulations.htm>

16. The Commissioner noted in this case that there was the potential for two outcomes depending on whether the request to be considered is

the one made on 5 April 2011 (which envisages receiving the entire database held for the relevant period) and the refined request which listed particular areas of interest following an enquiry from the council.

17. If we consider the entire database held by the council for the relevant period in line with the initial request, the council need only consider the redaction of information that is exempt under section 40(2) or 31 before disclosing the information. As the time taken to redact information that has been requested cannot be taken into account, section 12 would not apply.
18. However, if we consider the refined request made on 13 May 2011, then the names and contact details of individual tenants would not be covered by the scope of the request and the time taken to redact that information could legitimately fall within the scope of a relevant activity that the public authority may take account of when determining whether its cost estimate would exceed the appropriate limit. This is because the authority can take account of the time taken to extract information from other information that has not been requested.
19. The Commissioner considered this situation carefully and he noted that the purpose of offering a complainant an opportunity to refine or clarify the scope of a request for information is to assist them in obtaining some information. This obligation is enshrined in section 16 of the FOIA which provides that public authorities have a duty to offer advice and assistance where it would be reasonable for them to do so. In circumstances such as this, the attempt to clarify the particular area of interest has led to a situation that may not have been in the best interests of the complainant because it could result in the failure to obtain any information at all because the exclusion under section 12 may apply. For this reason, the Commissioner decided that it was appropriate to revert to the original request that was made on 5 April 2011 and take the scope of the request as being for the entire database for the relevant period relating to the housing jobs. This means that the public authority cannot rely on section 12 because it is not permitted to take account of the time taken to redact information that has been requested.
20. The above outcome means that the Commissioner must then consider whether any of the information in the relevant part of the database should be redacted because it is exempt under section 40(2) or 31.

Section 40(2) – Third party personal data

21. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 2 of the Data Protection Act 1998 ("the DPA").

22. For clarity, the council said that this exemption would cover the addresses of the properties and other information that could identify individual tenants such as names and contact details.

Is the withheld information personal data?

23. Personal data is defined by the DPA as any information relating to a living and identifiable individual. It has been established in a previous case heard by the Information Tribunal ¹ that an address is personal data. Knowing the address of a property makes it likely that the identity of the person living there will be discovered using other sources of information such as the electoral roll. The Commissioner was therefore satisfied that the addresses represented personal data. It is also clear that the contact details and names of tenants could also identify individuals and would be their personal data.

Would disclosure breach the Data Protection Principles?

24. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations

25. The council said that it had never said anything to indicate to its tenants that this information could be put into the public domain. The council also said that in June 2011, it had consulted an organisation that represents the views of council tenants called Tenants and Leaseholders Committee ("TALC") regarding the disclosure of council addresses. The council said that TALC was strongly opposed to disclosure of the information.
26. The Commissioner would like to clarify that, in line with the position he has often stated in the past, a public authority cannot side-step its obligations under the FOIA by not indicating to certain individuals that information could be disclosed under the FOIA. Nor can a guarantee of confidence override the Commissioner's usual considerations under the

¹ England and London Borough of Bexley v Information Commissioner (EA/2006/0060 & 0066).

FOIA. The Commissioner will take into account what may have been said to set an expectation of disclosure, but he will also consider whether that expectation was reasonable considering all the circumstances, such as the nature of the information.

27. The Commissioner considered the matter carefully and decided that the council tenants are not likely to have reasonably expected this information to be disclosed. While the Commissioner notes that council addresses are often already known, the Commissioner was not persuaded that there was any strong reason to doubt the council's assertion that the individuals concerned would not expect the address, names and contact details to be disclosed in a way that linked that information with particular repairs carried out at the properties concerned.

Consequences of disclosure

28. The council argued that in general, it considered that council tenants included a number of vulnerable people. It said that the disclosure of the addresses, contact details and names may result in unwanted contact.
29. The Commissioner accepts that a disclosure of a list of council properties, names and contact details coupled with information about repairs carried out at those properties may result in unwanted contact. The Commissioner also considered that the disclosure of some of the repair details may lead to the identification of recurring problems, security weaknesses or may be revealing of other personal circumstances such as age or disability. The Commissioner considered that the disclosure could potentially be distressing to some individuals.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

30. Taking the above factors into account, the Commissioner decided that the disclosure of the information would not be fair because it would not have been within the reasonable expectations of the council tenants and furthermore, it could potentially lead to some unwanted or distressing consequences.
31. The Commissioner can appreciate that there is a strong public interest in the council being transparent about what repairs it is carrying out and how much they cost because these actions involve the spending of public money. However, the Commissioner considered that there was limited public interest in the disclosure of the information on an address-level basis along with tenant names and contact details. The Commissioner did not accept that it would be necessary to disclose the information in such detail. In the Commissioner's view, the public interest in the council being transparent about the spending of public

money can be sufficiently met through the disclosure of other information without identifying individual tenants. The Commissioner considers that this would be a fair and proportionate approach to this issue. The Commissioner's view was that the council had therefore correctly said that information that could identify the individual tenants was exempt in this context under section 40(2) of the FOIA.

Section 31(1) – the prevention of crime

32. This exemption applies in circumstances where the disclosure of information would or would be likely to prejudice the prevention or detection of crime. It is qualified by a public interest test.
33. The council said that it considered that this exemption was engaged because there was a possibility of "bogus" services being offered to council tenants. The Commissioner did not consider that it was necessary to consider this exemption any further because the prejudice described was dependent upon the identification of the relevant council tenants and the Commissioner has already determined that this information is exempt under section 40(2).

Right of appeal

34. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF