

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 February 2013

**Public Authority:** Brentwood Borough Council  
**Address:** Council Offices  
Ingrave Road  
Brentwood  
Essex  
CM15 8AY

#### **Decision (including any steps ordered)**

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1. The complainant requested information concerning alterations being made to the interior of a neighbouring property. Brentwood Borough Council (the 'Council') refused the request on the grounds that it was the personal data of the owner of that property and that disclosure would be unfair to that individual.
2. The Information Commissioner's (the 'Commissioner') decision is that the Council was correct to refuse the request as the exemption provided by section 40(2) of the FOIA was engaged. The Council is not, therefore, required to disclose this information. The Council is, however, reminded to handle requests for information in accordance with FOIA as it failed to fully explain why the exemption was engaged and did not issue a proper refusal notice.

#### **Background**

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3. Although the complainant made an FOIA request initially, he submitted a complaint under the Council's own complaints procedure following its initial response and an exchange of emails. The Commissioner has had sight of the key correspondence associated with the complaint and has included details of the main thread of its responses in this notice because its response to the FOIA request did not set out the reasons for refusing to provide the information.

4. As part of the complaints correspondence, the Council confirmed on 16 January 2012 that it refused access to the Building Control records on the grounds that it is the personal data of the owner of that property and that disclosure would be unfair to that individual. It cited decision notice reference *FS50397686* in support of its position. It advised the complainant to contact the property owner in relation to the party wall issues.
5. The Council wrote further as part of its complaints process on 3 February 2012, noting the complainant had written twice to the property owner without any response, and suggested that he should consult a solicitor. The Council explained it does not have any jurisdiction over matters relating to the Party Wall Act. It asked the complainant to clarify what particular information he was seeking to secure via sight of the Building Regulations application which had not already been provided by one of the Council's officers, such that it could consider whether this would fall under the constraints of the Data Protection Act 1998 (the 'DPA').
6. In its letter of 1 March 2012 (again associated with the complaints policy) the Council explained that Building Control/Building Regulations applications differ from planning applications whereby neighbours are consulted in advance of any potential changes. It commented that whilst some Councils make Building Control applications available on their websites, the information given *"is only a brief description of the works to be carried out and is no more detailed than that which you were provided with by [named Council officer]. These websites do not provide copies of building regulation application forms, plans, drawings and correspondence."* The Council also advised that upgrades to its IT system for Building Control were pending which would make it possible to display application information on its website for the first time, but that such information would still have to comply with the DPA.
7. Following a further exchange of correspondence the Council advised the complainant of his right to pursue his complaint via the Local Government Ombudsman (the 'LGO'). The Commissioner is aware that the complainant chose to complain to the LGO and has been advised by him that the LGO referred him to the Commissioner because it had no jurisdiction over the matter.

## **Request and response**

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8. On 15 December 2012 the complainant wrote to the Council and requested information in the following terms:

*"Further to my telephone call, I would confirm that the owners of [address redacted] have removed the party wall chimney breast, without my knowledge or agreement and without providing the correct Notice. I am the owner of [address redacted].*

*I would be grateful if you could confirm whether or not you are aware of this work, and if so could you please send me details of the work they are carrying out."*

9. The Council responded on 20 December 2011 confirming it had received a *"Building Regulation full plans application for the proposed works. Inspections are being made as necessary to ensure compliance with the Building Regulations. Any issues with the 'Party Wall Act' need to be addressed with the property owner direct."*
10. There followed an exchange of emails in which the complainant advised the Council he had not been able to access the relevant application online and asked the Council to send it to him. The Council subsequently confirmed that Building Regulations applications are not available for public scrutiny.
11. On 27 December 2011 the complainant wrote to the Council to say that due to its unwillingness to assist him, he had no alternative other than to raise a complaint with it.
12. The Council reiterated its policy on not making Building Regulation information available for public scrutiny, and repeated that issues in respect of the Party Wall Act should be raised directly with the property owner. The complainant's email of 1 January 2012 made it clear that he wished to raise the matter as a complaint with the Council.
13. The complainant requested an internal review on 25 April 2012 but did not receive any response.

### **Scope of the case**

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14. The complainant initially contacted the Commissioner on 3 July 2012 to complain about the way his request for information had been handled. Once he had provided the necessary documentation associated with his request, his complaint was accepted on 4 September 2012.
15. At the outset of his investigation, the Commissioner considered whether the information requested is environmental. Whilst information relating to planning will commonly be environmental under regulation 2(1)(c) of the Environmental Information Regulations 2004 (EIR) and so a request for such information should be handled under the EIR, this is due to the

effect that the measures recorded within this information would have on environmental elements and factors referred to in regulations 2(1)(a) and (b). Where information records measures that would not have an impact upon any of those elements and factors, this information would not be environmental.

16. In this case the information records plans for alterations to the interior of a property. The view of the Commissioner is that the measures recorded within this information would not have any effect upon the elements and factors listed in regulations 2(1)(a) and (b) and so information recording these measures is not environmental. As this information is not environmental, the request should have been dealt with under the FOIA and the Commissioner has taken this approach in this notice.
17. In support of its approach to the request, the Council has explained that the whole premise of the Building Regulations is that they remain private because they are concerned with the interiors of individuals' homes. The process differs to that followed for planning applications as the planning legislation specifically allows for consultation and comment.
18. In support of its position the Council referenced the relevant legislation for both planning and Building Regulations applications. It pointed out that the planning legislation makes express provision for potentially affected individuals to be consulted and to comment on any proposed developments/external alterations, with a right for any individual to inspect the planning register at the Council's offices. Whilst the Building Regulations do not expressly state that these features are not available for potentially affected individuals, it is inferred by the legislation in that no such provision is made for access, comment or consultation.
19. In this case, although it is not obliged to do so, the Council agreed that that the Commissioner could provide the complainant with a list of the information held on the Building Regulations application file relevant to his request to demonstrate that a formal application was made. It also gave its consent to the Commissioner to inform the complainant about the details on the one-page Building Control form which the Commissioner understood had previously been provided to the complainant, minus the personal information.
20. The Council sent the Commissioner a copy of the unredacted one-page application form. The information on that form consists of the applicant's name and address, the agent's name, address and email address, the location of the building to which the proposed work relates, the nature of the work to be carried out, charges paid, the use of the building whether new or existing, whether the agent agrees to the conditions, whether the agent requires a completion certificate and a signed

statement from the agent signifying his/her understanding of the basis of the application, the fee payable and that further fees would be payable after the first inspection. The Commissioner provided the complainant with the above details, minus the names and addresses.

21. The complainant disputes that he was given the details of the form at the time of his request. The Council's position is that in telephone conversations between the complainant and the relevant officer, the complainant was advised what the application was for and was given the details minus the addresses, and that the complainant was already aware of the individual's name. The complainant states that he was not given any information from the application form but is aware of the name of the owner from publically available documentation on the internet.
22. Given the passage of time and the lack of recorded information relating to the calls, the Commissioner is not able to determine exactly what information was or was not provided or not to the complainant verbally. As outlined in paragraph 6 of this notice, however, the Council's letter of 1 March 2012 (to the complainant) as part of the complaints process states that details of building control applications on other councils' websites "*is only a brief description of the works to be carried out and is no more detailed than that which you were provided with by [named Council officer].*" The Commissioner's view is that some information must therefore have been provided to the complainant about the application form around the time of his request.
23. On 29 January 2013 the Commissioner wrote to the complainant to provide him with the list of the information held on the relevant file, the details on the one-page form and to outline his preliminary view that the Council had correctly withheld the information in accordance with section 40(2) of FOIA. He asked the complainant to consider withdrawing his complaint; which he declined and instead requested a decision notice.
24. The Commissioner has noted that the Council refused the request on the basis that it considered the information to be personal data. From the correspondence available on file, it would appear that the Council did not explicitly cite section 40(2) (personal information) until its complaint process letter of 1 March 2012. As a result, the Commissioner has considered section 40(2) of the FOIA.

## **Reasons for decision**

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25. In reaching his decision in this case, the Commissioner has considered a previous case about a similar request for information, involving Bolton

Council. The Commissioner issued a decision notice in that case (*reference FS50397686*) which held that the information was the personal data of an individual other than the requester, and that disclosure of the information would breach a data protection principle. His conclusion in this case was that requested information is exempt under section 40(2) of the FOIA and, therefore, Bolton Council was not required to disclose this information.

26. Section 40(2) of the FOIA states that information is exempt if it is the personal data of any person other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. There are, therefore, two steps to considering whether this exemption is engaged.
  - a. Does the information constitute the personal data of any individual aside from the requester?
  - b. Would disclosure of that personal data be in breach of any of the data protection principles?
27. As to whether the information is the personal data of an individual aside from the requester, the definition of personal data is given in the Data Protection Act 1998. This states that for information to be personal data it must relate to an individual and that individual must be identifiable from that information.
28. The information in question here relates to an application to carry out building work on a property. It is possible that information relating to a property may not be the personal data of an occupier of that property where, for example, there are multiple occupants of a property and so it could not be said that information about a property relates to an *individual*.
29. In this case, however, the Commissioner notes that the information relates specifically to an application to make alterations to a property. The information records that the application to make these alterations was made by an individual and this individual is identified by name within this information.
30. The Commissioner has taken the approach that this information relates not only to this property, but also more specifically to the application to make alterations to this property. When viewing this information as a whole in the context of the complainant's information request, the view of the Commissioner is that this information does relate to an individual and that this individual is identifiable from this information. The information in question does, therefore, constitute the personal data of an individual aside from the requester.

31. Turning to whether disclosure of this information would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle. This requires that personal data shall be processed fairly and lawfully and the focus of this analysis is on whether disclosure of this information would be in general fair to the individual to which it relates. In forming a conclusion on this issue, the Commissioner has considered the consequences of disclosure upon this individual, their reasonable expectations as to whether this information would be disclosed, and the legitimate interests of the public in this information.
32. The view of the Commissioner is that the consequences of disclosure upon the subject of this information would not be great. If it could be said that disclosure would result in detriment to the subject of this information through, for example, causing significant distress, the Commissioner may have concluded that disclosure of this information would accordingly be unfair. However, the information in question here is not of a nature that would be commonly considered to be of particular sensitivity. For this reason, the Commissioner does not believe that it could be said that disclosure would have a detrimental impact upon the subject on the basis of distress that would result through disclosure. Neither is the Commissioner aware of any argument about more tangible consequences of disclosure upon the subject, such as through financial loss. The Commissioner does not believe, therefore, that disclosure would be unfair to the subject on the basis of any consequence that would arise from it.
33. On the issue of the reasonable expectation of the subject about disclosure, the Council has not sought to obtain consent from the individual who submitted the application at the time that the request was received. The Commissioner believes that, whilst he has found above that this information would not have attached to it any particularly high level of sensitivity, most people would hold some expectation of privacy about the details of changes they make to the interior of their own home. The view of the Commissioner is, therefore, that the subject of this information would have a reasonable expectation of privacy in relation to this information.
34. Turning to the question of whether there is legitimate public interest in the disclosure of this information, the complainant has stated that his interest in this information stems from his property, which is tenanted, being semi-detached to the property to which the information relates. Given this, the Commissioner agrees that the interest of the complainant in this information is legitimate. However, this private interest does not necessarily translate into a legitimate public interest. On this point the view of the Commissioner is that information relating to amendments made to the interior of a private property would not generally be subject

to a legitimate public interest. In this case he does not believe that the legitimate private interest of the complainant in this information means that there is also a wider public interest in disclosure. The Commissioner does not, therefore, believe that public interest in disclosure is a valid factor to be weighed against any factors in favour of non-disclosure.

35. The view of the Commissioner is that the information in question here is not of any great sensitivity and so disclosure would not be likely to result in any significant negative consequence to the subject. However, he has also found that the subject would hold a reasonable expectation of privacy in relation to this information because this information relates to the interior of a private property. Having also found that there is no legitimate public interest in the disclosure of this information, the conclusion of the Commissioner is that disclosure would not, in general, be fair to the subject of this information, and so would be in breach of the first data protection principle.
36. The complainant submitted various points in support of his view that the information should be disclosed, due to the damage to his property which was caused by the works being carried out, the lack of a Party Wall agreement and the loss of two tenants as a result of the works; however the Commissioner's view is that the information constitutes the personal data of a third party.

### *Conclusion*

37. The Commissioner has found that the information in question is the personal data of an individual aside from the requester and that the disclosure of this personal data would be in breach of a data protection principle. His overall conclusion is, therefore, that this information is exempt under section 40(2) of the FOIA and so the Council is not required to disclose this information.

### **Other matters**

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38. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, the Information Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working



days. The Commissioner is concerned that in this case, the Council did not carry out an internal review. It said it had not done so because the complainant raised a formal complaint with the Council. The Commissioner would remind the Council of the need to recognise and handle internal review requests regardless of any ongoing non FOIA complaints process.

## Right of appeal

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39. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

40. 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.
41. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**