

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2015

Public Authority: Stoke on Trent City Council
Address: Civic Centre
Glebe Street
Stoke-on-Trent
ST4 1HH

Decision (including any steps ordered)

1. The complainant has requested information regarding private landlords found guilty of offences under the Housing Act 2004. Stoke on Trent City Council relied on section 40(2) (personal data) to withhold individuals' names and particular property addresses though it did release anonymised data.
2. The Commissioner's decision is that Stoke on Trent City Council correctly relied on section 40(2) to withhold the said information.
3. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

Request and response

4. On 31 January 2014, the complainant wrote to Stoke on Trent City Council ("the Council") and requested, amongst other things, information in the following terms:
 - Do you have a database/records of private landlords found guilty of offences under the Housing Act 2004 since Jan 2011? If so please can you supply us with this database (including the names and offences of the landlords)?
5. The Council responded on 18 February 2014. It named the general location of properties and the particular offences but withheld the each

property's house number and name of the landlord; the Council relied on section 40(2) to do so.

6. Following an internal review the Council wrote to the complainant on 10 March 2014. It stated that it upheld its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 10 March 2014 to complain about the way his request for information had been handled.

Reasons for decision

8. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:

- the duty to inform the applicant whether or not requested information is held and, if so,
- the duty to communicate that information to the applicant.

9. Section 40(2) of the FOIA states that information is exempt from the duty of disclosure if it constitutes the personal data of a party other than the complainant and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).

10. Personal data is defined in section 1(1) of the DPA as -

"...data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual".

11. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance and considered the information in question. He has looked at whether the information relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.

12. The withheld information comprises the name of a person or persons who have been convicted of offences under the Housing Act 2004 and the address of the relevant letting property. Names, of course, are biographical in nature and thus constitute the personal data of those landlords ("the data subjects") as per the definition in section 1(1) of the DPA.
13. The Commissioner concurs with the decision of the Information Tribunal¹ that "...knowing the address of a property makes it likely that the identity of the owner will be found". Therefore the addressees of property "also amount to personal data because the likelihood of identification of the owner... says various things about the owner. It says that they are the owner of the property and therefore have a substantial asset. ...The key point is that it says something about somebody's private life and is biographically significant". The Commissioner therefore considers that the withheld addresses also are personal data for the purposes of the DPA.
14. Section 2 of the DPA sets out what categories of personal data are classed as sensitive for the purposes of that legislation. These include personal data as to the alleged commission by the data subject of an offence. The withheld personal data in question here is, therefore, sensitive (section 2(h), DPA).
15. The next step is to address 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.
16. On reflection the Commissioner's position is that the withheld information falls into one of two categories. The first type is where the data subject was not a landlord at the time of the request and the second type is where the data subject was a landlord at the time of the request.
17. The Commissioner notes that the information falls under section 2(h) of the DPA as it relates to the data subjects' criminal convictions. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Further, disclosure of this type of information is likely to have a detrimental and/or distressing effect on the data subject.

¹ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i146/ENgland.pdf>

18. Having regard to the preceding paragraph the Commissioner considers that where the data subject was not a landlord at the time of the request it would be unfair to disclose the requested information. There is insufficient reason in such circumstance to release information where it likely to have a detrimental and/or distressing effect on the data subject.
19. Conversely, where the data subject was known to be a landlord at the time of the request this is such a differing context that the rationale in the previous paragraph is not to apply. Determining what is, or is not fair, depends on prevailing circumstances and factors at the time of the request. Therefore where the data subject was a landlord at the time of the request he or she had existing tenants and quite possibly potential tenants. In determining the balance of fairness there should be cognisance of this; in that it can reasonably be said to be fair, in these circumstances, for the public to know that a current landlord has been convicted of a criminal offence that is dependent on his/her letting activity. The interests of members of the public who are or may be tenants of the landlords should therefore be taken into account in determining whether they should know whether such convictions have occurred.
20. However a particular requirement in relation to processing sensitive personal data (which includes its disclosure) is that at least one of the conditions in Schedule 3 of the DPA² is met.
21. Therefore, even though the Commissioner has found that disclosure could be said to be fair, there cannot be lawful disclosure unless he finds that a Schedule 3 condition is satisfied.
22. The only Schedule 3 condition that may be satisfied is that the processing is necessary to protect the vital interests of another person where the data subject's consent has been unreasonably withheld (rule 3b, Schedule 3).
23. The Council has informed the Commissioner that the data subjects have withheld their consent to the release of the withheld information. The next question, of course, is whether the data subjects have acted unreasonably in doing so. The Commissioner's decision is that they have not. It is at their discretion as to whether they wish others (including their actual or prospective tenants) to know if they have been convicted of offences connected to the letting of property. If they do not wish

² <http://www.legislation.gov.uk/ukpga/1998/29/schedule/3>

others to know the Commissioner may not agree with their decision but that does not itself make it unreasonable. Accordingly the Commissioner must find that find that the Council properly relied on section 40(2) to withhold the information.

Right of appeal

24. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Alexander Ganotis
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SK9 5AF