

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2013

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

Decision (including any steps ordered)

1. The complainant requested a copy of an agreement between the Council and a property maintenance contractor. The Council withheld some of the content of this agreement under the exemptions provided by sections 40(2) (personal information of a third party) and 43(2) (prejudice to commercial interests).
2. The Commissioner's decision is that some of this information was withheld correctly under section 40(2) and, although this subsection was not cited by the Council, 40(1) (personal information of the requester). He has also found, however, that other information was incorrectly withheld under sections 40(2) and 43(2).
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose schedule 1, in relation to which the Commissioner found that section 40(2) was not engaged, and paragraphs 2.6.1 and 2.6.2, in relation to which the Commissioner found that section 43(2) was not engaged.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 15 November 2012 the complainant made the following information request:

"I request a copy of "the agreement" [between The Mayor and Burgesses of the London Borough of Islington and Partners for Improvement in Islington Ltd] that is referred to in 15 November 2012 correspondence that LBI Executive Housing and Adult Social Services Manager [issued in response to a previous information request made by the complainant]."

6. The Council responded on 11 December 2012. It stated that the request was refused and cited the exemption provided by section 43(2) (prejudice to commercial interests) of the FOIA.
7. The complainant responded on 16 December 2012 and requested an internal review. The Council responded with the outcome of the internal review on 25 January 2013. The Council changed its position at this stage and disclosed the agreement, but with some of the content of this withheld under the exemptions provided by sections 40(2) (personal information of a third party) and 43(2).

Scope of the case

8. The complainant contacted the Commissioner on 2 April 2013 to complain about the part refusal of his information request. The complainant indicated that he was not satisfied that the redactions from the information disclosed to him were justified.

Reasons for decision

Section 40

9. The Council cited the exemption provided by section 40(2) of the FOIA. This provides that information is exempt if it is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process. First, the information must constitute the personal data of an individual aside from the requester. Secondly, disclosure of that personal data must be in breach of at least one of the data protection principles.

10. The Council specified that section 40(2) was cited in relation to clauses 2.4 to 2.5.4 and schedules 1 and 2 of the agreement. For the reasons set out below, the Commissioner has considered section 40(1) in relation to clauses 2.5 to 2.5.4. The following analysis on section 40(2) concerns clauses 2.4 to 2.4.2 and schedules 1 and 2.
11. The first step in relation to section 40(2) is to address whether the requested information constitutes the personal data of an individual aside from the requester. The information in this case concerns addresses of properties. Following the Information Tribunal's decision in the case of *England and London Borough of Bexley v Information Commissioner (EA/2006/0060 & 0066)*, the Commissioner is satisfied that the address of a residential property constitutes personal data.
12. If the address of a property is known, it is possible in many cases to identify the owner and if rented the name of a tenant from other information which is in the public domain, for example, Land Registry, the electoral roll or talking to neighbours of that property. More obviously, in the hands of the Council itself it is possible to identify an owner and/or tenant from the address of a property, as the addresses of properties are held with ownership details on the Council Tax register.
13. The Commissioner finds, therefore, that the information in question is the personal data of the occupants of the properties to which it relates.
14. The next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which requires that personal data is processed fairly and lawfully and whether disclosure would be, in general, fair to the data subjects. In forming a conclusion on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subjects, any consequences of disclosure upon those individuals and whether there is any legitimate public interest in the disclosure of this information.
15. Clauses 2.4 to 2.4.2 and schedule 2 comment on the condition of the properties. The view of the Commissioner is that most people would have an expectation of privacy in relation to information that concerns the interior of their home. Most people would regard this space as private and would not expect commentary on the condition of their home to be disclosed into the public domain. Disclosure in contravention of this expectation would be likely to result in distress to the data subjects.
16. As to whether there is any legitimate public interest in the disclosure of this information, the issue here is whether there is public interest in this

information of such weight that this outweighs the factors against disclosure given above. The view of the Commissioner is that there is a legitimate public interest in disclosure of this information on the basis that it concerns an arrangement with financial implications for the Council and, as a result, for council tax payers in that area. However, in relation to clauses 2.4. to 2.4.2 and schedule 2, the Commissioner believes that the legitimate expectations of privacy that individuals will hold in relation to information that comments on their home tips the balance and that disclosure would be unfair and in breach of the first data protection principle. In relation to this content, the exemption provided by section 40(2) of the FOIA is, therefore, engaged.

17. Schedule 1 consists of a list of addresses. This information gives no commentary on those properties and so the Commissioner does not believe that the concerns described above apply in relation to this information. In view of the absence of the same expectation of privacy as covered above, as well as the legitimate public interest in disclosure, the view of the Commissioner is that it would not be unfair to disclose this information.
18. In order for disclosure to be in line with the first principle, disclosure must be necessary in order for the legitimate interest identified at paragraph 16 to be met. The Commissioner's published guidance¹ on this exemption states that disclosure should be necessary in order to satisfy a pressing social need. It also states that:

"where the information in question is relatively innocuous, the general need for transparency regarding public bodies may constitute a sufficiently 'pressing social need'."
19. The Commissioner regards the list of addresses contained in schedule 1 to be innocuous and hence that the general requirement for transparency constitutes a pressing social need in relation to this information.
20. A second issue that must be addressed when considering the issue of necessity is whether the information may be available elsewhere. In this case the Commissioner relies on the refusal of the Council to disclose this information as evidence that it is not available elsewhere.

1

http://www.ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf

21. The exemption provided by section 40(2) of the FOIA is not, therefore engaged in relation to schedule 1 and at paragraph 3 above the Council is required to disclose this information.
22. As noted above, the Commissioner has pro-actively considered section 40(1) in relation to paragraphs 2.5 to 2.5.4. The Commissioner will consider exemptions not cited by a public authority where he considers it appropriate to do so and will have particular regard to his dual role as regulator for the Data Protection Act 1998 as well as the FOIA when considering taking this approach.
23. Section 40(1) provides that information that is the personal data of the individual making the information request is absolutely exempt from the FOIA. No consideration of the data protection principles is necessary when considering this subsection; if the information is the personal data of the person making the request it is exempt.
24. The Council stated that this content concerns the complainant's home. For the same reasons as covered above at paragraphs 11 and 12, it is, therefore, the personal data of the complainant and so is exempt under section 40(1) of the FOIA. The Commissioner comments further on this information in the 'Other matters' section below.

Section 43(2)

25. This section provides an exemption for information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person. Consideration of this exemption is a two-stage process. First, for the exemption to be engaged, prejudice to commercial interests must be at least likely to result. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
26. As to whether this exemption is engaged, the Council specified that prejudice would be likely to result to its own commercial interests. It did not, however, provide an explanation as to how disclosure of the specific content in question here – clauses 2.6.1 and 2.6.2 – would be likely to have that result. The only specific explanation provided by the Council to the ICO concerned other parts of the information that are covered under the section 40 analysis above.
27. As well as this lack of a specific explanation, the Commissioner has also taken into account the passage of time between the recording of the information in question and the date of the information request. This information is dated July 2010 and it would have been necessary to address whether prejudice to commercial interests could still be said to

be a likely outcome after the elapsing of well over two years between the creation of this information and the date of the request.

28. In view of the lack of a specific explanation from the Council and the passage of time since this information was recorded, the conclusion of the Commissioner is that the exemption provided by section 43(2) of the FOIA is not engaged. It is not, therefore, necessary to go on to consider the balance of the public interest and at paragraph 3 above the Council is required to disclose this information.

Other matters

29. At paragraph 24 above, the Commissioner concluded that some of the information in question is the personal data of the complainant and so section 40(1) applies in relation to that information. The Council should now consider that information under section 7 of the Data Protection Act 1998 and provide the complainant with a fresh response under that provision including, if appropriate, disclosure of his personal data.

Right of appeal

30. 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

31. 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.
32. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF