

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 March 2019

**Public Authority:** Royal Borough of Kensington and Chelsea  
**Address:** The Town Hall  
Hornton Street  
London  
W8 7NX

### Decision (including any steps ordered)

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1. The complainant has requested information regarding rehousing statistics following the fire at Grenfell Tower from the Royal Borough of Kensington and Chelsea ("RBKC"). RBKC disclosed some information and denied holding other information. Its position changed during the Commissioner's investigation and it argued that while it did not hold some information, the remainder which it did hold was exempt from disclosure due to "confidentiality". The Commissioner has deduced that it was relying on section 40 (unfair disclosure of personal data) as its basis for withholding this information.
2. The Commissioner's decision is that RBKC does not hold two sets of requested information. In respect of the other requested information that it does hold, it is not entitled to rely on section 40 as a basis for withholding it.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

In respect of 128 properties within the scope of the request about which it had previously made no disclosure, it must disclose the following information:

- the location of those properties by identifying which London Boroughs they are located in;
- the number of bedrooms in those properties; and
- the square footage of those properties.

4. RBKC 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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5. On 20 December 2017, the complainant requested information of the following description:

“How many properties have been secured/acquired so far to rehouse people affected by the Grenfell fire, their respective value, location, square footage, the number of bedrooms and mortgage/borrowing rate. The total amount of money spent so far to rehouse people affected by the fire, specifying all the entries.”

6. For ease of future reference the Commissioner broke down the request as follows:

1. How many properties have been secured/acquired so far to rehouse people affected by the Grenfell fire?
2. What is the value of the properties secured/acquired?
3. What is the location of the properties secured/acquired?
4. What is the square footage of the properties secured/acquired?
5. How many bedrooms in the properties secured/acquired?
6. What is the mortgage or borrowing rate for the properties secured/acquired?

7. On 13 March 2018, RBKC responded. It set out that it has committed over £235m to secure 307 homes. RBKC stated that it could not disclose location.

8. On 19 March 2018 the complainant requested an internal review setting out that a list with all of the properties' values, square footage, number of bedrooms and mortgage/borrowing rate must be provided. He also set out an example of the response he would like. He asked that a list of each of the 307 properties was provided setting out the requested detail in relation to each property.

9. Following the Commissioner's intervention and on 10 May 2018, RBKC provided information about 179 properties. In relation to those 179 properties, the number of bedrooms was recorded along with the average purchase price and the average square footage as well as the London borough in which they were located. RBKC did not provide information in relation to the remaining properties, setting out that they were secured through other registered providers or directly from

developers with whom the council already had contractual arrangements.

## Scope of the case

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10. The complainant first contacted the Commissioner in February 2018 regarding RBKC's failure to process this complaint and his request for internal review. However, once that had been resolved and the complainant was unhappy with the outcome of the internal review, the complainant contacted the Commissioner again on 16 May 2018 to complain about this.
11. The Commissioner entered into a dialogue with RBKC. Unfortunately, due to RBKC's failure to respond in a timely manner to her enquiries, the Commissioner issued an Information Notice on 31 October 2018. This formally required a response to her enquiries within a specified timeframe. The Commissioner does not serve Information Notices regularly and only does so if she is unable to obtain timely co-operation through an informal request for information to assist her in her investigation.
12. It is equally unfortunate that RBKC's response to that notice did not provide a clear explanation as to significant aspects of its position, nor did its response to the further enquiries by the Commissioner. The Commissioner tried one further time to obtain a clearer response. The response, sent on 8 March 2019, provided nothing substantial in addition to arguments it had already provided.
13. Following the issue of the information notice and having considered its response (albeit one that was not particularly clear), the Commissioner had asked whether RBKC held some or all of the following and what its basis was withholding any or all of it with respect to the 128<sup>1</sup> properties about which it had not disclosed any information:
  - the respective value;
  - the location;
  - the square footage of the property;
  - the number of bedrooms; and

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<sup>1</sup> (Information on 307 properties requested – information on 179 subsequently disclosed = 128 properties)

- the mortgage/ borrowing rate incurred by other registered providers or developers.
- 14. It said that it did not hold the respective value of the properties nor the mortgage or borrowing rate incurred by other registered providers or developers.
- 15. It said that it held their location, the square footage and the number of bedrooms.
- 16. The Commissioner also asked it about an apparent discrepancy in its figures contained in its response to her. RBKC explained that this was due to the fact that the information it had at the time of the request was in a live document and some related to temporary housing rather than permanent re-housing. Despite the Commissioner specifically asking why any of the information should not be disclosed under FOIA, RBKC did not provide any explanation in support of continuing to withhold it beyond "RBKC are concerned that confidentiality of Grenfell residents would be breached by releasing the data." However, given that it had already provided the complainant with borough level information about 179 properties rather than precise locations, it remained unclear as to why RBKC could not make a similar disclosure at borough level.
- 17. The Commissioner has therefore considered whether RBKC is entitled to withhold the location at borough level, square footage and number of bedrooms for the remaining 128 properties.
- 18. The Commissioner has also considered whether RBKC is correct when it says that it does not hold the value of these 128 properties or the mortgage/borrowing rate incurred for these 128 properties by other registered providers or developers.

## **Reasons for decision**

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- 19. Section 40(2) states that any information to which a request for information relates is exempt information if it constitutes personal data which is not the requester's own personal data, and the disclosure of it would contravene any of the data protection principles of prevailing data protection legislation.
- 20. At the time of the request, the Data Protection Act 1998 was still in force and had not been superseded by the General Data Protection Regulation ("GDPR"). The Commissioner has therefore considered the application of the Data Protection Act 1998 but is also mindful of the GDPR because this would apply to any disclosure of personal data at the time of this Notice.

21. RBKC provided no arguments further than to say that disclosure would breach the confidentiality of the residents. The Commissioner is unable to say, therefore, whether it was seeking to rely on section 41 (confidentiality) or section 40 (unfair disclosure of personal data). The Commissioner does not consider it appropriate to insert arguments on behalf of a public authority but, given that she also has responsibility as the regulator for UK data protection legislation, she does consider it appropriate to consider whether RBKC can rely on section 40 as its basis for withholding these three items that it says it does hold, namely the location (at borough level) of the properties in question, the square footage of the properties and the number of bedrooms in each.
22. As noted above, section 40 applies where the information in question is personal data and disclosing it would breach the applicable data protection legislation.
23. The first question to resolve is therefore whether the information is personal data. Information is personal data if a living individual can be identified from the information and that information is biographically significant about them.
24. The Commissioner has considered whether the information can be disclosed at borough level because this is the level at which RBKC had disclosed information about 179 properties and the complainant did not object to this.
25. It is beyond question that the information is biographically significant. Where someone lives, particularly where they have been rehoused as a result of the terrible events at Grenfell Tower is clearly biographically significant. However, the Commissioner is unable to see how any individual can be identified by disclosing which London Borough they have been rehoused in. Had RBKC explained, perhaps with specific examples, how individuals could be identified from borough level information, she would have taken it into account in her considerations. However, it did not. The Commissioner also noted that RBKC had already released borough level information in response to this request and had not reported any breaches of confidentiality arising for the individuals who had been rehoused as part of this group.
26. The Commissioner has therefore concluded that this information is not exempt under section 40 because it is not personal data; a living individual cannot be identified from it. In reaching this view, the Commissioner has had regard for her own guidance.<sup>2</sup> While the GDPR

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<sup>2</sup> <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/>

has further to say about the definition of personal data, specifically with reference to special category data (not applicable here) and information held in less obvious electronic forms such as one's IP address (not applicable here), the Commissioner still considers GDPR guidance on the definition of personal data to be applicable and relevant when considering this point under the Data Protection Act 1998.

27. The Commissioner is not aware of any other information in the public domain which would allow individuals to be identified from this information. In the absence of any other argument submitted by RBKC as to why it should be withheld, the Commissioner requires RBKC to disclose the following information about the 128 properties in question.
- their location (at borough level)
  - the square footage of these properties
  - the number of bedrooms.

### **Is further information held?**

28. Section 1 of the FOIA states that

(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. RBKC denied holding information about the value of the 128 properties or about the mortgage/ borrowing rate incurred by other registered providers or developers on those properties.
30. When considering whether requested information is actually held, the Commissioner considers the matter to the civil standard, that is, on the balance of probabilities. She asked RBKC a series of questions to establish its position, for example, whether it had a business need to hold this information and what its document retention policies say about information of this nature.
31. RBKC appears to have made its earlier disclosure based on a spreadsheet it had and does not appear to have considered other possible information sources at its disposal for any information which was not actually on this spreadsheet at the time of the request. It also said "the Council is still acquiring housing so exact numbers do shift". Further, it said "The spreadsheet is a "live" working document. Certain

properties acquired will not have proven suitable for immediate Grenfell related use and will have been used for the Temporary Accommodation need, hence changing numbers.”

32. The Commissioner can only consider what was held at the time of the request but notes that RBKC’s initial response to her enquiries was inconclusive about whether information was held (as well as subject to delay in itself). When further asked about the request for information concerning the value of the 128 properties, it said it did not hold any information “as the arrangements are not a straight purchase”. The Commissioner is satisfied that RBKC would not hold property value information on this basis and that it had no apparent business need to do so in these circumstances.
33. Regarding whether or not it holds any information about “the mortgage/borrowing rate incurred for these properties by other registered providers or developers”, it said that this was not known as the commercial arrangements were confidential to those providers or developers”. Again, the Commissioner accepts this explanation as entirely plausible and that RBKC has no apparent business need to do so
34. There is no part of FOIA which prevents RBKC from proactively providing non-exempt information or contextual information to make any disclosure more clear. FOIA does not require a public authority to create new information. The Commissioner recognises that RBKC has a high volume of requests around this subject. She also recognises that the spreadsheet it has been using is a live document, the contents of which may change from day to day. It is not prevented by FOIA from explaining this and while it is rightly circumspect about disclosing any information which reveals individuals’ identities, it should always consider what it can disclose without doing revealing identities. It should also ensure that it explains itself more clearly to the regulator about why disclosure would compromise its commitment to protect individuals’ identities.
35. The Commissioner has concluded that RBKC does not hold either property value information or the mortgage/borrowing rate incurred for the 128 properties. She has considered this matter to the civil standard, that is, on the balance of probabilities.

## **Other matters**

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36. The Commissioner is extremely disappointed that she had to resort to her formal information gathering powers under section 51 of the FOIA to obtain a response from RBKC. Its engagement with the Commissioner

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on this case has been subject to repeated delays and a lack of clarity when its responses are eventually forthcoming.



## Right of appeal

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37. 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)

38. 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.
39. 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 .....**

**Gerrard Tracey  
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