

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2012

Public Authority: Hounslow Homes
Address: St Catherines House
2 Hanworth Road
Feltham
Middlesex
TW13 5AB

Decision (including any steps ordered)

1. The complainant has requested information relating to which properties on a specific estate are owned by leaseholders and which are tenanted. The Commissioner's decision is that Hounslow Homes has incorrectly applied the exemption for personal data.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
 - Disclose the requested information.
3. The public authority must take this step 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

4. Hounslow Homes is an arm's length management organisation wholly owned by the London Borough of Hounslow.

Request and response

5. On 12 April 2012 the complainant made the following request for information:

“Under the Freedom of Information Act I request that you send me details of which properties on the Ivybridge estate are owned by leaseholders and which are tenanted.”
6. Hounslow Homes responded on 26 April 2012 and provided the total number of council dwellings and the total number of leasehold dwellings.
7. The complainant then requested a list of all the leasehold addresses, as per his original request.
8. Hounslow Homes replied on 4 May 2012 stating that it is not obliged to provide the information as numbers have already been provided and disclosure could possibly contravene the Data Protection Act. It confirmed this as its internal review response on 8 May 2012.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The Commissioner has considered whether Hounslow Homes has correctly applied the personal data exemption.

Reasons for decision

11. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
12. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means data which relate to a living individual who can be identified –

 - (a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”

13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that Hounslow Homes stated that disclosure would be unfair and ‘quite possibly’ breach the first data protection principle.

14. The first data protection principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

(a) at least one of the conditions in schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

15. As explained above, the first consideration is whether the withheld information is personal data. Following the former Information Tribunal’s decision in the case of England and London Borough of Bexley v Information Commissioner¹ the Commissioner is satisfied that the address of a residential property constitutes personal data as outlined below.

16. If the address of a property is known, it is generally possible to identify the owner or tenant from other information which is in the public domain; for example, the Land Registry, the electoral roll or talking to neighbours of that property.

17. As the Commissioner is satisfied that the withheld information is personal data, he now needs to consider whether disclosure would breach the first data protection principle, as Hounslow Homes has claimed, i.e. would disclosure be unfair and/or unlawful.

18. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the

¹ Appeal numbers EA/2006/0060 & 0066

reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Nature of the information and reasonable expectations

19. The Commissioner considers that the requested information, namely whether a property is let from Hounslow Homes or is leasehold where Hounslow Homes or the council owns the freehold, is of low inherent sensitivity. The Commissioner has taken into consideration the fact that such information is not a private matter as it is already in the public domain. He is aware that information is available from the Land Registry as to both freeholders and leaseholders of properties. Therefore it is also possible to identify that a housing association or council owns the freehold to a property where an individual is the leaseholder.
20. Although the Commissioner considers that tenants and leaseholders of Hounslow Homes may not have a clear understanding that details of their addresses would be disclosed in this format, he does not consider that this automatically makes disclosure unfair.
21. The Commissioner notes the view of the First-Tier Tribunal in *Exeter City Council v The Information Commissioner and Mr Nicola Guagliardo*² with regards to the reasonable expectations of council owned properties:

“Additionally we are satisfied that there is a proper distinction to be drawn between those living in a Council owned asset and private accommodation, because the Council are accountable to the public for the way they manage those assets and execute housing policy whereas a private landlord has no such additional public responsibility and that this must impact upon the reasonableness of any expectation that the Council would not publish this information.”

Consent

22. Hounslow Homes explained that in April 2012 it entered into a new Management Agreement with Hounslow Council and Hounslow Federation of Tenants and Residents Associations, with revised terms that allow residents more say in how their housing service is run. It stated that the tripartite agreement is the first in the country and gives both residents and leaseholders more power, control and authority in how the service operates. It affords the resident federation

² Appeal number EA/2012/0073

a much bigger part in decision making with Hounslow Homes and given this, Hounslow Homes feel it necessary to advise them that it has been asked to disclose this information, as they collectively represent leaseholders in their dealings with the company.

23. When considering the issue of consent, the Commissioner's view is that where the data subject consents to the disclosure of their personal data within the time for statutory compliance with the request, then this disclosure will generally be considered fair.
24. However, any refusal to consent is not determinative in the decision as to whether the data subject's personal data will be disclosed. Rather the Commissioner will take the data subjects comments into account insofar as they represent an expression of views of the data subject at the time of the request had the data subject given any thought to the issue at the time. These views help form the analysis of fairness.
25. In this case, the Commissioner has not been provided with any reasons that set out why, at the time of the request, the individual data subjects considered disclosure would be unfair.

Consequences of disclosure

26. In examining the consequences of disclosure, the Commissioner has considered whether disclosure would cause any unnecessary damage or distress to the data subjects. He is mindful of the low inherent sensitivity of the data and of the fact that in practice the fact that a particular property is or is not owned by the council will usually be known to neighbours or because it is part of a known council housing estate.
27. The council argued that disclosure would cause distress if leaseholders are targeted for marketing by third parties. The Commissioner notes that Hounslow Homes has not provided any evidence in support of this argument.
28. The Commissioner considers that disclosure of a list of council leasehold and tenanted addresses could result in unwanted contact of a commercial nature. However, he has not given this significant weight as he is aware that many methods are used to target individuals for marketing purposes including the edited electoral roll, targeted approaches by area and local knowledge.
29. The Commissioner has considered that, as council housing homes are normally offered to people who need them most, some of the tenants may well be vulnerable individuals, such as asylum seekers, benefit recipients or women who have left violent partners. He considers that there would be unfairness to individuals if they were publically identified

as members of a vulnerable group. However, it should not be inferred from this decision notice that disclosure of the requested information automatically identifies tenants of those properties as 'vulnerable'. Indeed, in the absence of any arguments in support of this from Hounslow Homes, the Commissioner is not persuaded by this view and does not consider that there would be any general unfairness in being identified as council tenants or leaseholders.

Legitimate interests in disclosure

30. The Commissioner has not been provided with any specific legitimate interests that arise in this case but recognises that there is an important legitimate public interest in transparency surrounding council properties. There is a legitimate interest in allowing the public to be aware of the council's housing stock which is significant for democratic engagement in a very important issue, namely the supply of housing.

Conclusion on analysis of fairness

31. Although the Commissioner accepts that Hounslow Homes tenants and leaseholders would not necessarily expect that details of their addresses would be disclosed in this way and that there would be unfairness if they were identified as members of a vulnerable group, he is not persuaded that there would be any significant harm or distress from disclosure or any general unfairness of being identified as council tenants or leaseholders. He is mindful of the low inherent sensitivity of the information and the fact that such information is publically available and when added to the strong legitimate public interest in disclosure, has concluded that disclosure would not in fact be unfair.

Lawfulness

32. In the context of freedom of information requests, the Commissioner considers it is likely that it will be unlawful to disclose personal information where it can be established that the disclosure would be a breach of a statutory bar, a contract or a confidence. In this case he has seen no evidence that any of these breaches would occur and he has consequently concluded that disclosure would not be unlawful.

33. As the Commissioner has concluded that disclosure would not in fact be unfair or unlawful he has gone on to consider Schedule 2 of the DPA.

DPA Schedule 2 condition

34. There are six conditions in schedule 2, but only Condition 1 (consent) or Condition 6 (legitimate interests) should be relevant to disclosure under the FOIA. The Commissioner considers that the relevant condition in

Schedule 2 in this particular case is the sixth condition which states that:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”

35. The Commissioner's guidance on 'The exemption for personal information'³ states that Condition 6 should be approached as a three-part test:
 1. there must be a legitimate interest in disclosure;
 2. the disclosure must be necessary to meet that public interest; and
 3. the disclosure must not cause unwarranted harm to the interests of the individual.
36. The Commissioner has already highlighted in paragraph 32 of this decision notice that there is a legitimate interest in disclosure of the requested information.
37. In considering the issue of necessity, the Commissioner has considered whether there are any alternative means of meeting the identified legitimate interests and the extent to which those alternative regimes meet those legitimate interests. However, in this case, the Commissioner is not satisfied that there are other means of meeting the legitimate interests of accountability and transparency and Hounslow Homes has not submitted any alternative means for consideration.
38. The Commissioner has already concluded, when considering fairness above, that there would not be any unnecessary harm or distress caused to the data subjects from disclosure of the information.
39. As he is also of the opinion that disclosure is necessary to meet the legitimate public interest he has concluded that condition 6 of Schedule 2 of the DPA is met in this case and has therefore concluded that section 40(2) of the FOIA is not engaged. The requested information should therefore be disclosed.

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http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/PERSONAL_INFORMATION.ashx

Other matters

40. Although it does not form part of this decision notice the Commissioner wishes to highlight the following matter:
41. Even though the Commissioner does not consider that the release of the requested information to the complainant would breach any of the data protection principles, he recognises that Hounslow Homes continues to have some reservations. Therefore, he would not raise any objections to Hounslow Homes drawing the attention of the complainant to any responsibilities which he may acquire in his own right as a data controller under the Data Protection Act 1998.

Right of appeal

42. 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

43. 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.
44. 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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