

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 November 2011

Public Authority: Sandwell Homes Limited
Address: Dartmouth House
Sandwell Road
West Bromwich
B70 8TQ

Decision (including any steps ordered)

1. The complainant has requested information relating to an incident that occurred and the decision of Sandwell Homes Limited (Sandwell) not to take action against an individual.
2. The Commissioner's decision is that Sandwell has correctly relied on section 40(2) (third party personal data) of FOIA to withhold all information that does not constitute the complainant's personal data, which has been separately considered under the provisions of the Data Protection Act 1998 (DPA).
3. The Commissioner does not require the public authority to take any steps as a result of this notice.

Request and response

4. On 11 March 2010, the complainant wrote to Sandwell Metropolitan Borough Council (the "Council") and requested information in the following terms:

"This is a request under the Freedom of Information Act. I am writing to request all files and electronic communications regarding an incident to do with my tenancy in 2003/04.

[Person x, the partner of person y, is described as being party to an incident involving the complainant]. *I would like to see the discussion between officers regarding the consideration of council rules.* [The status of person y, a tenant, is described]. *I would like to understand the*

process and discussion that took place between council officers in this matter and how they reached their decision [regarding person y]."

5. The request, it appears, was passed to Sandwell as the appropriate public authority that would hold relevant information. Sandwell responded on 12 April 2010. It stated that it was unable to disclose any records relating to third parties. Sandwell did, however, provide an explanation demonstrating why it had reached the decision referred to in the request.
6. The complainant subsequently wrote to the Council (the "Council") to ask that it review the refusal of the request. In its letter of 16 June 2010 the Council informed the complainant that Sandwell constituted a separate public body for the purposes of FOIA. However, it confirmed that an official at the Council had carried out a review of the handling of the request on behalf of Sandwell.
7. The official found that the requested information was exempt under section 40(2) of FOIA. He also referred to the possibility that some of the relevant records were likely to be subject to the exemption set out at section 42 (legal professional privilege) of FOIA. The official did note though that Sandwell had on 4 June 2010 provided the complainant with records containing his personal data.

Scope of the case

8. The complainant contacted the Commissioner to complain about Sandwell's refusal to provide all of the information he had requested.
9. It is the case that some of the information covered by the scope of the request constitutes the complainant's personal data. The relevant access-regime in such a scenario is the DPA and not FOIA. The Commissioner has therefore carried out a separate assessment under the DPA and therefore this information does not form part of this notice.
10. In any event, the Commissioner notes that the personal data of an applicant is automatically exempt information under FOIA by virtue of section 40(1) of FOIA.
11. During the course of his investigation Sandwell has confirmed that it is only seeking to rely on section 40(2) of FOIA as grounds for withholding the outstanding information. This exemption therefore serves as the focus of the Commissioner's decision.

Reasons for decision

12. Section 40(2) of FOIA provides an exemption to the right to access recorded information where it is the personal data of any third party. In order for a public authority to rely on section 40(2) it would have to be satisfied that:
- the disputed information constitutes the personal data of a third party; and
 - disclosure of the disputed information would contravene a data protection principle contained in the DPA.
13. The Commissioner addresses each of these points in turn.

Is the requested information personal data?

14. The complainant has indicated that information identifying an individual can be redacted for the sake of facilitating the disclosure of the remaining information covered by the request. The Commissioner has therefore considered whether, in the absence of descriptive factors such as names of third parties (not just those of person x and y), the requested information could still be classified as personal data.
15. The test to be applied in these circumstances is whether a member of the public can identify individuals by cross-referencing the anonymised data with other information that was available to them. If so, the information is personal data.
16. The Commissioner has observed that the request focuses on a specific incident involving person x and the decision of Sandwell not to take measures against person y in spite of the incident. The Commissioner is therefore of the opinion that all the requested information is inextricably linked to person x or person y, or both. Therefore, to anonymise the information would, effectively, render it meaningless.
17. Based on this analysis, the Commissioner is satisfied that the requested information constitutes personal data. He has therefore moved on to the question of whether disclosure would be in keeping with the data protection principles.

Would disclosure contravene a data protection principle?

18. The relevant data protection principle for the purposes of the request is the first. This requires the fair and lawful processing of personal data. The Commissioner's considerations here focus on the general issue of whether the disclosure of the disputed information would be fair.

Fairness

19. The application of the first data protection principle in respect of fairness involves striking a balance between competing interests, the arguments around which are now well rehearsed. However, in summary, the Commissioner will be guided by the following factors when weighing up these competing interests:
 - (i) A data subject's reasonable expectations of what would happen to their personal data.
 - (ii) The consequences of disclosure.
 - (iii) The balance between the rights and freedoms of the data subject and the legitimate interests of the public.
20. In this case the requested information is contained in the tenancy file associated with a property managed by Sandwell.
21. It is a widely accepted principle that every individual should have the right to some degree of privacy in respect of their private lives. Bearing this principle in mind, the Commissioner agrees that both person x and person y would have a reasonable expectation that Sandwell would protect the confidentiality of personal data contained in a tenancy file.
22. In forming this view the Commissioner has been instructed by the distinction he has previously made between an individual's private and public (ie working) life; it being more likely that the disclosure of information relating to a data subject's professional life will be fair. Although the information is held by a public authority that is accountable to the public it serves, the Commissioner considers that the information ultimately relates to individuals acting in a private capacity.
23. The Commissioner is aware that the complainant has a particular, and understandable, interest in knowing how Sandwell reached a decision in the situation cited in the request. However, the Commissioner is mindful that disclosure under FOIA is to the world at large, the impact of which would significantly impinge on the private lives of person x and person y. The potential distress to the data subjects through disclosure is, in the Commissioner's view, clear and tangible because of the sensitive nature of the information itself.
24. In the limited circumstances to which the information relates, the Commissioner has concluded that the strength of the legitimate interest in disclosure is not sufficient to supersede the right of the data subjects to privacy. This decision has, as referred to above, been informed by the Commissioner's considerations of the reasonable expectations of the data subjects and the possible consequences of disclosure.

25. In light of his findings, the Commissioner has concluded that disclosure of the requested information would be unfair and is therefore exempt information under section 40(2) of FOIA.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Andrew White
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