

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

### **Decision notice**

**Date:** 23 March 2015

**Public Authority:** North Tyneside Metropolitan Borough Council

**Address:** Quadrant  
The Silverlink North  
Cobalt Buisness Park  
North Tyneside  
NE27 0BY

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

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1. The complainant has requested information in relation to searches made under his name and several trading names. North Tyneside Metropolitan Borough Council (the council) refused some of the information under section 40(1) of the FOIA – the complainant's own personal data - and the remaining information under section 40(2) of the FOIA – third party personal data.
2. The complainant explained in his internal review request that he required the total amount of searches made and total cost incurred, and did not require it individually for each name listed. The council maintained its response.
3. The Commissioner's decision is that the council has correctly withheld the information it has under section 40(1) of the FOIA – the information under the complainant's name - but finds that section 40(2) of the FOIA is not engaged to withhold the remaining information identified as being required by the complainant in his internal review request.
4. The Commissioner requires the public authority to issue a fresh response to the complainant for the total amount of searches made and total cost incurred as requested and outlined in the complainant's internal review request of the 15 August 2014 within the amended dates requested on the 18 August 2014, without relying on section 40(2) of the FOIA for the 7 business names.

5. The public authority 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

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6. On 18 June 2014 the complainant requested the following information from the council:

*"Would it be possible for you to provide me with the amount of Personal Searches and costs under my following trading names:*

*[Complainant name redacted]*

*[Trading name redacted]*

*[Trading name redacted]*

*[Trading name redacted]*

*[Trading name redacted]*

*[Trading name redacted]*

*[Trading name redacted]*

*[Trading name redacted]*

*All Personal Searches were done through your local Land Charges Department."*

7. The council responded on the 30 July 2014. It refused the information relying on section 40(1) and 40(2) of the FOIA. Section 40(1) as some of the information was the complainant's own personal data, and section 40(2) as it is third party data.
8. The complainant responded on the 15 August 2014, requiring an internal review, advising that another council refused to provide the information requested under regulation 12(5)(2) of the Environmental Information Regulations 2004 (EIR), but were able to provide him with the total amounts of searches and costs, rather than for each name listed individually. The complainant advised that he would be happy to receive the information in the same way for this request. He stated:

*"With regards to your last e-mail please could you review the information and my request as I think there maybe some confusion as you are the only council out of 11 in the North East that has not provided the requested information.*

*The information I would like to request is the total amount of searches under all trading names previously provided and the*

*total amount I was charged by North Tyneside Council to access the information on the public registers in question (Land Charges) between September 2008 and August 2010."*

9. On the 18 August 2014, the complainant amended the dates that he required the information from and to. That being from January 2008 to August 2010.
10. On the 26 August 2014, the council responded to the internal review request maintaining its decision.

### **Scope of the case**

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11. The complainant contacted the Commissioner on the 25 September 2014 as he was not satisfied that the council had refused the information requested and that the trading names were registered to him.
12. The Commissioner has confirmed to the complainant that he will be considering whether the council are able to refuse to provide the total amount of searches and costs, as outlined in his review request of 15 August 2014 (the refined request), under section 40(1) and 40(2) of the FOIA. See paragraph 8 above for the quoted revised request that the Commissioner is considering in this case.
13. The Commissioner will firstly consider if any or all of the information is exempt, to the refined request, under section 40(1) of the FOIA and then gone on to consider if the remaining refused information is exempt under section 40(2) of the FOIA.

### **Reasons for decision**

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14. Section 40(1) of the FOIA states that:

*"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject"*

15. In other words, under section 40(1) of the FOI, information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute: no consideration of the data protection principles is necessary when considering this subsection and it requires no public interest test to be conducted.

*Is the requested information, in the refined request, personal data?*

16. Personal data is defined by the Data Protection Act 1998 (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.
17. Information will relate to a person if it is about them, linked to them, has some biological significance for them, is used to inform decisions affecting them, and has them as its main focus or impacts on them in any way.
18. Having considered the information being requested, the Commissioner is satisfied that the part of the request where the complainant has requested information specifically under his own name, that information would constitute his own personal data. Therefore he considers that it is appropriate that any decision as to whether or not a data subject is entitled to be provided with their own personal data should be made in accordance with the DPA, not the FOIA.
19. The Commissioner is therefore satisfied that the information requested under his own name has been correctly withheld under section 40(1) of the FOIA by the council.
20. The Commissioner will now go on to consider whether the remaining withheld information can be withheld under section 40(2) of the FOIA.

#### **Section 40(2) of the FOIA**

21. Section 40(2) of the 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 or second condition below is satisfied."*

22. 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?*

23. The remaining information is regarding the trading names. The complainant has stated that these are his trading names, and they are run as a sole trader. The Commissioner asked whether the complainant was able to provide any documentation to the council which would prove

that the trading names are in fact his trading names, however he was unable to do this.

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24. The council has told the Commissioner that it does not have records that identify these trading names as belonging to the complainant and the complainant has been unable to provide any documentation that would confirm these are his own trading names.
25. The council has informed the Commissioner that as these trading names are not limited companies or identifiable as entities in themselves, so it has assumed that they must be an individual's personal data as sole trader names. As the council has been unable to identify this information as belonging to the complainant, then it considers it exempt under section 40(2) of the FOIA.
26. The Commissioner has researched the company names and has discovered that a number of them are in fact limited companies. As such, the Commissioner finds that for those trading names at least, they are not sole traders and are therefore not the personal data of individuals as sole trader names. However, the Commissioner has not been able to determine that this is the case for all the trading names listed.
27. That said, the Commissioner has had regard to the fact that the complainant's refined request only requires the total cost and amount of searches made by the trading names, not an individual breakdown for each one.
28. In this respect, the Commissioner does not consider that to provide the total number of searches and total cost of these searches would constitute personal data as you would not be able to determine which of the 7 trading names made how many searches or the individual costs they incurred. Nor would you be able to determine whether a particular trading name made a search or incurred a cost at all.
29. Therefore, the Commissioner's decision is that section 40(2) of the FOIA is not engaged with regards to the total amount of searches made and total cost for the 7 listed trading names, which was requested in the complainant's refined request of the 15 August 2014 within the amended dates he requested on the 18 August 2014.

### **Other matters**

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30. The council has told the Commissioner that although it has refused part of the request under section 40(1) of the FOIA, that being the

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information requested under the complainant's own name, it has not responded to him under the DPA for that particular information.

31. The Commissioner being the regulator of the DPA as well as the FOIA, will write further to the council separate to this decision notice, to remind it of its obligations of responding to individual's requests for their own personal data as set out in the DPA.

## Right of appeal

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32. 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)

33. 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.
34. 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**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**