Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **18 December 2012**

Public Authority: **HM Land Registry**
Address: **Trafalgar House**
1 Bedford Park
Croydon
CR0 2AQ

Decision (including any steps ordered)

1. The complainant requested the results of a search of the 'Index of Proprietors' Names' in respect of a named individual.

2. The Commissioner's decision is that the public authority was excluded from confirming or denying it held the information requested by virtue of section 40(5)(b)(i) FOIA (personal information).

3. The Commissioner does not require the public authority to take any steps.

Request, background and response

4. On 6 June 2012, the complainant wrote to the public authority requesting a search to be made against the index of proprietors' names (IOPN) in respect of [Named Person].

5. The Commissioner understands that any person may apply to search the IOPN in respect of:

   - Their own name
   - The name of a corporate body such as a registered company
   - The name of some other person in whose property they can satisfy the registrar that they are interested generally. For example:

- The Official Receiver or a trustee in bankruptcy may search against the name of the bankrupt
- A personal representative may search against the name of the deceased on production of the relevant evidence, such as probate or letters of administration.

6. An applicant applies by completing a PN1 form. If they are applying to search in respect of the name of some other person, then at panel 7 (section 7) of the form, they must explain the nature of their interest and enclose evidence of their entitlement to search.[1]

7. Following a telephone conversation with a staff member of the public authority, the complainant wrote back on the same day (i.e. 6 June 2012) and requested information in the following terms:

'*Please note that should you feel that the circumstances supporting the request i.e. "Reasons" in the Entitlement to Search section [section number 7] are unacceptable then the request for the data is made under The Freedom of Information Act 2000.'*

8. The PN1 application was subsequently rejected by the public authority on the grounds that the evidence provided did not satisfy the registrar that the applicant was a person interested generally in the property of the [Named Person].

9. The public authority responded to the request under FOIA on 25 June 2012 in accordance with the provisions of section 1(1)(a) FOIA (i.e. duty to confirm or deny whether information is held). In other words, it confirmed or denied it held the information requested. The Commissioner has not specified the public authority's exact position for reasons which will become clear further below in the 'reasons for the decision' section of this notice.

10. Following an internal review the public authority wrote to the complainant on 19 July 2012. It upheld the response previously provided in accordance with section 1(1)(a) FOIA.

[1] See, Land Registry's Practice Guide 74

Scope of the case

11. On 2 August 2012, the complainant contacted the Commissioner to complain about the way his request for information had been handled.

12. In view of the nature of the request which was for the search results in respect of a named individual on the IOPN, the Commissioner invited the public authority to re-consider its position. He specifically invited the public authority to consider whether it was in fact excluded from complying with the duty imposed by section 1(1)(a) by virtue of the provisions of section 40(5)(b)(i) FOIA. The public authority re-visited the request and revised its original position.

13. The scope of the investigation therefore was to determine whether the public authority is excluded from its duty under section 1(1)(a) with respect to the request for the results of a search of the IOPN against [Named Person] on the basis of section 40(5)(b)(i).

14. The Commissioner is an independent regulator and is therefore not under a duty to act either on behalf of a complainant or a public authority. However, he is also mindful of his role as regulator of the Data Protection Act 1998 (DPA). In light of his responsibilities under the DPA, the Commissioner considers he has a duty to take positive steps to prevent the disclosure of personal information under FOIA which would breach the DPA and it is for that reason that he was under a duty to intervene in this case and ask the public authority to re-consider its position.

Reasons for decision

Section 40(5)(b)(i)

15. The provisions of section 40 subsections 1 to 4 generally exempt personal data from unfair disclosure. In relation to a request for the personal data of individuals other than the applicant (i.e. the person making the request), section 40(5)(b)(i) further excludes a public authority from complying with the duty imposed by section 1(1)(a)[2] if to

[2] Section 1(1)(a) states: 'Any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request…' This requirement is commonly referred to as the duty to confirm or deny.

do so would reveal personal data and contravene any of the data protection principles. Therefore, a public authority is by virtue of section 40(5)(b)(i) excluded from confirming or denying it holds requested information if to do otherwise would reveal personal data and contravene any of the data protection principles.

Is the requested information personal data?

16. Personal data is defined in section 1(1) of the Data Protection Act 1998 (DPA) as:

'*……..data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or 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 person in respect of the individual.*'

17. As mentioned, the request was for a search to be conducted against [Named Person] in the IOPN. The public authority explained that the result of a search of the IOPN would reveal all the title numbers of properties owned by [Named Person] if any. It would reveal whether or not [Named Person] is registered as a proprietor or has a charge over the properties. It would also reveal whether or not each of the properties is jointly owned.

18. The Commissioner finds that the requested information relates to an identifiable individual – i.e. [Named Person] and that they are the focus of the information which would be revealed following a search of the IOPN in respect of their name. He therefore finds that the requested information is personal data within the meaning of section 1(1) of the DPA.

19. A search of the IOPN in respect of [Named Person] would reveal a number of things including whether or not [Named Person] owns any properties. As mentioned, that information is personal data because it relates specifically to [Named Person]. The Commissioner therefore finds that confirming or denying whether the public authority holds the requested information would reveal personal data about [Named Person]. The results of any search including the absence of any entries reveal information about [Named person] because the search is about the individual who is named in the request and it is for that reason that the results constitute personal data.

Would complying with section 1(1)(a) contravene any of the Data Protection Principles?

20. As mentioned, for section 40(5)(b)(i) to apply, complying with the duty under section 1(1)(a) must reveal personal data and contravene any of the data protection principles.

21. The first data protection principle states:

    '*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 [of the DPA] *is met…..*

22. The public authority submitted that confirming or denying it held information within the scope of the request would be unfair. It explained that information in the IOPN is obtained as part of statutory registration processes relating to dealings with land, and the resulting register of title is open to public inspection under the Land Registration Act and Rules. However, the register of title provides information relating to property whereas the IOPN is an index of individual and company names. A search of the index focuses on the individual as the purpose of the search is to discover details of property (or charges secured against property) owned by that person.

23. It argued that even though property ownership information can be said to be in the public domain by other means, for example by obtaining an official copy of the register of title for that particular property under the Land Registration Act and Rules, it is not automatically fair to disclose the information in another context. It pointed out that the rules around access to the IOPN clearly set out by whom and in what circumstances a search of the index can be made. The public authority therefore submitted that the rules regarding access to the IOPN create an expectation of privacy and it would be unfair to confirm or deny to the world at large[3] whether it holds the requested information.

24. Given the restricted access to the IOPN, the Commissioner considers [Named person] would have a reasonable expectation that the public authority would not reveal personal information about them by confirming or denying whether it holds information against their name in response to a request under FOIA. He believes that such a confirmation or denial would be an intrusion into [Named Person]'s private life, for example, by providing an indication of their financial position.

[3] Disclosure under FOIA is considered to be disclosure to the world at large because anyone is then entitled to the same information.

25. The Commissioner does not consider the fact that the land register could reveal title information about [Named Person] very persuasive. As explained by the public authority, the land register permits searches under property names, the results of which would inevitably contain information relating to title. However, that is not a targeted named individual search as is the case in an IOPN search. It is also not intrusive as it is not focused on individuals. Without the general public knowing all the properties (if any) to search against in the land register to find information related to [Named Person], information in respect of [Named Person] (if any) in the land register would be extremely difficult to find. It is therefore questionable whether information (if any) specifically in the land register in relation to [Named Person] can be said to be properly in the public domain. In any event, there is, as mentioned, a distinct difference in the type of information that the IOPN potentially holds about individuals as opposed to the information which could be discovered from a property search. Therefore, the public authority confirming or denying whether it holds information in the IOPN in respect of [Named Person] could potentially reveal much more about [Named Person] (and this applies irrespective of whether or not the IOPN in fact holds information about them) than information from a property search would.

26. The Commissioner therefore accepts that it would be unfair in the circumstances for the public authority to confirm or deny whether it holds information within the scope of the request. He believes that [Named Person] would have a very reasonable expectation that the public authority would not reveal their personal information in response to a request under FOIA. He also considers that it would be a significant intrusion into the private life of [Named Person].

27. In view of the above, the Commissioner finds that confirming or denying that the public authority holds information within the scope of the request would contravene the first data protection principle. The public authority was therefore entitled to rely on the exclusion at section 40(5)(b)(i) FOIA.

Right of appeal

28. 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

29. 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.

30. 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 .....

Alexander Ganotis
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