

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 30 January 2007

**Public Authority:** New Forest District Council  
**Address:** Appletree Court  
Lyndhurst  
Hampshire  
SO43 7PA

### Summary Decision

---

1. The complainant requested information about a complaint concerning a potential breach of planning regulations on his property. The public authority released some of the information but refused to release the name and address of the informant on the basis that it was exempt under sections 30 and 40(2) of the Act. Having considered the relevant provisions of the Act and the submissions received from both parties, the Commissioner is satisfied that the public authority has validly withheld the requested information.

### The Commissioner's Role

---

2. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

### The Request

---

3. The complainant has advised that on 27 July 2005, he requested information from New Forest District Council ("NFDC") in accordance with section 1 of the Act. The information relates to a complaint about a potential unauthorised change in use of the land adjacent to [an address in] Ringwood and the erection of a fence restricting access. Specifically, the complainant requested to be:
  - *advised of the identity of the Informant and*
  - *provided with a copy of their representations.*

4. In its letter to the complainant dated 5 September 2005, NFDC advised the complainant that it had identified the information as a telephone complaint made on 27 June 2005 which was recorded on its planning enforcement file and which alleged that the complainant had extended his domestic curtilage by knocking down a wall and encompassing what was previously "amenity" land within his private garden.
5. NFDC stated that it's policy is to treat complaints alleging a breach of planning control in confidence and that the identity of the Informant may be withheld under the following exemption in the Act:
  - 30(2)(a) and (b) – investigations and proceedings conducted by public authorities.
6. NFDC explained its reasoning for believing the exemption was engaged and also explained the basis upon which the public interest test had been applied by it.
7. On the 12 September 2005, the complainant requested an internal review of the decision. In its letter dated 4 October 2005, NFDC confirmed it had reviewed and upheld the original decision.

## The Investigation

---

8. On 31 October 2005 the complainant contacted the Commissioner to complain about the way his request for information had been dealt with by NFDC. As NFDC had advised the complainant of the nature of the representations made by the informant, the only information in issue and which the complainant asked the Commissioner to consider was whether NFDC had correctly withheld the identity of the informant under the Act and whether he was entitled to the information under section 35 of the Data Protection Act 1998 (the "DPA").
9. In the course of his investigation, the Commissioner has considered both the context and the nature of the information requested by the complainant. The Commissioner has also considered the relevant provisions of the Environmental Information Regulations 2004 (the EIR), in particular regulation 2(1). The Commissioner is satisfied that the request for information does not fall within the definition of environmental information as set out in regulation 2(1) of the EIR because it does not relate to the state of the elements of the environment such as the physical state of the land or the construction of a building affecting the land nor does it relate to factors affecting the elements of the land, energy or noise. Rather, the information requested by the complainant concerns only the personal information of the Informant which is consequently not environmental information.
10. The Commissioner has seen the complaint form which recorded the telephone complaint, and has been in contact with NFDC in order to clarify certain issues that arose as a result of his review of this form.

11. Following his review of the above complaint form, it seemed clear to the Commissioner that the information consisted of the personal data of the Informant and he consequently asked NFDC to consider the use of the exemption at section 40(2) of the Act. In a letter dated 30 October 2006, NFDC confirmed to the Commissioner that it now considered that the withheld information was indeed the personal data of the Informant and as a result it would be unfair to the Informant to disclose it.

## Analysis

---

### Exemptions

#### Section 40 (2)

12. NFDC contends that identity of the Informant is exempt under this section as the information comprises personal data, the disclosure of which would contravene the first data protection principle.
13. To provide the complainant with the name and address of the Informant would clearly identify the Informant and so it the Informants personal data.
14. Personal data relating to a third party is exempt from disclosure under the Act where one of the conditions referred to in section 40(3) is satisfied.
15. One of the conditions in Section 40(3) is satisfied where disclosure of the information requested would result in breaches of any of the 'data protection principles' set out in Schedule 1 Part I of the DPA.
16. The first data protection principle requires that personal data shall be processed fairly and lawfully, and in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met.
17. When considering compliance with the first data protection principle it is necessary to consider what the reasonable expectations of a person would be in relation to how the information they provided would be used and to whom it may be disclosed.
18. The Commissioner accepts that where a person informs a public authority about their concerns regarding a potential breach of planning regulations they would not normally expect their identity to be disclosed to the individual allegedly committing the breach. Having reviewed the information, the Commissioner is satisfied that it was provided with an expectation of confidence.
19. Consequently, to release the personal information of the Council's informant would in the opinion of the Commissioner contravene the first data protection principle on the basis that it would be unfair as no condition set out in Schedule 2 of the DPA is satisfied. It could also potentially be unlawful on the basis that it would constitute a breach of confidence.

20. The Commissioner considers therefore that the exemption at section 40(2) is engaged in relation to the information.

### **Public Interest Test**

21. Section 40 of the Act provides an absolute exemption where disclosure of personal data about someone other than the complainant would contravene any of the data protection principles provided by the DPA. There is therefore no need to consider the public interest test.

### **Section 30(2)**

22. The Commissioner considers that the exemption at section 30 of the Act may also be engaged in respect of the information. However, as the information is exempt under section 40 of the Act there is no need to consider this exemption.

## **Other Matters**

---

### **Section 35 of the DPA**

23. In his letter of 31 October 2005, the complainant made a request for the Commissioner to consider the application of section 35 of the DPA in his decision.

Section 35 (2) of the DPA provides that:

“Personal data are exempt from the non-disclosure provisions where the disclosure is necessary –

- a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or
  - b) for the purpose of obtaining legal advice,
- or otherwise necessary for the purposes of establishing, exercising or defending legal rights.”

24. In response to the above request, the Commissioner wishes to state that except where the Act specifically permits, he is unable to determine any issue under the DPA because the Act and the DPA are different information access regimes, each subject to different disclosure considerations or tests. Under the Act, disclosure is deemed to be made to the public ‘at large’. However, disclosure under the DPA is deemed to be made directly to the applicant. The primary issue for consideration under the Act is whether or not the public authority is under an obligation to disclose the information requested directly to the complainant.

Therefore any request by the complainant for the Commissioner’s determination under the DPA should be brought under the DPA, which is the appropriate regime. The Commissioner’s website ([www.ico.gov.uk](http://www.ico.gov.uk)) contains further advice and information on this issue

25. Accordingly, in this Decision Notice, the Commissioner has only considered the the exemptions under the Act that the public authority have applied in its decision to withhold the requested information.

## **The Decision**

---

26. The Commissioner's decision is that the public authority has dealt with the request for information in accordance with the Act.

## **Steps Required**

---

27. The complainant having received some of the information requested and the Commissioner being satisfied that the withheld information is exempt, the Commissioner requires no steps to be taken.

## Right of Appeal

---

28. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 30 day of January 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal Annex**

**Section 30** provides that:

“(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
  - (i) whether a person should be charged with an offence, or
  - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.

(2) Information held by a public authority is exempt information if-

(a) it was obtained or recorded by the authority for the purposes of its functions relating to-

- (i) investigations falling within subsection (1)(a) or (b),...

**Section 40(2)** provides that:

“(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or second condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”