

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 February 2022

**Public Authority:** Bristol City Council  
**Address:** The Council House  
College Green  
Bristol  
BS1 5TR

#### **Decision (including any steps ordered)**

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1. The complainant has requested details of how many houses had work carried out to specific parts of the property by Bristol City Council (the council), and the addresses of the properties where this work was carried out. The council provided an explanation in response to part of the request, and disclosed partial information in regard to the request for the addresses concerned. It redacted other parts under section 40(2) (personal data) of the FOIA.
2. The Commissioner's decision is that the council was correct to apply section 40(2) to redact partial addresses from the information it disclosed.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 16 February 2021, the complainant wrote to the council and requested information in the following terms (numbering added):  
  
*"1. The information I request is concerning the 780 properties which had the Soltherm EWI system which was installed/applied to that property how many of those same properties had vented soffits fitted, how many of those properties had non-vented soffits fitted.*  
  
*2. Please supply the address of the 6 properties which had the roof replacement using Reland Roofing Company tiles after this (EWI) External Wall Insulation was applied I do not require any information in regards to the names/named persons at those same address."*
5. The council responded on 10 March 2021. As regards part 1 of the request it said that *"No data was taken for existing vents to soffits or non vented soffits on properties prior to works commencing. Vented soffits were fitted to those properties that had their roof pitch line extended."* As regards part 2 of the request it informed the complainant that it had provided the data, on 26 February 2021, in response to a previous request of his. The data which was disclosed previously was partial addresses of the properties redacted.
6. On 12 March 2021 the complainant asked the council to carry out a review of its response to his request. He argued that the council's response to part 1 of the request misread the request. He also argued that he was not requesting the names of any of the individuals concerned as regards part 2 of the request.
7. Following an internal review, the council wrote to the complainant on 4 May 2021. It clarified its position as regards part 1 of the request. As regards part 2 it disclosed the street names and first part of the postcodes to the properties, however it maintained its reliance upon section 40(2)(personal data of third parties) to withhold parts of the addresses of the properties in order that they could not be specifically identified.

## Scope of the case

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8. The complainant contacted the Commissioner on 1 April 2021 to complain about the way his request for information had been handled.
9. He did not raise any issues with the council's response to part 1 of his request, however he considers that the council should not have redacted the sections of the addresses from the data it provided in response to part 2 of his request.

## Reasons for decision

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### Section 40 personal information

#### Section 40(2) - personal data of third parties

10. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
11. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
12. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
13. 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 DP principles.

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA

***Is the information personal data?***

14. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual"*.

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

16. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of the individual.

17. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

18. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the individuals who rent properties from the council or who are involved in the right to buy process.

19. The complainant has requested the addresses of the 6 properties. Specific addresses of properties owned or rented by the individuals provides a degree of biographical information about the individuals owning or occupying those properties. Those individuals are identifiable from the specific address when combined with other information which is already within the public domain, such as the electoral roll. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

20. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

21. The most relevant DP principle in this case is principle (a).

***Would disclosure contravene principle (a)?***

22. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"*.

23. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair, and transparent.
24. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

***Lawful processing: Article 6(1)(f) of the GDPR***

25. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"<sup>2</sup>.*

26. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
  - a. **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - b. **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - c. **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

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<sup>2</sup> Article 6(1) goes on to state that:-

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

27. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

*Legitimate interests*

28. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
29. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
30. The complainant has outlined that he has a personal interest in the information being disclosed. He claims that the property he lives in lost value as a result of work carried out by the council's contractors, and that this should therefore be taken into account in terms of his right to buy price. He considers that the council should reduce the price of the property accordingly. There is some merit to the argument as the complainant has demonstrated that the Local Government and Social Care Ombudsman subsequently agreed that the council had not acted appropriately in regard to some aspects of his complaint over wider matters.
31. The council recognised that there is a legitimate interest in ensuring transparency and accountability with regards to how the council manages its stock of housing, including regarding maintenance and improvement works carried out on the buildings and the status of the right to buy scheme and associated actions.
32. Insofar as the wider public is concerned, the public always has a general legitimate interest in there being greater transparency and accountability in regard to the actions and decisions of public authorities, and it is no different in this case. Many individuals will consider taking advantage of the right to buy, and if the council's actions have failed to meet appropriate standards in this case the public has a legitimate interest in knowing more about this.

*Is disclosure necessary?*

33. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
34. The council has already disclosed the partial information falling within the scope of the request. It argues that this information provides sufficient transparency and accountability without the need for the disclosure of personal data. The complainant disagrees.
35. The Commissioner is satisfied that there are no less intrusive means of achieving the legitimate aims of the complainant which have been identified.

*Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms*

36. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
37. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
38. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

39. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
40. The individuals concerned are members of the public, who have taken advantage of the right to buy, or council tenants who have had dealings with the council as regards improvements to their properties. They would have absolutely no expectation that their details might subsequently be disclosed to the whole world in response to an FOI request. The Commissioner also notes that they would effectively have had no option but to provide their details to the council.
41. Whilst none of the individuals have been identified by the council as expressing concerns about the disclosure, it is not surprising given that they may not be aware of the potential for their information to be disclosed.
42. Although the council has not identified any specific damage or distress which would be caused by a disclosure of the information, the Commissioner considers that a disclosure of the withheld information would involve a breach of privacy for those individuals, and many may find it annoying that information which was provided to the council for one reason has been disclosed to the whole world in response to an information request.
43. The Commissioner recognises that names and addresses can be gathered from information which is already within the public domain. They will be able to be obtained via the electoral roll in many instances. However, the details which the complainant has requested would not be in the public domain. They would only become public if disclosed by the council.
44. The legitimate interests identified by the Commissioner largely revolve around the complainant's personal interests in his own property, and in the subsequent valuation of that property as regards the right to buy. The wider public has very little legitimate interest in the full addresses of the properties being disclosed. On the counter side, the Commissioner considers that the disclosure of information relating to the tenants and property owners of the addresses in question would be intrusive and go against their expectations and understanding of the reasons why the council holds and processes their personal information.
45. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.



46. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.
47. Having found that the information is the personal data of a third party and that its disclosure would contravene principle (a), the conclusion of the Commissioner is that the exemption provided by section 40(2) of the FOIA was engaged and the council was not obliged to disclose the information in question.

## Right of appeal

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48. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.
50. 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 .....**

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**