

## Freedom of Information Act 2000

### Decision notice

**Date:** 25 October 2017

**Public Authority:** Southwark Council  
**Address:** PO Box 64529  
London  
SE1P 5LX

#### Decision (including any steps ordered)

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1. The complainant requested information relating to repair work carried out in her residential block. The Council provided some information and denied that other information was held. The Council also refused part of the request under section 40(2) of the Freedom of Information Act 2000 (the Act).
2. The Commissioner's decision is that the Council has correctly refused the request under section 40(2) of the Act. The Council breached sections 10(1) and 17(1) of the Act by providing a late response to the complainant, but as the response has been issued no steps are required.

#### Request and response

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3. On 31 August 2016, the complainant wrote to Southwark Council and requested information in the following terms:

*"With regards to the attachments, which register repairs works at block 4 in [Complainant's address], please identify which charges belongs to the leaseholders/council and in which financial year(s)."*

*Also, the following information are missing from the attachments:*

*a) SAP dates*

*b) Reference numbers*

*c) the full name of the companies*

*d) the name(s) of the person responsible for the call outs."*

4. Southwark Council responded on 9 December 2016. It provided a digest showing works carried out at the address with the charges for the works and the dates. The Council's response in regards to each of the items of the request was as follows:
  - a) Denied holding relevant information, as the repairs are made in bulk for groups of repairs rather than by SAP dates.
  - b) Denied holding relevant information, as the repairs are made in bulk for groups of repairs rather than by reference numbers.
  - c) Disclosed the list of contractors' names.
  - d) Confirmed that relevant information was held but that it was exempt under section 40(2) of the Act as it was third party personal data, and none of the conditions from section 40(3) applied.
5. Following an internal review Southwark Council wrote to the complainant on 17 January 2017. It upheld the original response.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 23 October 2016 to complain about the way her request for information had been handled. At this time the complaint related to the time it had taken for the Council to issue a response to her request. Upon receipt of the Council's internal review the complainant confirmed she wished to carry on her appeal against the handling of her request.
7. The complainant submitted a number of documents to the Commissioner in support of her appeal, some of which were not germane to the Commissioner's powers under the Act to investigate the handling of requests. The complainant's appeal specifically asked the Commissioner to investigate:
  - a) whether the Council was withdrawing information from a report provided to residents as part of their tenancy agreement.
  - b) the Council's delay in handling her request.
  - c) information withheld under section 40(2) of the Act.
  - d) whether the Council should disclose the name of the Project Manager who carried out work in her block in January 2017.
8. The Commissioner cannot investigate a) as this is not something the complainant receives under the provisions of the Act, but instead through her tenancy agreement. The Commissioner cannot investigate

- d) as the complainant had not requested this information from the Council. The Commissioner's decision can only be based on the handling of a request, so if no request has been made then the Commissioner cannot make a decision on whether information should be disclosed. However, the Commissioner could investigate b) and c), as both relate to the Council's handling of the complainant's request.
9. Therefore the scope of the Commissioner's investigation was to consider whether the Council is entitled to withhold information under section 40(2) of the Act. The Commissioner shall also consider the length of time the Council took to issue its response to the complainant.
10. During the course of the investigation the Commissioner gave the complainant her view that the public authority was entitled to rely on section 40(2) of the Act. The Commissioner also informed the complainant that the request – which asked for the people “responsible” for call outs – was interpreted by the Council as the residents who asked for the repairs to be carried out. The complainant confirmed she wished to appeal as the Commissioner had erred in her interpretation of section 40(2) of the Act. For the avoidance of doubt, the Commissioner understood this to mean that the complainant disagrees with the Council's decision to withhold the names of the residents who had requested the repairs.

## Reasons for decision

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### Section 40(2) – third party personal data

11. Section 40(2) – (3) of the Act states that:

*“(2) Any information to which a request for information relates is also exempt information if –*

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

*(b) either the first or the second condition below is satisfied.*

*(3) The first condition is –*

*(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –*

*(i) any of the data protection principles,”*

12. Section 40(2) of the Act is an absolute exemption that allows third party personal data (i.e. other than that of the applicant) to be withheld. In order for section 40(2) to be engaged, the Commissioner will need to determine the following:

- Whether the information is third party personal data.
- Whether disclosure would contravene any of the data protection principles.

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

13. Personal data is defined in section 1 of the Data Protection Act 1998 (DPA) as:

*“data which relate to a living individual who can be identified –*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is 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 other person in respect of the individual;”*

14. The request asks for the *“name(s) of the person responsible for the call outs”*. An individual's name would allow them to be identified, and so is personal data as per section 1 of the DPA.

### **Would disclosure contravene any of the data protection principles?**

15. In its submissions to the Commissioner the Council relied on the first data protection principle. This provides that personal data should not be disclosed unless it is fair and lawful to do so. The Commissioner considers that this principle is appropriate under the circumstances.

16. To determine whether it is fair to process the withheld personal data the Commissioner has taken the following factors into account:

- The nature of the requested information;
- The consequences of disclosure;
- The reasonable expectations of the individuals, and
- The rights of the individuals against any legitimate interest in disclosure of the information.

*Nature of the requested information*

17. The Commissioner has not seen the withheld information. However, under the circumstances she does not consider it necessary to have seen it as the scope of the request determines what the information will be.
18. The information disclosed to the complainant in the PA's response of 9 December 2016 listed the repairs that were carried out and the flat numbers where the work was done. The Council explained that it can cross reference this with other records it holds, which would provide the names of the individuals who requested the repair work.
19. The Commissioner considers that this is private residential information for individuals who are not working for the Council or prominent in the public sphere. Information of this nature carries a strong inherent protection and it would require strong arguments to show that it would be fair to disclose this information.

*Consequences of disclosure*

20. There is a general principle of fairness meaning that individuals have a right to a private life. The Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, to which the DPA gives effect, contains a reference to protecting privacy rights, as recognised in article 8 of the European Convention on Human Rights. Were the requested information to be disclosed then it would represent an intrusion upon the privacy rights of the residents who requested the repair works.
21. The Council's argument is the list of flats could be used to identify the relevant personal data using other information held in its records. It is entirely possible that some individuals would be able to identify the names purely from the information which had been disclosed to the complainant. However, this is because they already possess the information, and no new information is being disclosed to them. The Commissioner views disclosure as information being released into the public domain, so disclosure is to the world at large and not just the individual who made the request. There is no public register of the properties concerned that would allow individuals to cross-reference the information previously disclosed the complainant and allow them to determine personal data, so there is no possibility that the public could identify personal data based on what was provided by the Council to the complainant.

*The reasonable expectations of the individuals*

22. In some instances there are circumstances where an individual would have a reasonable expectation that their personal data might be disclosed into the public domain in response to a request under the Act. For example, individuals who are in receipt of significant amount of public funds and individuals who are in senior positions of prominent organisations.
23. In this instance, the Commissioner considers that the individuals who requested the repair work would have a reasonable expectation that their personal data would not be disclosed. The information relates to their private lives, and also about their place of residence, which individuals have a right to protect from being disclosed into the public domain.

*Balancing rights of the individual against any legitimate interest in disclosure of the information*

24. When the complainant requested an internal review she made arguments to the Council that the information needs to be disclosed for the sake of transparency and accountability.
25. However, the Commissioner does not consider that disclosing the names of the individuals who requested repair work would offer much of value in the way of transparency or accountability. The information disclosed to the complainant lists the flat numbers where the work was carried out, having a name to go with a flat number does not provide much to help understand about how the Council is carrying out repair works.

*Commissioner's decision on fairness*

26. The Commissioner has taken all of the factors into account when reaching her decision. In her view, the nature of the information confers a reasonable expectation that it would be withheld, and disclosure would represent an intrusion into the data subjects' privacy rights. In addition, the Commissioner cannot identify any legitimate interests that would justify disclosure in these circumstances.
27. The Commissioner's decision is that it would be unfair to disclose the withheld personal data, which would contravene the first data protection principle. Therefore section 40(2) of the Act is engaged and the request can be refused.

**Section 10(1) – time for compliance with a request**

28. Section 1(1) of the Act states:

*“(1) Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him.”*

29. Section 10(1) of the Act states:

*“(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”*

30. The complainant submitted her request on 31 August 2016, and the Council acknowledged the letter on the same day. The Council initially provided held information for item c) of the request on 9 December 2016, which is 72 working days after receipt of the request.

31. As the Council did not communicate held information to the complainant within 20 working days it breached section 10(1) of the Act. As the response has been issued no steps are required.

### **Section 17(1) – time for refusal of a request**

32. Section 17(1) of the Act states:

*“(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, **within the time for complying with section 1(1)**, give the applicant a notice which –*

*(a) states that fact,*

*(b) specifies the exemption in question, and*

*(c) states (if that would not otherwise be apparent) why the exemption applies.”*

33. The Council's response to the complainant also withheld information under section 40(2) of the Act. As this refusal notice was not within the time frame for complying with section 1(1) the Council breached section 17(1) of the Act. As the response has been issued no steps are required.

## Right of appeal

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

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

35. 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.
36. 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 .....**

**Terna Waya**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**