

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 March 2012

**Public Authority:** London Borough of Islington  
**Address:** Town Hall  
Upper Street  
London  
N1 2UD

#### Decision (including any steps ordered)

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1. The complainant has requested information concerning repairs carried out by the London Borough of Islington (the council) on a specific property. The 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. The Commissioner's decision is that the 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

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2. On 21 August 2011, the complainant wrote to the council and requested information in the following terms about a specific block of flats:  
  
"Please can you provide the number of times, the dates, the reason and the costs of repairs to flat 38 (name redacted) for the past 10 years."
3. The council responded on 19 September 2011. It refused to disclose the information requested on the basis of the exemption contained at section 40 – personal information.
4. Following an internal review the council wrote to the complainant and upheld its initial refusal.

## Scope of the case

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5. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant argued that the information he was seeking was about a property and not about the resident of that property.

## Reasons for decision

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6. 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.
  1. Does the information constitute the personal data of any individual aside from the requester?
  2. Would disclosure of that personal data be in breach of any of the data protection principles?

## Is the requested information personal data?

7. As to whether the information is the personal data of an individual other than 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.
8. The Commissioner has taken the approach that the requested information relates not only to a specific property, but also more specifically to the repairs made to that property over a ten year period. Whilst no individual would be identifiable from some of this information if viewed in isolation, when viewing the requested information as a whole, in the context of the complainant's information request, the Commissioner is of the opinion that the requested information does relate to an individual and that the individual is identifiable. Therefore, the information in question does constitute the personal data of an individual other than the requester.

## Would disclosure breach the Data Protection Principles?

9. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle, which is most relevant in this case, states that personal data should only be disclosed in fair and lawful circumstances. The

Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations of the data subject**

10. On the issue of the reasonable expectation of the data subject with regards to disclosure of the requested information, it is significant that the Council sought the consent of the occupier of the flat at the time the request was received, and this was not forthcoming.
11. The Commissioner believes that most people would hold some expectation of privacy about the details of repairs undertaken in their home. The data subject did not give explicit consent for the requested information to be released. Therefore, the view of the Commissioner is that the subject of this information would have a reasonable expectation of privacy in relation to the requested information.

### **Consequences of disclosure**

12. The view of the Commissioner is that the consequences of disclosure upon the subject of this information would not be great. However, release of details of the data subject's living conditions, and the standard of the repairs carried out may cause unnecessary distress to the data subject as well as leaving them open to the possibility of being targeted by companies selling services to people in similar situations.

### **Legitimate public interest**

13. 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 a long running dispute between the council and the residents of specific blocks of flats in relation to service charges and frequent damage caused by flooding 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 repairs of a specific property would not generally be subject to a legitimate public interest.
14. In this case the Commissioner does not believe that the legitimate private interest of the complainant in the requested 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.

## **Conclusion**

15. 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 not given consent to the disclosure and because this information relates to the interior of the subject's property.
16. 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.
17. 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 the first 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 it.

## Right of appeal

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18. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

19. 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.
20. 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**  
**Group Manager**  
**Information Commissioner's Office**  
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**Wilmslow**  
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**SK9 5AF**