

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 July 2012

Public Authority: London Borough of Haringey
Address: River Park House
225 High Road
Wood Green
London
N22 8HQ

Decision (including any steps ordered)

1. The complainant requested information relating to council leasehold addresses in Haringey from Homes for Haringey which is an Arms Length Management Organisation (ALMO) set up by Haringey Council (the council). The council refused to provide this information under the exemption at section 40(2) for third party personal data.
2. The Commissioner's decision is that the council correctly withheld information under section 40(2).
3. Therefore the Commissioner does not require any steps to be taken.

Request and response

4. On 10 December 2010, the complainant wrote to the council requesting information in the following terms:

[1]"An up to date list of all Council Leasehold addresses in Haringey from Home Ownership Team Of Homes For Haringey"

[2]"A list of Council leasehold addresses in haringey except for addresses that are sublet by the Home Oenership team of Homes For Haringey"(sic)

[3] "a request for correspondence addresses of leaseholders who sublet their properties in Haringey from the Home Ownership Team of Homes For Haringey"

The Commissioner understands from the council's website that the council requires anyone who sublets to provide contact details for both themselves as leaseholders and their tenants as a requirement of the lease agreement.

5. The council responded on 13 December 2010. It stated that the information the complainant requested in relation to properties which are in private ownership and subject to a lease from the council, was personal data and it refused to disclose it under section 40(2) of the FOIA.
6. The complainant disputed this assertion and requested an internal review, stating that none of the 3 requests would identify individuals and was therefore, not personal data.
7. Following an internal review, the council wrote to the complainant on 20 January 2011. The review upheld the original response that the requested information was personal data and therefore exempt under section 40(2).

Scope of the case

8. The complainant contacted the Commissioner on 31 January 2011, to complain about the way her request for information had been handled.
9. The Commissioner considers the scope of this case to be the council's application of section 40(2) to the requested information. The complainant considers the requested information to be information that should be available to the public as the addresses she sought are known as 'leasehold' and the council owns the freehold.
10. The Commissioner wrote to the council on 3 March 2011, asking for its reasons for withholding the requested information.
11. On 16 March 2011, the council provided its arguments to the Commissioner. The council again cited section 40(2) and explained that it had provided the information requested at point 2 of the request to a leaseholders' association but that this had not been disclosed under the FOIA and was therefore not disclosure to the world at large.
12. On 8 June 2011, the Commissioner wrote to the complainant with his initial view that the council had correctly applied section 40(2).

13. The complainant stated that she wished to continue with her complaint as she believed that some of the requested information was already in the public domain because it had been disclosed outside of the FOIA to a leaseholders' association.
14. On 8 June 2011, the council wrote to the Commissioner to say that it had now released the information to the complainant requested under point 2 of the request. The council stressed that the disclosure was made outside of the FOIA. It was made clear to the complainant that this information had been released to her because of her role in an external leaseholders' association.
15. The Commissioner subsequently asked the complainant if she was content with this release or wished to pursue her complaint.
16. On 2 August 2011, the complainant confirmed that she wanted to continue her complaint but was prepared to await the outcome of an Information Rights Tribunal hearing (Neath Port Talbot County Borough Council v IC) which might have relevance in this matter.¹
17. On 5 January 2012, following the outcome of the Tribunal hearing the Commissioner wrote to the council asking if it wished to reconsider its decision to withhold the requested information.
18. On 14 February 2012, the council responded:

"When we use the term "Leaseholder" we mean people who have purchased their property under the right to buy legislation. The properties are bought on a Leasehold basis, the Council retains the Freehold, but the Leaseholders are free to sell their Leasehold interest and are responsible for maintaining the property. A council tenant is someone who we place in a council-owned and managed property; we rent the property to them."

The council maintained its previous position, stating that the Tribunal decision was different from its own considerations as it did not involve council owned/maintained properties which it would have been happy to release. The council disputed the second part of the request as being essentially covered by point 1 and 3, *"unless that element of the request relates to non-council leasehold properties"*. If that was the case, the council did not believe it held this information. However, the

¹ Found at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i639/20111230%20Decision%20EA20110037.pdf>

complainant's request is focused on properties over which the council held the freehold at the time the request was made.

19. The Commissioner again gave his opinion to the complainant that, if the requested information related to privately owned ex-council properties, he would be unlikely to order disclosure.
20. On 16 April 2012, the Commissioner wrote to the complainant explaining that the council had argued that she was asking for details of privately-owned/managed properties. 'Leaseholder', in the public authority's eyes, appears to mean people who have purchased their property under the 'right to buy' legislation. The Commissioner understands that an individual who owns the leasehold is the leasehold owner and, subject to the provisions in the lease, may act as they wish with their property. This applies to all properties, irrespective of who owns the freehold.
21. The complainant responded by explaining that, under the 1985 Landlord and Tenant Act, the council owns the freehold in a 'right to buy'. The Commissioner understands that some properties have been sold on once or more and, as such, the 'right to buy' is no longer a relevant factor. The complainant further argued that the individuals involved are not 'owners' but 'leasehold tenants'. The council owns the freehold and most leases are for 100-125 years. Individuals who bought under this scheme are 'leasehold tenants' who pay service charges. She maintained that this right can be passed on but will eventually revert to the council.
22. The Commissioner wrote again to the complainant on 24 April 2012, explaining that as the requested information had been exempted under section 40(2) he would look at fairness in any consideration of whether this information should be released.

Reasons for decision

23. Section 40 of the FOIA states 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."

24. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the data protection

principles set out in schedule 1 of the Data Protection Act 1998 ("the DPA").

Is the withheld information personal data?

25. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
26. It has been established in a previous case heard by the Information Tribunal that an address is personal data.² Knowing the address of a property makes it likely that the identity of the person living there could be discovered using other sources of information such as the electoral roll. The Commissioner is therefore satisfied that the requested address information represents personal data.

Would disclosure contravene any of the data protection principles?

27. 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 must be processed fairly and lawfully. 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

28. 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.
29. Firstly, the Commissioner has considered the general availability of the requested information. Clearly, the requested information is obtainable from the Land Registry but it would be expensive and time consuming to obtain it by these means. The Commissioner considers that obtaining the requested information in this way would be a barrier

² England and London Borough of Bexley v Information Commissioner (EA/2006/0060 & 0066).

and effectively means that the information is not realistically available to the general public.

30. The complainant has argued that, as the requested information has been released at point 2 of the request, it is already in the public domain. However, even though it has been released to the complainant because of her role in a leaseholders' organisation and prior to that, to another leaseholder organisation, it has been released outside of the FOIA. Both leaseholder organisations would, however, be expected to keep it for specific purposes and process it with due regard for the DPA. Past disclosures, especially to a limited audience, may not in practice be available to the general public. Therefore, the Commissioner does not consider the release of this information to be in the public domain and, consequently, not a release to the world at large.
31. The council considers it likely that the individuals who live at the requested addresses involved would have no expectation that the information held by the council would be provided to third parties in this way. The council maintains that the individuals involved would only anticipate the council disclosing the address information in relation to the administration of the properties in question. The Commissioner agrees with the council that individuals who purchase their property from the council would not expect their addresses publicly available to anyone who asks for them.

Consequences of disclosure

32. The council further suggested that the purpose of obtaining this information was likely to involve contacting individuals on the lists. It stated that individuals would wonder where their personal details had been obtained and would not expect the source to have been the council. It argued that the disclosure of this information had no connection to the purpose for which it holds this information. It does not serve the legitimate interests of the council and no fair processing notice had been provided to suggest it might be used in this way.
33. The Commissioner accepts that some councils would appear to have disclosed similar requested information but he does not consider that this sets a precedent for disclosure under the FOIA. Although some courts and tribunals have considered address information to have a low inherent sensitivity in terms of personal data, each case has to be considered on its own merits. In *Anthony Turcotte v The Information Commissioner and the London Borough of Camden* the following observation was made:

"The Tribunal can understand why Mr Turcotte is perplexed when

bodies like the Housing Corporation and Westminster Council seem so unguarded in response to similar information requests made by him. The fact is, however, that the Information Commissioner made the correct decision in relation to the LB Camden's actions. What other public bodies have chosen to reveal in circumstances that might be regarded as outside the current legislation is not a matter for this Tribunal." (para 33)³

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

34. The Commissioner accepts the council's argument that the exact nature of a private individual's legal interest in their property is not something that should be in the public domain as a matter of public interest. The council maintained that, if it held a list of addresses of all privately-owned properties in the borough that were owned on a leasehold, rather than a freehold basis, it would withhold it on the grounds that it is personal information and it would be unfair to the individuals to release it. The fact that the individuals acquired their leasehold interest in their property from the council rather than a private individual or company should not, it argued, make any difference.
35. One of the factors in *Neath Port Talbot County Borough Council v The Information Commissioner* was that the council were transferring their entire housing stock to an ALMO which was not covered by the FOIA. In that case, the tenants were likely to be significantly affected by the stock transfer. The request covered the entire housing stock and did not reveal different types of tenants. To disclose the requested information in this case would specify that the property is now privately owned. Though any damage or distress caused to the individual address holders concerned is likely to be minimal, the Commissioner agrees with the council that there is no legitimate interest in the public being informed.
36. The Commissioner considers that a disclosure of a list of council leasehold addresses may result in unwanted contact from individuals of a commercial or non-commercial nature. As the FOIA is motive blind, motives which may or may not be altruistic for requesting information cannot be considered here. The overriding factor is that the individuals

³ Found at <http://www.informationtribunal.gov.uk/DBFiles/Decision/i118/Turcotte.pdf>

concerned would not expect their personal data to be released in that way or used, other than for the council's own statutory housing duties. No arguments have been put forward that the release of this information is necessary for accountability and transparency reasons. The Commissioner does not consider that the reasonable expectation of confidentiality held by the individuals concerned is outweighed by any legitimate public interest in disclosure, and accepts that disclosure of their personal data would be unfair and unnecessary in the circumstances.

37. Therefore the Commissioner considers that the information was correctly withheld under section 40(2).

Right of appeal

38. 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

39. 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.
40. 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

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