

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 September 2014

**Public Authority:** Bath & North East Somerset Council

**Address:** The Guildhall  
High Street  
Bath  
BA1 5AW

#### **Decision (including any steps ordered)**

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1. The complainant has requested planning and building information about his neighbour's property. Bath & North East Somerset Council (the council) provided the complainant with some information and a link to its planning portal. It refused to provide some of the information relying on section 40(2) of the FOIA. The withheld information being the building control file, as it considered it to be third party data.
2. Following an internal review, the complainant was later provided with his own data under the Data Protection Act (1998) and some further information. The complainant has advised the Commissioner that he is not satisfied that the council has not provided him with the withheld information, and considers that further information is held by the council.
3. The Commissioner's decision is that the council has correctly relied on section 40(2) of the FOIA to withhold the building control file and is satisfied that, on the balance of probabilities, there is no further information held by the council. However the Commissioner has found that the council has breached section 10 of the FOIA, as it did not provide all of the information the complainant was entitled to within the required 20 working days from the receipt of the request.
4. As the complainant has now been provided with all the information he is entitled to with regards to this request, the Commissioner does not require the council to take any steps.

## Request and response

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5. On 6 November 2013 the complainant made the following request for information under the FOIA for:

*"Could you please forward all documentation that you hold on file relevant to [address redacted]. These papers will cover a period from April 2010 to the current date."*

6. On the 12 November 2013, the council asked for clarification of the request, asking the complainant to confirm the type of information he is seeking.

7. The complainant clarified his request on the 14 November 2013, stating:

*"I am seeking all documentation held by the Council pertaining to [address redacted]/ the Basement [address redacted]. This should cover all planning/ building works documentation, plans etc..."*

8. The council responded on 16 December 2013. It advised that planning history after 1997 is available by using the following link:

<http://isharemaps.bathnes.gov.uk/projects/bathnes/developmentcontrol/>

9. The council also advised that it holds two recent building regulation applications for [address redacted] and that both have been inspected and Building Regulation Certificates issued. The council advised the complainant that it was unable to provide further detail in relation to the Building Regulation Applications as it considers them to be exempt under section 40(2) of the FOIA. That being the personal data of a third party.

10. The complainant requested an internal review on the 20 January 2014 as he was not satisfied with the council's response to the request, as he only received a link to six items on its planning website. He stated he requires the full file held on planning to the address.

11. The complainant contacted the Commissioner on the 10 February 2014 as he was not satisfied with the council's response. The Commissioner advised the complainant that he would need to provide a copy of the council's internal review before the complaint could be considered.

12. The Commissioner contacted the council to ask whether it was going to undertake an internal review on this case.

13. The council provided the complainant with its internal review response on the 12 March 2014. It maintained its application of section 40(2) of the FOIA to withhold the Building Control file.
14. The council also located some further information that it did not consider exempt and stated this would be sent to the complainant within 10 working days.
15. Lastly, in the internal review, the council located some of the complainant's own personal data which it advised was exempt from disclosure under section 40(1) of the FOIA. It advised the complainant that he can make a subject access request for this information under the Data Protection Act 1998 (DPA) if he required it.

### **Scope of the case**

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16. Following the internal review, the complainant advised the Commissioner that he was still not satisfied with the council's response. He also stated that he had not received the further information that the council had located in its internal review.
17. During the Commissioner's investigation the council provided the Commissioner with a copy of the withheld information and the information it had located and stated it had provided to the complainant following the internal review, this included a copy of the complainant's own personal data.
18. As the complainant stated that he had not received this information, it was agreed by the council for the Commissioner to provide a copy of this information to the complainant, which included the complainant's own personal data. This was emailed to the complainant on the 22 July 2014.
19. The Commissioner considers the scope of the case is to determine whether the council has correctly withheld the building control file under section 40(2) of the FOIA and whether there is any further information held by the council within the scope of the request.

### **Reasons for decision**

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#### **Section 40(2) of the FOIA – Third party data**

20. Section 40(2) of FOIA states that:

*"Any information to which a request for information relates is also exempt if-*

*a) it constitutes personal data which do not fall within subsection (1), and*

*b) either the first of the second condition below is satisfied."*

21. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection principles set out in Schedule 1 of the DPA.

### **Is the withheld information personal data?**

22. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
23. It is the Commissioner's view that an individual or individuals can often be identified from a postal address through sources such as the Land Registry and the electoral roll. He is therefore satisfied that the withheld information relates to a living person (the owner of [address redacted]), and that the individual can be identified from the information in question.

### **Would disclosure contravene any of the Data Protection Principles?**

24. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the 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 disclosure against the legitimate public interest in disclosing information.

### **Consequences of disclosure**

25. The council has stated to the Commissioner that had the individual known that the building control file would be disclosed, then it is possible that the individual would not have provided the required information to the council.
26. The council considers also that the withheld information is private to the owner and he would not expect this information to be disclosed into the public domain. Disclosure of this information would cause a loss of trust in the building control process.

## **Reasonable expectations**

27. The council has told the Commissioner that the withheld information relates to an individual private life and their home and disclosure would place detailed information, relating to the individuals property and building plans into the public domain.
28. The council has advised the Commissioner that the individual has reasonable expectations that this information would not be disclosed into the public domain. This is because unlike planning applications, building control files are not routinely disclosed or published into the public domain.
29. The council has advised the Commissioner that none of the withheld information is already in the public domain and states that although it has not asked the individual whether or not the information can be released, since the request was made, the council considers that from communications with him, consent would not be given.
30. The Commissioner's view is that the consequences of disclosure of the withheld information would not be significant as it is not considered to be of particular sensitivity. Therefore, the Commissioner does not see that there would be particular detrimental impact, on the basis of distress, placed upon the individual should the information be disclosed.
31. The Commissioner has not been presented with or aware of any tangible consequences on the individual, such as financial loss, if the withheld information was disclosed. On this basis the Commissioner does not consider that disclosure would be unfair on the individual with regards to consequences that would arise from it.
32. Although the Commissioner does not consider the withheld information falls into a category of any particular high level of sensitivity, that being the changes to the interior of a home, there would still be a level of expectation of privacy about the details of the changes.
33. As the council has stated, the building control file was submitted on the basis that this information would not be made available to the public and so would attract a more significant and reasonable expectation of privacy to the individual.
34. The Commissioner also sees that generally people would hold some expectation of privacy about the details of the changes they make to the interior of their home. The Commissioner's view therefore is that the individual of whom the information relates would have a legitimate and reasonable expectation of privacy in relation to this information.

**Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure.**

35. The council has stated that disclosing this information may allow the public to better understand the building control process and gain more confidence in it by being able to view all documents and records; however the building control process is documented, rigorous and managed by experienced professionals.
36. The council has also stated to the Commissioner that the building control process is well established and provides reassurance that construction is built in line with the appropriate regulation and so would go some way to satisfy any legitimate public interest.
37. The complainant has a legitimate interest in the information sought as he is a neighbour in the property. The complainant has expressed to the Commissioner that he does not consider the council has kept a detailed file and therefore has not adhered to the correct processes. He has also advised that he has been to the Local Government Ombudsman (LGO), who has not chosen to investigate his complaint to them.
38. The complainant has also highlighted to the Commissioner that he considers there is wrongdoing on the council's part in relation to the building works and that this is a listed building that he is entrusted by the other residents to ensure it maintains its structural integrity.
39. The Commissioner is of the view that had the LGO found wrongdoing in regards to the building process, then there may have been more weight added to any legitimate interests in disclosure of the withheld information.
40. The Commissioner sees that there is a legitimate public interest in the building control process to determine that Building Regulations are being applied properly. At the same time, the Commissioner considers that the building control process has been introduced with the specific aim of entrusting the council to apply the Building Regulations appropriately. This in turn, in the Commissioner's view, creates a greater interest in protecting the integrity of the building consent process and that disclosure could damage the public trust in the Building Regulations process.
41. The Commissioner recognises that the legitimate interests of the complainant must be weighed against any unwarranted prejudice to the rights, freedoms and legitimate expectations of the owner of [address redacted]. On considering all of the above, the Commissioner's decision it that disclosure of the withheld information would be unfair to the individual who the data relates to.

## **Section 1 of the FOIA – Held/ Not held**

42. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
43. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
44. The Commissioner therefore must decide whether, on the balance of probabilities, the council holds any information which falls within the scope of the request (or was held at the time of the request).
45. The Commissioner asked the council to explain the types of searches it undertook to establish that no further information is held within the scope of the request.
46. The council has told the Commissioner that it contacted the planning and building control department in relation to this request and confirmed to the Commissioner that the information held is either in the building control file, or the planning file.
47. It advised all the emails and other electronic information received in relation to building control are printed off and kept as hard copy files.
48. All information in relation to planning is held on its electronic database, and the information can be found by searching the required address. The link to this database was provided to the complainant in its initial response. The council has advised the Commissioner that all relevant information is added when received.
49. The council has stated to the Commissioner that it is not aware of any relevant information being either deleted or destroyed.
50. The council has also told the Commissioner that it does not hold any other emails, letters, plans or other correspondence other than what has already been provided to the complainant or withheld under section 40(2) of the FOIA.
51. The complainant has advised the Commissioner that he considers that more information should be held by the council in relation to this request. He has stated to the Commissioner that an example of what he would have expected to see is building certificates.

52. The council has advised the Commissioner that the only building certificates held are those in the building control file, which has been withheld under section 40(2) of the FOIA.
53. If there are other documents, records, plans that the council are required to have on file but do not, then it is outside the Commissioner remit to request this information be obtained/ created. The Commissioner can only determine what is actually held in recorded form and whether it should be provided on request.
54. The complainant has advised the Commissioner on several occasions that he knows that the council holds more information and has stated that he will provide this evidence to him but has not done so. But without sight of this, the Commissioner is unable to consider it.
55. The Commissioner, on considering the above, has determined that, on the balance of probabilities, the council does not hold any further information within the scope of the request other than what has already been identified.

### **Section 10 of the FOIA**

56. Section 10 of the FOIA requires a public authority to provide the requestor with a copy of the information it holds, that he is entitled to, within 20 working days from the receipt of the request.
57. The complainant made his request on the 6 November 2013 and clarified his request on the 14 November 2013. Although the council provided its initial response within the required 20 working days, it located and provided more information following its internal review of 12 March 2014.
58. The Commissioner therefore finds that the council has breached section 10 of the FOIA as it did not provide this further information to the complainant within the required timeframe.
59. As this further information has now been provided to him, the Commissioner does not require any steps from the council.



## Right of appeal

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60. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

61. 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.
62. 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**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**