

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 November 2013

Public Authority: London Borough of Barnet
Address: North London Business Park (NLBP)
Oakleigh Road South
London
N11 1NP

Decision (including any steps ordered)

1. The complainant requested information from London Borough of Barnet (the Council) relating to the number of complaints about a named individual at a specified address.
2. The Council refused to confirm or deny whether it held the requested information citing section 40(5) - personal information. The Commissioner's decision is that the Council was entitled neither to confirm nor deny holding information relevant to the request. He requires no steps to be taken.

Request and response

3. On 26 July 2013 the complainant requested information of the following description:

"Subject to the Freedom of Information Act 2000, I request to be informed about the number of complaints that have been made about [name and address redacted] and to be provided with a breakdown of how many different residents those complaints came from".

4. The Council responded on 1 August 2013. It told the complainant that as the information relates to third parties it is exempt from disclosure under section 40(2) (personal information) of the FOIA and that, further to section 40(5), it is not obliged to confirm or deny whether it holds the requested information.

5. Following an internal review, the Council wrote to the complainant on 16 August 2013 upholding its original position.

Scope of the case

6. The complainant contacted the Commissioner on 16 August 2013 to complain about the way his request for information had been handled.

7. He told the Commissioner:

"You will see that I was very careful about how I worded this request, in order to avoid Barnet Council hiding behind the DPA on the grounds that any information provided 'would identify a living person'. I therefore made it clear that the identity of the individual is already known to me!"

8. The Commissioner considers the scope of his investigation to be the Council's application of section 40(5).

Reasons for decision

Section 40 personal information

9. Generally, the provisions of section 40(1) to (4) exempt 'personal data' from disclosure under FOIA if to do so would breach the data protection principles.
10. Section 40(5) further excludes a public authority from complying with the duty imposed by section 1(1)(a) (that is, to either confirm or deny holding the information), if complying with that duty would:
 - constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act (DPA).
11. This exemption is absolute and therefore requires no consideration of the public interest.

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

12. The DPA defines personal information as:

"...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 intention of the data controller or any other person in respect of the individual."

13. The complainant has clearly stated that he is only asking for two numbers. In correspondence with the Council, he confirmed that he is not asking for the names of any complainants or for details of what was complained about.

14. He told the Commissioner:

*"It cannot be overemphasized that *ALL* I have asked Barnet Council for is few numbers, viz.*

(1) HOW MANY complaints have been received about a specific named individual (who is also a council tenant), and

(2) a breakdown of HOW MANY different residents have complained about him.

How can a 'living individual' possibly be 'identified from' a few numbers?"

15. The Council told the complainant:

"To state whether or not we hold complaints data related to a living individual concerned would by definition be to release information relating to that individual. The individual is also identifiable, as you yourself have identified this individual in your request".

16. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.

17. In the Commissioner's view, whether or not a complaint has been made against a named individual is information which constitutes the personal data of that individual.

18. Furthermore, the Commissioner considers that even confirming or denying whether information is held would reveal whether or not a complaint had been made about that individual.

19. Accordingly, the Commissioner considers that if the Council confirmed or denied holding the requested information it would represent the

disclosure of the personal data of the individual specified in the request. This is because, in the circumstances of this case, the very act of stating that the requested information is or is not held would disclose to the requester whether or not that individual has been complained about.

Would disclosure breach the data protection principles?

20. Having established that the information which would be disclosed by confirming or denying constitutes personal data, the Commissioner has examined whether disclosure of that personal data would breach a data protection principle. The data protection principles are set out in schedule 1 of the DPA.

21. The Council told the complainant:

"In our view, confirming or denying the existence of the information would contravene the first data protection principle which requires the council to process personal data in a fair and lawful manner.

Disclosure of information under FOI is disclosure to the world at large and we consider that it would be unfair to confirm or deny to the world at large that the requested information is held".

22. The first principle states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

23. In the Commissioner's view, when considering whether a disclosure of personal information is fair it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject.

24. In this case, the Council told the Commissioner that the individual identified in the request:

"would not expect the council to disclose to the world that complaints have or have not been made about him".

25. The Commissioner considers it reasonable that a member of the public would have an expectation that information revealing whether or not the Council has received complaints about them would not be disclosed under the FOIA.

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

26. Notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
27. The Commissioner acknowledges that there is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities.

Conclusion

28. The request in this case relates to the number of complaints that have been made about the individual identified in the wording of the request.
29. In making a decision in this case, the Commissioner is satisfied that confirming or denying that the requested information is held would constitute a disclosure of personal data as it is clear that it would disclose information which is linked to an identifiable individual. The Commissioner concludes that the disclosure of this personal data would be unfair, and would therefore be in breach of the first data protection principle, as it would reveal information relating to an individual's personal and private circumstances about which they would have an expectation of non-disclosure.
30. As disclosure of information under the FOIA is considered disclosure to the public at large and not to the individual applicant, in the case of personal data there is no assumption of disclosure and the Commissioner must balance the legitimate public interest in disclosure against the interests of the individual(s) whose data it is.
31. Having considered the circumstances of this case, the Commissioner's view is that the right to privacy outweighs the legitimate public interest in confirming or denying whether the requested information was held. Accordingly, the Commissioner is satisfied that the Council was entitled to rely on the provisions of section 40(5) of the FOIA.

Right of appeal

32. 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

33. 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.

34. 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
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