

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 January 2008

Public Authority: Transport for London
Address: Information Access and Compliance Team
Windsor House
42-50 Victoria Street
London
SW1H 0TL

Summary

The complainant requested the percentages upon which compensation settlements were made to residents of a specific road under the Land Compensation Act following the building of the A12 Hackney to M11 Link Road. The public authority declined to provide the information by virtue of the exemption contained in section 40(2) and by extension section 40(3)(a). After considering the case the Commissioner upheld the public authority's decision to withhold the information under section 40(3)(a).

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant in a letter dated 12 October 2006 made a request in accordance with section 1 of the Act for;

'the percentages upon which settlements have been made. On this basis, please may I have percentage details (if any) on the following houses/roads. Where settlements have been made, please list out the number of each house and name of road and what the agreed percentage settlement figure was. All these houses are in Wanstead.'

3. In this letter the complainant went on to list the names of the roads and a number of houses on those roads related to her information request.

4. The public authority responded on 9 November 2006 and stated that it considered the information requested was exempt under section 40 of the Act. It stated that *'disclosing the percentages upon which settlements have been made, plus details of settlement figures by house number and road name, would breach one or more of the data protection principles and therefore we cannot provide you with the information.'*
5. The complainant responded in a letter dated 11 December 2006 stating that she was not requesting settlement figures, rather, her request was for; *'the percentage scale which you have used in calculation to assess compensation in South Wanstead.'* She also added the names of two more roads, and clarified that she was also seeking the percentage scale for a specified number of houses on one of these additional roads, and all the houses on the other to her information request of 12 October 2006.
6. The public authority received this letter on 22 December 2006 and treated it as a new information request.
7. On 12 January 2007 the public authority responded to the complainant's letter of 11 December 2006 and reiterated that the information requested would not be disclosed by virtue of the exemption contained in section 40(2).
8. The complainant requested a review of the public authority's decision to withhold the information in a letter dated 10 February 2007.
9. The public authority concluded its internal review and responded to the complainant on 19 March 2007. It upheld its original decision not to disclose the information by virtue of the exemption contained in section 40(2).
10. It stated amongst other things that there is a no single percentage scale used to calculate the amount of compensation paid to an individual property owner. Instead, *'Payments are calculated using standard surveying methodology which involves assessing several 'physical factors' (for example, changes in noise, light or pollution) and the effect these changes have upon each property's market value, whilst also being affected by the detailed negotiations which take place with each property owner.'*

The Investigation

Scope of the case

11. On 12 April 2007 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following point:

'without knowing the capital valuation that TFL's surveyor placed upon a property, it would be impossible, just looking at a percentage, to know what amounts

individuals received by way of compensation and for this reason I cannot see why I am refused this information under the Freedom of Information Act.'

Chronology

12. The Commissioner contacted the complainant on 25 September 2007 outlining that the investigation would cover the applicability or otherwise of section 40(2) to the information requested. He also invited the complainant to indicate if she felt that any other matter also needed to be investigated.
13. The Commissioner contacted the public authority on 27 September 2007 and asked it to provide a copy of the requested information as well as full and detailed explanations as to why section 40(2) is engaged.
14. In line with the provisions contained in section 40(3)(a), the Commissioner also asked the Public Authority to identify which of the data protection principles would be breached by disclosing the information.
15. The public authority responded on 24 October 2007 via email but due to security reasons decided to send the requested information via post instead.
16. In its response the public authority maintained that the information contained in the spreadsheet showed the percentage of a property's market value that was paid to the residents of specified addresses as compensation settlement and should be considered as personal data for the purposes of the Data Protection Act 1998 (DPA) which in this case effectively engages section 40(2) and by extension section 40(3)(a) of the Act.
17. The public authority also indicated that in its opinion disclosing the information would contravene the first and sixth data protection principles. The first principle relates to fair and lawful processing while the sixth relates to processing in accordance with the rights of data subjects.

Analysis

Exemption

18. The Commissioner first considered the applicability or otherwise of the exemption contained in section 40(2) and by extension section 40(3)(a) of the Act.
19. The combined effect of sections 40(2) and 40(3)(a) is that information is exempt from disclosure if it constitutes personal data of which the applicant is not the data subject and would contravene any of the data protection principles or a section 10 notice under the DPA.
20. A full text of sections 40(2) and 40(3)(a) can be found in the legal annex at the end of this Notice.

21. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by the DPA. Section 1(1) of the DPA defines personal data 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 indication of the intentions of the data controller or any other person in respect of the individual;'
22. Having examined the spreadsheet in which the information is contained, the Commissioner notes that it does not include the names of the residents concerned.
23. However the spreadsheet does contain the addresses of the residents as well as the percentage of their property's market value paid to them as compensation in line with the complainant's information request. The Commissioner has therefore considered whether the percentage paid is personal data.
24. The Commissioner is persuaded by the public authority's argument that this information is personal data for the reasons outlined below.
25. The information contained in the spreadsheet relates to individuals' homes and personal finances and by extension their private and family lives. In the case of England and London Borough of Bexley v the Commissioner, the Information Tribunal (Appeal Number: EA/2006/0060 and 0066) ruled that the addresses of properties owned by individuals are personal data about those individuals because it says various things about them. For example, that they own a substantial asset.
26. The Commissioner notes that the percentages of a property's market value paid to residents are very particular to each individual and determined by the effect of the changes in *'physical factors'* to the market value of each individual's property as well as the *'detailed negotiations'* with each of them.
27. The specific nature of this data may make it possible to identify a pattern of how the compensation offers were made, and consequently this could lead to the identification of the residents concerned.
28. The Commissioner also considers the percentage data and the property addresses of this relatively small group of people could be coupled with easily accessible information from sources such as the Electoral Register and the Land Registry to not only identify the residents concerned but also give a good indication of the amount of compensation they were paid.

The first data protection principle

29. The first data protection principle requires that the processing of personal data should be fair and lawful and that personal data should not be processed unless at least one of the conditions in Schedule 2 of the DPA is met.
30. In considering whether the disclosure of the requested information would be fair the Commissioner has considered the reasonable expectations of the data subjects as to how the information would be used by the public authority and what the effect of disclosure would be on the data subjects.
31. The Commissioner notes that the public authority did not at any stage inform the residents that details of their compensation claim or final settlement could potentially be disclosed to a third party. The public authority has explained that it adopted a confidential approach to its dealings with individual residents to ensure that settlements could be reached on a case by case basis unhindered by disclosure of settlements agreed with others. The Commissioner therefore accepts that the residents had a reasonable expectation that information of the nature requested would not be disclosed and to otherwise disclose it would be unfair to the residents concerned.
32. The Commissioner is persuaded by the public authority's argument that this information relates to individuals' homes and personal finances, and by extension their private and family lives. This is also consistent with the Commissioner's guidance on section 40 of the Act which suggests that information which is about the home or family life of an individual, his or her personal finances, or consists of personal references is likely to deserve protection in contrast to information about someone acting in an official or work capacity.
33. Therefore, the Commissioner is of the view that this information about these individuals deserves protection because disclosure would constitute an unfair infringement of their private lives.
34. In light of the above the Commissioner believes that to disclose the information requested would contravene the first data protection principle and therefore is exempt by virtue of the information contained in section 40(2) of the Act. As the Commissioner has decided that the exemption is engaged on the basis that disclosure would contravene the first principle, he has not considered TFL's assertion that the sixth principle would also be breached.

The Decision

35. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

36. The Commissioner requires no steps to be taken.

Other matters

37. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
38. The public authority's reference in its internal review to the request of 12 October 2006 when it had concluded that the complainant's letter of 11 December 2006 constituted her information request was slightly misleading. The Commissioner considers that the letter of 11 December 2006 did include a further request for information. However, it also included an expression of dissatisfaction by the complainant which should have been treated as a complaint and therefore a request for internal review. The Commissioner therefore concludes that the public authority did not conform to paragraph 38 of the section 45 code of practice.

Right of Appeal

39. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 2nd day of January 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

LEGAL ANNEX

Section 40(2) provides that –

“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.”

Section 40(3) provides that –

“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, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded