

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 September 2011

Public Authority: Bolton Council
Address: Bolton Town Hall
Bolton
BL1 1RU

Decision (including any steps ordered)

1. The complainant has requested information concerning alterations being made to the interior of a neighbouring property. Bolton Council refused the request on the grounds that it was the personal data of the occupier of that property and that disclosure would be unfair to that individual.
2. The Commissioner's decision is that Bolton Council was correct to refuse the request as the exemption provided by section 40(2) of the FOIA was engaged. The Council is not, therefore, required to disclose this information.

Request and response

3. On 24 September 2010 the complainant wrote to Bolton Council (the Council) and requested the Building Control Application for a specified address. The complainant contacted the Council again on 13 October 2010 and specified that he wished this request to be handled under the FOIA.
4. After a delay, the Council responded on 6 December 2010. It stated that the requested information was exempt under section 41 of the FOIA as it believed that the information in question had been provided to it in confidence.
5. Following an internal review the Council wrote to the complainant on 7 February 2011. It now stated that it believed that the information was environmental and so the request should have been considered under the Environmental Information Regulations 2004 (EIR). It maintained that the information should not be disclosed, however, and now cited

the exception from the EIR provided by Regulation 13(1), as it believed that the information in question was personal data and that it would be a breach of the data protection principles to disclose this information.

Scope of the case

6. The complainant contacted the Commissioner to complain about the refusal of his request.
7. Whilst the Council dealt with the request under the EIR, the view of the Commissioner is that the information requested is not environmental. The view of the Council appeared to be that, as the information related to planning, it was environmental. Whilst the Commissioner would agree that information relating to planning will commonly be environmental, this is due to the effect that the measures recorded within this information would have on the landscape. Where information records measures that would not have an impact upon the environment, this information would not be environmental.
8. In this case the information records plans for alterations to the interior of a property. The view of the Commissioner is that the measures recorded within this information would not have any effect upon the environment and so information recording these measures is not environmental. As this information is not environmental, the request should have been dealt with under the FOIA and the Commissioner has taken this approach in this Notice.
9. Whilst the Council cited section 41 of the FOIA as its initial grounds for refusing the request under the FOIA, the Commissioner has noted that the final grounds given by the Council for refusing the request were that it considered the information to be personal data. As a result, the Commissioner has considered section 40(2) of the FOIA, which provides an equivalent exemption to Regulation 13 of the EIR.

Reasons for decision

10. Section 40(2) of the FOIA states that information is exempt if it is the personal data of any person other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. There are, therefore, two steps to considering whether this exemption is engaged.
 - Does the information constitute the personal data of any individual aside from the requester?

- Would disclosure of that personal data be in breach of any of the data protection principles?
11. As to whether the information is the personal data of an individual aside from the requester, the definition of personal data is given in the Data Protection Act 1998. This states that for information to be personal data it must relate to an individual and that individual must be identifiable from that information.
 12. The information in question here relates to an application to carry out building work on a property. It is possible that information relating to a property may not be the personal data of an occupier of that property where, for example, there are multiple occupants of a property and so it could not be said that information about a property relates to an *individual*.
 13. In this case, however, the Commissioner notes that the information relates specifically to an application to make alterations to a property. The information records that the application to make these alterations was made by an individual and this individual is identified by name within this information.
 14. The Commissioner has taken the approach that this information relates not only to this property, but also more specifically to the application to make alterations to this property. Whilst no individual would be identifiable from some of this information were it viewed in isolation, when viewing this information as a whole in the context of the complainant's information request, the view of the Commissioner is that this information does relate to an individual and that this individual is identifiable from this information. The information in question does, therefore, constitute the personal data of an individual aside from the requester.
 15. Turning to whether disclosure of this information would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle. This requires that personal data shall be processed fairly and lawfully and the focus of this analysis is on whether disclosure of this information would be in general fair to the individual to which it relates. In forming a conclusion on this issue, the Commissioner has considered the consequences of disclosure upon this individual, their reasonable expectations as to whether this information would be disclosed, and the legitimate interests of the public in this information.
 16. The view of the Commissioner is that the consequences of disclosure upon the subject of this information would not be great. If it could be said that disclosure would result in detriment to the subject of this information through, for example, a disclosure of information that would

be likely to result in significant distress to the subject, the Commissioner may have concluded that disclosure of this information would accordingly be unfair. However, the information in question here is not of a nature that would be commonly considered to be of particular sensitivity. For this reason, the Commissioner does not believe that it could be said that disclosure would have a detrimental impact upon the subject on the basis of distress that would result through disclosure. Neither is the Commissioner aware of any argument about more tangible consequences of disclosure upon the subject, such as through financial loss. The Commissioner does not believe, therefore, that disclosure would be unfair to the subject on the basis of any consequence that would arise from it.

17. On the issue of the reasonable expectation of the subject about disclosure, it is significant that the Council sought the views of the subject at the time that the request was received. The response of the subject at that time was that they did not consent to the disclosure of this information. Clearly, therefore, given this the expectation of the subject of this information would be that the information would not be disclosed. As to whether this would be a reasonable expectation, that the Council sought the view of the subject means that it would be to at least some extent a reasonable expectation on the part of the subject that the Council would act upon these views. The Commissioner also believes that, whilst he has found above that this information would not have attached to it any particularly high level of sensitivity, most people would hold some expectation of privacy about the details of changes they make to the interior of their own home. The view of the Commissioner is, therefore, that the subject of this information would have a reasonable expectation of privacy in relation to this information.
18. Turning to the question of whether there is legitimate public interest in the disclosure of this information, the complainant has stated that his interest in this information stems from his property being semi-detached to the property to which the information relates. Given this, the Commissioner agrees that the interest of the complainant in this information is legitimate. However, this private interest does not necessarily translate into a legitimate public interest. On this point the view of the Commissioner is that information relating to amendments made to the interior of a private property would not generally be subject to a legitimate public interest. In this case he does not believe that the legitimate private interest of the complainant in this information means that there is also a wider public interest in disclosure. The Commissioner does not, therefore, believe that public interest in disclosure is a valid factor to be weighed against any factors in favour of non-disclosure.
19. The view of the Commissioner is that the information in question here is not of any great sensitivity and so disclosure would not be likely to result in any significant negative consequence to the subject. However,

he has also found that the subject would hold a reasonable expectation of privacy in relation to this information on the basis that they had registered an objection to disclosure and because this information relates to the interior of a private property. Having also found that there is no legitimate public interest in the disclosure of this information, the conclusion of the Commissioner is that disclosure would not, in general, be fair to the subject of this information, and so would be in breach of the first data protection principle.

20. The Commissioner has found that the information in question is the personal data of an individual aside from the requester and that the disclosure of this personal data would be in breach of a data protection principle. His overall conclusion is, therefore, that this information is exempt under section 40(2) of the FOIA and so the Council is not required to disclose this information.
21. The Commissioner also notes that there was a delay by the Council in responding to this request. The FOIA requires that a response to an information request must be sent within 20 working days of receipt of the request. In failing to respond to this request within 20 working days of receipt, the Council did not comply with this requirement. The Council must ensure that the delay in responding to the complainant's request is not repeated in future.

Right of appeal

22. 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

23. 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.
24. 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

**Jon Manners
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