

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 9 January 2012

Public Authority: Greenwich Council
Address: The Woolwich Centre
35 Wellington Street
Woolwich
London SE18 6HQ

Decision and steps required

1. The complainant has requested a copy of a noise abatement notice served on an autistic man, as reported in the national press. This was refused on the grounds that the requested information is personal data.
2. The Commissioner's decision is that the requested information is personal data, but that in the circumstances of this case, some of that data may be disclosed.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose to the complainant the copy of the noise abatement notice described in his request. Partial address details for the subject of the notice should remain withheld and may be redacted from the notice. The elements to be redacted are:
 - house number; and
 - postcode
 - All other elements of the notice should be disclosed without redaction.
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 Sunday 7 August 2011, the complainant emailed Greenwich Council (the council) and requested information in the following terms:

"This concerns the recent case, reported in The Sun newspaper of 9th July 2011, of Dean Harman, 40, the autistic man served by Greenwich Council with a noise abatement notice for humming in his flat. Please send a copy of that noise abatement notice by e-mail in PDF format. Please confirm that you have received this message. Please indicate whether your staff will be able to locate this notice and send it on Monday morning."

6. Receipt of this request was acknowledged by the council on Monday 8 August. On 10 August the complainant emailed the council, requesting that the information be supplied as soon as possible.
7. The council responded on 12 August 2011. It stated that the document requested was considered to be the personal information of the resident and, as such, to be governed by the Data Protection Act. It provided a copy of the template noise abatement notice which is used by the council.
8. Following an internal review the council wrote to the complainant on 22 August 2011. It stated that it remained clear that its position of 12 August was correct.

Scope of the case

9. The complainant contacted the Commissioner on 10 August 2011 with what he described as a "*pro forma complaint*", to complain about the way his request for information had been handled.
10. His complaint was that, at the time of making his complaint, the council had only acknowledged his complaint and had not indicated whether the request would be fulfilled. The complainant contacted the Commissioner again, on 19 August, complaining that the council had failed to cite any relevant section of the Data Protection Act in its response, nor any reasoning.
11. On 14 October, the Commissioner wrote to the complainant to establish the scope of the complaint. He explained that the '*pro forma complaint*' received did not contain any grounds on which to pursue the complaint. The complainant's response, received 18 October 2011, was of no

assistance to the Commissioner, but his further email, of 19 October 2011 states:

"As required, herewith my written request for a decision notice about this request [...]"

12. The Commissioner notes that the complaint was submitted two working days after the request had been received by the council. Given that the statutory timescale for response had not yet elapsed, the complaint, as received, gave no grounds for the Commissioner to investigate.
13. The Commissioner subsequently discussed the matter with the complainant and verified that the complaint relates to the council's refusal to disclose the requested information on the grounds that it is personal data, and disclosure would breach the data protection principles. The Commissioner considers that the scope of the case is to determine whether the council's refusal of the information as personal data, under the provisions of section 40(2) and 40(3)(a)(i) of FOIA is, or is not, correct.

Reasons for decision

Personal information.

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 do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied."

Section 40(3) provides that –

"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 [...]

14. At the time of his request, the complainant was provided with a blank copy of a noise abatement notice template, but the completed version served in this case was refused. The information contained in the completed version, which is not contained in the blank template is:
 - the name and address details of the person on whom the noise abatement notice is served;
 - details of the noise complaint (“Type of noise”) and the steps required to comply with the notice (“Measures to be taken to abate the nuisance”); and
 - the name and official contact details of the officer who has signed the notice.
15. The complainant has referred the Commissioner to national press reports published at the time, and still available on newspaper websites, which name the person on whom the notice was served and provide partial address details. The various press reports also comment on the nature of the noise nuisance alleged, and on the action which the notice requires to be taken. The Commissioner examined these reports and is satisfied that this information is in the public domain, and remains so at the time of writing. The reports also contain quotes and background information from the person’s parents, and comment from disability charities.
16. It is reasonably clear, from the context of these reports, that the personal data of the person has been placed in the public domain by members of his close family. While it cannot be shown that the data subject himself took these steps, he is a vulnerable adult and his close family may be understood to be acting on his behalf. They have given press interviews and discussed the context of the notice, and the circumstances leading up to the serving of the notice. They cannot therefore be assumed to have any concerns about the disclosure of this personal data.
17. In consideration of ‘fairness’ under the first data protection principle, the Commissioner notes that the story is still recent and, in any event, as above, information about the matter was placed in the public domain voluntarily by the data subject or his family. Whatever the circumstances surrounding the personal data, it is clear that the information is already substantially in the public domain and that any possible harm from disclosure which might occur is already possible, irrespective of whether the information is disclosed under FOIA. The Commissioner therefore accepts that disclosure in this case would not be unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

18. The Commissioner agrees with the council that the house number and postcode should be redacted from any disclosed document, as that information is not revealed in any of the reports which have been brought to his attention, but he does not support the redaction of the information about the measures described in the noise abatement notice. The exact wording in the notice is not reproduced in the press reports, but the essential information (the nature of the noise, and the measures to be taken to mitigate any nuisance) are clearly explained in the reports, so disclosure will not put any additional information into the public domain.
19. He also notes, and supports, the council's concerns about the data subject's vulnerability, but the notice itself does not contain any sensitive personal data. He finds that aside from the postcode and house number details, which are not in the public domain, disclosure of the remaining information relating to the person would not be unfair or unlawful, and would not contravene the first data protection principle. This information should be disclosed.
20. The notice also contains personal data of the council staff member responsible for serving the notice. The Commissioner notes four things:
 - (i) the personal data comprise their name, contact telephone number and email address, and relate to the council staff member's public duties, not to their private life;
 - (ii) the duties do have public-facing elements, which are directly related to the matter under consideration; these data are likely already to be in the public domain, albeit not linked directly to this specific matter;
 - (iii) the staff member is sufficiently senior to be entitled to sign and serve a legal document on behalf of the public authority; and
 - (iv) the circumstances of the notice have proven to be controversial. It is arguable, in the specific situation of this case, that the responsible person may be asked to account for their actions.
21. Again, in consideration of 'fairness' under the first data protection principle, the Commissioner has considered both the reasonable expectations of the staff member, and the possibility of any harm arising from the disclosure. The Commissioner does not believe that a council staff member in a public-facing role would have a reasonable expectation that their name and contact details would necessarily be withheld. However, he is mindful that identification of the staff member

who decided to take the controversial action might invite unwelcome contact by way of criticism in emails or telephone calls.

22. Balancing this, the Commissioner understands that the noise abatement notice was subsequently withdrawn, which suggests that the council came to recognise the inappropriateness of the notice in the circumstances. The Commissioner has not enquired whether the staff member responsible for the notice has faced any internal criticism or disciplinary process.
23. In consideration of the broader context, the Commissioner accepts that the possibility of identification and public comment might serve the wider public interest, in making public employees aware of their own accountability in relation to the decisions they make. This is particularly true in relation to senior staff within a public authority, but the Commissioner does not exclude the possibility that, in some circumstances, this may extend to more junior staff, particularly where they are exercising their own discretion in respect of authority delegated to them.
24. Furthermore, the First Tier Tribunal (Information Rights) has previously commented (particularly in the context of requests refused as vexatious), that staff in a public authority might expect to receive a measure of robust questioning, sometimes expressed in fairly critical terms. The Commissioner is not condoning the abuse of public employees, but recognises that, at least to some degree, receipt of critical or challenging correspondence is part and parcel of a public-facing staff member's role, and it is only in circumstances where this goes beyond acceptable limits that any real harm might be envisaged.
25. In this case, therefore, the likelihood of the unwelcome contact envisaged at paragraph 21 is considered to be small, and the likelihood of actual harm arising is considered to be substantially smaller.
26. The Commissioner finds that disclosure of the name and contact details of the council staff member responsible for the notice, in this case, is necessary for the legitimate public interest in making individuals accountable for action taken, and would not be unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

Right of appeal

27. 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

28. 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.
29. 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
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