

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **2 February 2015**

Public Authority: **London Borough of Islington**

Address: **Islington Council
Town Hall
Islington
N1 2UD**

Decision (including any steps ordered)

1. The complainant has requested from London Borough of Islington (the "Council") information in relation to the sale of specific commercial premises. There are two parts of this request.
2. The Council applied section 14(2) of the FOIA to the first request for information. To the second request, the Council disclosed some of the requested information and applied section 40(2) of the FOIA to the remaining part of the request.
3. The Commissioner's decision is that the Council has correctly relied upon section 40(2) of the FOIA to the second request. However, the Commissioner has dismissed the Council's use of section 14(2) of the FOIA to the first request and he orders the Council to issue a fresh response to part 1 of the request.
4. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to part 1 of his request as detailed in paragraph 12 under FOIA without relying on section 14(2).
5. The Council 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

6. The complainant provided the Commissioner with a background to his complaint against the Council as follows:

"In 2007, the London Borough of Islington announced that it would sell-off its commercial property portfolio. Broadly speaking, the Council put the portfolio out to tender. This tender was won by Structadene Ltd, one of Britain's largest property owners. Each property was valued and each leaseholder could exercise the right to buy the freehold if it matched the valuation."

7. On 28 March 2011 the complainant wrote to the Council and requested information in the following terms:

- (1) *"The date when Islington council exchanged contracts with Structadene Ltd in respect to the sell-off."*
- (2) *The date when Structadene Ltd and the Council completed on the above contract.*
- (3) *The original date for lessees to exchange contracts with the Council was August 10 2007. However, I understand that a number of lessees exchanged contracts after this date. I would like to be provided with full details as to when these parties exchanged contracts and on what properties."*

8. On 17 May 2011 the Council responded and provided the complainant with some of the information requested. The Council applied section 40(2) of the FOIA to the remaining part of the request.

9. On 7 May 2014 (3 years later) the complainant telephoned the Council to query the response to his information request dated 17 May 2011. Specifically, he raised a concern regarding details of a particular property (on Essex Road) that had been omitted from the Council's response.

10. The Council wrote to the complainant on 28 May 2014 and explained that it was unable to confirm whether the particular property (on Essex Road) had been omitted. The Council informed the complainant that it could process a new written FOI request relating to this.

Request and response

11. In June 2014 the complainant submitted a new FOI request to the Council of the following description:

"You told me about 221 properties the one that was important to me you left out can you please tell me the reason was – [named property]? Please tell me the day of exchange and completion to who bought it..."

12. For clarity, the Commissioner has considered this request to be:
 - (i) The reason why the specific property was omitted
 - (ii) The date of exchange/completion and the name of the purchaser.
13. On 28 July 2014 the Council responded to the complainant. It explained that in its letter of 28 May 2014 the Council had replied to the complainant's questions regarding its initial response to the original request. Therefore, the Council considered this to be a repeat request and applied section 14(2) of the FOIA as a reason to not disclose information regarding this part of the request.
14. In relation to the remaining part of the complainant's request, the Council provided the complainant with the date the contracts were exchanged and the completion date with the final purchaser.
15. However, the Council withheld the *"exact details of the person that purchased the property"* and cited section 40(2) of the FOIA to this part of the request. The Council considers this to be personal information and that it would be unfair to disclose this to the complainant.
16. The complainant requested an internal review on 7 August 2014 on the handling of his FOI request and clarified his concerns on 18 August 2014.
17. Following an internal review, the Council wrote to the complainant on 11 September 2014 and upheld its decision to withhold the information requested.

Scope of the case

18. The complainant contacted the Commissioner on 10 October 2014 to complain about the way his new request for information dated June 2014 had been handled.
19. The Commissioner considers the scope of this case to be to determine the Council's use of section 14(2) of the FOIA to the first part of the request, concerning the reason why the specific property was omitted.
20. The Commissioner also considers the scope of this case to be to determine if the Council correctly applied section 40(2) of the FOIA to the information concerning who bought the property in question.

Reasons for decision

Section 14(2) repeated requests

21. Section 14(2) of the FOIA states:

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

22. This means that Section 14(2) may only be applied when all three of the following criteria have been fulfilled;

- the request is identical or substantially similar to a previous request from the same requester;
- the authority has previously provided the information to the requester or confirmed that it is not held in response to the earlier FOIA request; and
- a reasonable interval has not elapsed between the new request and the previous request.

23. The Council explained that the complainant's new request for information was addressed in its response dated 28 May 2014. In this letter the Council advised the complainant that in order to review the information which was initially provided that due to the passage of time, the Council would have to consider this as a new request for information.

24. The Commissioner has noted that the complainant contacted the Council by telephone on 7 May 2014 to query the Council's response to his FOI request of 17 May 2011. The complainant was of the view that not all the properties which had been sold during the specific period, had not been provided to him. He was concerned about the omission of the details for the sale of a particular property on Essex Road which had been sold.

25. The Council argued that it is difficult to review the response from three years ago and explained that it is not possible to confirm whether the Council had failed to provide the complainant with details of the particular property. The Council told the complainant that the only way it could review the information previously provided and check if an incorrect figure was disclosed, would be to treat this as a new request for information.

26. The Commissioner recognises that this part of the request is the complainant seeking a reason for the omission and not for recorded information. However, the request could still apply to any information held by the council that related to how it had handled the complainant's earlier request.
27. The Council considered the information requested in June 2014 as a repeat request and cited section 14(2) of the FOIA to the first part of the complainant's request.
28. The Commissioner does not consider this as a repeat request. This is not the same as the original request. In the recent request the complainant asks why the named property was omitted from the Council's response and who bought the property. However, the original request relates to dates on the exchange of contracts and details on the properties.

Section 40(2) personal data

29. 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').
30. 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."

31. 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, the Council considers that disclosure would breach the first data protection principle.
32. The Council has argued that this is personal data and to release this information under the FOIA would be unfair and therefore in breach of the DPA.

33. The Council explained to the complainant that contracts were exchanged but this was withdrawn by agreement between the parties. The Council added that the property was then offered to the portfolio purchaser and the grant of the lease to the director of the portfolio purchaser was completed.
34. However, the Council stated that it was unable to release the details of who bought the property as it constitutes personal information.
35. The complainant expressed his dissatisfaction with the Council's refusal to provide him with the information he requested and clarified his concerns to the Council. The complainant also complained about the process and service he received regarding the "Right to Buy" scheme.

Is the information in question personal data?

36. The Council considers the details of individuals and their specific circumstances of exchange on properties to be personal data.
37. The Commissioner considers that the information in question is the name of the individual who bought the property and is personal data. This is because it relates to the individual's public life and to disclose their name would be an invasion of privacy.

The Commissioner's approach to fairness

38. The Commissioner has gone on to consider whether disclosure of this information would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure, (if it would cause an unnecessary or unjustified damage or distress to the individuals concerned); and
 - the balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

Reasonable expectations of the individual

39. The Council explained that the disclosure of the information would be unfair and therefore it would be in breach of the first data protection principle.

40. The Commissioner considers that the individual who bought the property would not reasonably expect their name to be disclosed to an FOI requester.
41. Given that the requested information is personal data, the Commissioner considers that it would be within the reasonable expectations of the individual for this information not to be put into the public domain.

The consequences of disclosure

42. The Commissioner considers that the release of the name and details of the purchaser would be a possible invasion of privacy. He acknowledges that these details to be confidential and he is therefore satisfied that the disclosure of this information is likely to cause damage and distress to the individual.

The legitimate public interest

43. The Commissioner considers that the public's legitimate interests must be weighed against any prejudice to the rights of freedoms and legitimate interests of the individuals concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interest of the complainant) accessing the withheld information.
44. The Commissioner acknowledges that details of the purchaser of the named property to be personal data and he has considered whether there is a pressing social need for the information to be disclosed. His decision is that the information would not be of interest to the public.
45. The Commissioner has been unable to identify any legitimate interest in disclosure that is more compelling than protecting the purchaser's legitimate interest in keeping his identity and details of the buying of the property private.
46. The Commissioner considers that the complainant's concern in the information is personal rather than being representative of any wider public interest. It is clear that the complainant wishes to obtain the identity of the purchaser in order to try to issue a legal challenge.
47. The Commissioner is satisfied that there is no wider public interest in the disclosure of the information which is sufficient to outweigh the rights of the individual concerned.

The Conclusion

48. The Commissioner has viewed the copy of the Sale Agreement of the named property which the Council provided. The Commissioner

recognises that this withheld information contains the buyer's personal details. Based on this, the Commissioner is satisfied that the withheld information is personal data. The disclosure of it would breach the first data protection principle and it would be unfair to the individuals concerned to release this information.

49. Therefore, the Commissioner considers that the exemption of section 40(2) of the FOIA is engaged and that the Council was correct not to disclose the withheld information.
50. However, the Commissioner has dismissed the Council's use of section 14(2) of the FOIA to the first request and he orders the Council to issue a fresh response to part 1 of the request.

Right of appeal

51. 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

52. 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.
53. 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

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