

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2015

Public Authority: London Borough of Tower Hamlets
Address: Town Hall
Mulberry Place
5 Clove Crescent
London
E14 2BG

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Tower Hamlets ("the Council") relating to the grounds on which five applicants were placed above her for a property.
2. The Commissioner's decision is that the Council correctly applied section 40(2) of FOIA.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 18 September 2014, the complainant wrote to Council and requested information in the following terms:
"Moreover I had stated in my complaint that I want to know on what grounds have the five people placed above me for this property (Cawdor walk)? I have had decant status for 5 years. This information I request from you under the freedom of information act".
5. The Council responded on 2 October 2014 and explained that the requested information was exempt from release under section 40(2) of FOIA. However it did provide the complainant with some general information regarding the Council's Allocation Scheme. This information provided a general overview setting out why people may be prioritised or placed above the complainant.

6. Following an internal review the Council wrote to the complainant on 3 December 2014. It upheld its previous decision.

Scope of the case

7. The complainant contacted the Commissioner on 16 December 2014 to complain about the way her request for information had been handled.
8. Specifically the complainant disputed the Council's application of section 40(2) to the request.
9. The Commissioner has therefore had to consider whether the Council were correct to apply section 40(2) to the request.

Reasons for decision

10. Section 40 of FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
11. Taking into account his dual role as regulator of both the FOIA and the Data Protection Act 1998 (the "DPA") the Commissioner has considered whether the names of the attendees can be withheld under this exemption.

Is the withheld information personal data?

12. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") 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 data controller or any person in respect of the individual..."

13. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
14. The Council acknowledged the complainant's point that she did not want to receive any personal data such as the name or address of the applicants. However the Council argued that even with these redactions,

the applicants could be identified by data matching. It noted that the complainant knew where the successful applicant had previously been living. It subsequently argued that if the requested information was released, the complainant would be able to use the process of elimination to identify the personal data of the successful application and potentially, the personal data of the other applicants.

15. Having considered this and noting that the requested information relates to a small geographical location, the Commissioner considers that it is likely that the identity of at least some of these individual's is known or could be ascertained by the complainant.

Would disclosure breach the data protection principles?

16. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
17. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. 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

18. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
19. The Council explained that the individuals concerned would have no expectation that their personal data would be disclosed in response to an information request.
20. The Council stated that the information sought by the requester will be used for housing purposes to determine their own application and tenancy. The Council also explained that the individuals would have no expectation that this information would be shared with others.

The consequences of disclosure

21. The Commissioner considers that if the information were disclosed and the individuals concerned identified, this would be an invasion of privacy.

The legitimate public interest

22. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainants) accessing the withheld information.
23. The Commissioner considers that the information the Council has already provided to the complainant in its initial response to the request goes a long way to satisfy the legitimate public interest. The Commissioner considers that the Council has struck the right balance between the rights, freedoms and legitimate interests of the individuals who are the subject of this information; and the legitimate interest of the public. The Commissioner considers that the exact details setting out why the five applicants were placed above complainant is not information that would be of value to the greater public.

Conclusion

24. The Commissioner appreciates and understands why the complainant is seeking the requested information. However, it is important to stress that disclosure of the requested information would mean disclosure to the whole world rather than to the requester alone. In this case, it is therefore unreasonable to disclose the requested information to the whole world.
25. The Commissioner is therefore satisfied that the Council correctly relied upon section 40(2) to withhold the requested information.

Right of appeal

26. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

27. 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.
28. 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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