

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 April 2015

Public Authority: London Borough of Southwark
Address: PO BOX 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Southwark ("the Council") for information relating to the repairs on communal parts of a block of flats.
2. The Commissioner's decision is that Council has correctly applied section 40 of FOIA to withhold the flat numbers where a repair was raised to a communal part of an individual flat.
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 21 October 2014 the complainant wrote to the Council and requested information in the following terms:

"The Council has refused to provide data as to where certain repairs were carried out in a block of flats the freehold of which is owned by the Council. I own a leasehold flat in the block. I am charged by the Council for a proportion of the costs of repairs to common parts in my half of the block. I would normally expect some repairs are carried out in my half, some to the other. The location of repairs are identified in relation to whichever is the nearest flat, by its number. The repairs are not inside the flats.

I am unable to identify the location of the repairs as the Council declines to provide the numbers of the flats under some delusion that they are 'personal data' and cannot be disclosed. In the absence of same I will

have conclude that all repairs must have been carried out to common parts in the other half of the block.

I am asking you now to provide the flat numbers. I have raised the same question for repairs to common parts for previous years, and they were eventually grudgingly provided by Home Ownership.

I have already had to refer the Home Ownership Teams failings to the Housing Ombudsman on another matter, who found in my favour and found LBS seriously at fault both in my case and in its information systems generally. I would prefer not to have to refer this request as a further example of maladministration to the Housing Ombudsman Service or to the Information Commissioner for a failure to comply with an FOI, but I will if necessary.

Please release the data requested by return. The redaction is a nonsense”.

5. The Council responded on 18 November 2014 and confirmed that the requested information was held. However it explained “*we consider that along with other information available to you, such as the electoral register, this could be used to identify named individuals whose details are considered personal data*”. The Council subsequently cited section 40 of FOIA.
6. Following an internal review, the Council considered that the flat numbers that were used to signpost contractors to a communal repair did not constitute personal data. However, it explained that where a repair is raised to an individual property, the Council considered this to constitute personal data and therefore exempt from release under section 40 of FOIA. The Council subsequently disclosed the information to the complainant but redacted the flat numbers where a repair was raised to an individual flat.

Scope of the case

7. The complainant contacted the Commissioner 22 December 2014 to complain about the way his request for information had been handled.
8. Specifically the complainant argued that the Council incorrectly applied section 40 to the flat numbers where a communal repair was raised to an individual flat.
9. The Commissioner has had to consider whether the Council was correct to apply section 40 of FOIA to the flat numbers where a repair was raised to a communal part of a flat.

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 Council was correct to withhold the flat numbers where a repair was raised to a communal part of a flat. It is worth noting that external doors and windows of a flat are classed as a communal part.

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. In this case, the Commissioner is satisfied that if the exempt information was disclosed, it is likely to lead to the identification of individuals.
15. In coming to this view, the Commissioner has noted that the complainant is a leaseholder in the block of flats in question. The Commissioner considers that this will be a small geographical location and it is likely that the individuals living in the flats will be 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 complainant informed the Commissioner that the Home Ownership Team has previously disclosed the flat numbers where a repair was raised to a communal part of a flat. The Commissioner therefore asked the Council to confirm whether the data subjects would have a reasonable expectation that this information would be disclosed again in response to an information request.
20. The Council explained that it was unaware how the complainant received this information. It confirmed that the complainant did review the records in 2012/13 and if he received an unredacted copy of this information, it was done in error.
21. The Council confirmed that the data subjects do not have an expectation that the requested information will be disclosed in response to an information request.
22. The Commissioner further asked the Council to confirm whether it had contacted any data subjects for their consent to disclosure of the information withheld under section 40.
23. The Council confirmed that it has not contacted a data subject to seek consent. The Council explained that if it did this, it must then do it for all leaseholders who ask for this type of information and as it has a mixed portfolio, it would involve asking all tenants and leaseholders across the Borough. The Council believes that this would set a precedent as it would not be able to refuse to do the same for other leaseholders if it provides the information to the complainant.

The consequences of disclosure

24. The Council considers that there is the potential for problems to arise between residents if personal data about those who have requested the repairs is released, particularly so as leaseholders pay service charges based on the repairs that are reported.

25. The Council's view is that if the requested information was released, it could cause distress to the person raising the repair, and may dissuade residents from reporting issues in the future as they may be subject to adverse pressure to not report problems.

The legitimate public interest

26. 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 complainant) accessing the withheld information.
27. The Commissioner acknowledges that the complainant has a strong interest in the information that has been withheld. This is because he wants to ensure that the money he contributes towards repairs is only used to repair communal parts he is responsible for.
28. However the Commissioner must consider the legitimate public interest in the requested information rather than the interests of the requester. In this case, the Commissioner considers that the information the Council has disclosed goes a long way to satisfy the legitimate public interest.
29. The Commissioner further considers that the flat numbers where a repair has been raised to a communal part of a flat is not information that would be of value to the greater public.
30. The Commissioner notes that the data subjects would not expect this information to be released in response to an information request and disclosure of the withheld information would cause damage and distress. The Commissioner there accepts that the right and freedoms of the data subjects outweigh the public's legitimate interest in disclosure of this information.
31. The Commissioner is satisfied that the Council correctly withheld the flat numbers where a repair was raised to a communal part of a flat under section 40 of 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Rachael Cragg
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