

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 July 2014

Public Authority: London Borough of Hounslow ('the Council')

Address: The Civic Centre
Lampton Road
Hounslow
TW3 4DN

Decision (including any steps ordered)

1. The complainant has requested the tenancy application form of a named individual from the London Borough of Hounslow.
2. The Council relied on section 40(2) of the FOIA in refusing to provide the information requested. It stated that the information was personal data and its disclosure would infringe the Data Protection Principles as the release of it would be unfair. The Commissioner's decision is that the Council has met its obligations under the FOIA. He is satisfied that the release of the information would be unfair. He therefore does not require the Council to take any steps to comply with the legislation.

Request and response

3. On 28 January 2014, the complainant wrote to the London Borough of Hounslow and requested information in the following terms:
'a copy of the original application that [named individual] completed including and up to the time when her tenancy agreement was concluded.'
4. On 3 February 2014 the Council wrote to the complainant stating that the information could not be provided as it is third party personal data which it was not permitted to disclose without consent.
5. On 10 February 2014 the complainant contacted the Council clarifying that his request was made pursuant to the Freedom of Information Act.

6. On 13 February 2014 the Council issued a refusal notice stating that it was withholding the information requested and relied on section 40(2) of the FOIA as the basis for doing so. It advised that it considered the information to be personal data which could not be disclosed without the data subject's consent.
7. On 10 March 2014 the complainant wrote to the Council to request an internal review.
8. On 30 April 2014 the Council provided its internal review decision. It upheld its initial response and the application of section 40(2) stating that the information requested was personal data. It advised that the disclosure of the information to the public would contravene the data protection principles as well as likely to cause damage and distress to the individual who would not expect their housing application to be disclosed.

Scope of the case

9. On 1 May 2014 the complainant lodged a complaint with the Information Commissioner's Office stating that he remained dissatisfied with the Council's internal review decision.
10. The scope of this case has been to determine whether the Council handled the complainant's request dated 28 January 2014 in accordance with the FOIA. Specifically, whether the Council is entitled to rely on section 40(2) of the FOIA as a basis for refusing to disclose the tenancy application form of the named individual.

Reasons for decision

11. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled: –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

12. In this matter the Council advised the complainant that it relied upon section 40(2) of the FOIA to withhold the information, as it believed that the information requested is personal data the disclosure of which would breach the principles of the Data Protection Act 1998 (the 'DPA').

Section 40(2) FOIA

13. Section 40(2) sets out an exemption for information which is the personal data of a third party, the disclosure of which would be in breach of the principles of the DPA. In this case the Council sought to rely on the first principle of the DPA which states that personal data must be processed fairly and lawfully.
14. Personal data is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller. In this matter the requested information is clearly personal data as it relates to the tenancy application form of an identifiable living individual.
15. Having identified that the requested information is personal data consideration has to be given to whether its release would be fair. In considering whether disclosure of the requested information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
 - the consequences of disclosure to the data subject;
 - the data subject's reasonable expectations of what would happen to their personal data; and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
16. In its response to the request the Council explained that the disclosure of the information would breach the DPA and it was not permitted to disclose the information without the individual's consent. In its internal review response the Council also advised the complainant that the disclosure would be likely to cause damage and distress to the individual as the tenant would not expect their housing application to be placed in the public domain.
17. The Council also provided further arguments to the Commissioner confirming that some of the withheld information constitutes sensitive personal data and personal data in relation to other 3rd parties.
18. The Council also advised the Commissioner that the fair processing notice provided to the named individual stated that the information would only be shared with housing associations and co-operatives to provide housing assistance. Therefore the individual concerned would not have any reasonable expectation that their personal information

would be disclosed to the public. Additionally the Council expressed concern that the disclosure of the information could lead to a possibility of victimisation and substantial distress.

19. The Complainant submitted arguments for disclosure to the Commissioner which relied upon alleged tenancy fraud committed by named individual as the basis on which the tenancy application form should be disclosed. The Council has advised the Commissioner that the complainant raised the allegation of tenancy fraud in October 2013. As a result the Council conducted an investigation into the allegations and found that there was no evidence of tenancy fraud and closed the investigation. The Council considers that there is no overriding legitimate public interest in disclosure as it maintains that tenancy fraud has not occurred in this situation.
20. The Commissioner has considered both the complainant's argument that the information should be disclosed because he suspects a criminal offence has been committed and the Council's concerns about the reasonable expectations of the individual as to the use of their personal data. Having done so he considers that disclosure of the information in question would not have been expected by the individual concerned, would have a detrimental and distressing effect. Therefore, in all the circumstances of the case, it would not be fair for the requested information to be released.
21. The Commissioner therefore considers that the Council has acted appropriately in withholding the requested information and is entitled to rely upon sections 40(2) of the FOIA.

Right of appeal

22. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

Rachael Cragg
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Wycliffe House
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Wilmslow
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SK9 5AF