



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 12 June 2006

Public Authority: Mid Devon District Council ('the Council')

**Address: Phoenix House
Phoenix Lane
Tiverton
Devon
EX16 6PP**

Summary Decision

The Request

On 8 February 2005 the complainant requested the following information from the Council.

“The record of business rates payments [for premises at Eggesford Station Yard] from the Council’s records for the period 1997 to 2004”. The complainant went on to clarify that they were asking “whether there were any periods between 1997 and 2004 when no business rates were paid due to the site being un-occupied or if during the same period any payments were made by any party other than [the tenant]”.

In the course of the Commissioner’s investigation the complainant has confirmed that they wanted to know whether the occupied or un-occupied rate applied between 1997 and 2004, rather than the specific sum payable. That information will be referred to in this Decision Notice as ‘the occupancy information’.

The complainant also wanted to know whether any party other than the tenant made payments for the business rates during the period in question. That information will be referred to as the 'rate payer identity information'.

The Commissioner's decision in this matter is that:

1. The Council failed to comply with section 1 (1) (b) of the Act in relation to some of the occupancy information. This is because the Commissioner has determined that a limited amount of that information does not constitute personal data.
2. The Commissioner is satisfied that the remainder of the occupancy information within the scope of the complainant's request is exempt under section 40 (2). Therefore the Council has complied with the Act in refusing to supply the information in accordance with section 1 (1) (b).
3. In failing to confirm that the rate payer identity information sought in the second part of the request is not held the Council did not comply with section 1 (1) (a). The Council also failed to clarify the type of information held that relates to the business rates payable on the property. Therefore it failed to provide advice and assistance in accordance with section 16 (1).
4. The Council has also failed to comply with its obligations under section 17 (1) (c) because it did not explain in the Refusal Notice why the exemption in section 40 (2) applied to the occupancy information.

Action Required

5. The Commissioner has ordered the Council to disclose to the complainant those parts of the occupancy information which do not constitute personal data within 30 days of the date of this Decision Notice. Therefore the Council should notify the complainant which business rate applied to the tenanted section of the property when the liable party was a limited company. In doing so it should also clarify the dates that this rate applied.
 6. The Commissioner has not ordered any further remedial steps.
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1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision as to whether or not, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

1.4 The Commissioner is satisfied that it is appropriate for him to make a decision in this case.

2. Review of the case

2.1 On 8 February 2005 the following information was requested from the Council in accordance with section 1 of the Act.

"The record of business rates payments from the Council's records for the period 1997 to 2004". The complainant went on to clarify that they were asking "whether there were any periods between 1997 and 2004 when no business rates were paid due to the site being un-occupied or if during the same period any payments were made by any party other than [the tenant]".

2.2 The request was acknowledged on 10 February and a response was sent dated 8 March. This advised the complainant that the requested information was considered to be exempt under section 40 (2) of the Act. The complainant requested an internal review of this decision on 16 March. The complainant stated in the letter that the "information is not personal to anyone since all we are seeking to establish is when empty property relief payments applied and when full business rates applied". On 24 March the Council notified the complainant that the decision had been taken to uphold the application of section 40 (2) and that therefore the information would not be disclosed.

- 2.3 The complainant was not satisfied with the outcome of the review and submitted an application for a decision to the Commissioner on 19 April 2005.
- 2.4 The complainant has not specified alleged breaches of the Act but has stated that they believe that they are entitled to be provided with the requested information under the Act. The Commissioner understands, on the basis of the correspondence, that the complainant does not accept that the exemption in section 40 (2) has been applied correctly. In particular the complainant does not accept that the information constitutes personal data.
- 2.5 The Council is satisfied that the requested information constitutes third-party personal data and that to disclose it would breach the first data protection principle to process personal data fairly and lawfully. Therefore section 40 (3) (a) (i) applies. It has also contended that disclosure would contravene a section 10 notice issued by the data subject [the tenant] and therefore section 40 (3) (a) (ii) also applies.
- 2.6 In the course of his investigation the Commissioner first considered whether the requested information constitutes third-party personal data and he is persuaded that the majority of the occupancy information does.
- 2.7 In relation to that third-party personal data the Commissioner went on to consider the application of section 40 (3) (a) (i) in the first instance. As he determined that, in his view, disclosure of the personal data would breach the first data protection principle, he took the decision that it was not necessary to go on to comment on the section 10 notice or the application of section 40 (3) (a) (ii).

3. The Commissioner's Investigation

- 3.1 On 19 August 2005 the Commissioner invited comments from the Council and asked to be provided with copies of the information that had been withheld from the complainant. A reply together with a copy of the withheld information was provided on 20 September 2005.
- 3.2 The Commissioner has reviewed the correspondence between the complainant and the Council to determine whether the Council complied with the procedural requirements of Part I of the Act.
- 3.3 The Commissioner has also drawn upon his Office's guidance on personal information under the Data Protection Act 1998 ('the DPA').

- 3.4 When considering this complaint the Commissioner also reviewed the Valuation Office Agency Summary Valuation Rating List 2005, the Government's official website which provides general information on Business rates (mybusinessrates.gov.uk) and the Companies House website.

4. The Commissioner's Findings & Analysis

Exempt Information

- 4.1 In reaching a decision about the Council's substantive response to the request, the Commissioner considered the following questions:
1. Does the Council hold the requested information?
 2. Does the information constitute third-party 'personal data'?
 3. If it does, would disclosing the material to the complainant breach the First Data Protection Principle, thereby making it exempt under section 40 (2) of the Act?

Does the Council hold the requested information?

- 4.2 Section 1 (1) of the Act provides that,

“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.”

Occupancy information

- 4.3 The Commissioner has been provided with a copy of the applicable rates for the tenanted portion of the property in the course of his investigation. Therefore he is satisfied that the Council holds the occupancy information.

Rate Payer identity information

- 4.4 In its letter to the Commissioner dated 20 September the Council explained that the system used to log business rates information does not

- record the name of the person who has made payments against the accounts. It simply lists the person or firm liable and whether payments have been received.
- 4.5 As part of the investigation the Commissioner queried whether other departments within the Council would hold information that would enable it to identify who had paid the business rates on the property in question. In particular the Commissioner questioned whether the finance department would hold information regarding payments made by direct debit or cheque that would enable it to establish the identity of the person or company paying business rates on a particular property.
- 4.6 In an email dated 2 March 2006 the Council confirmed that having searched its records it had established that a payment on the property was made by cheque during 2003. However the cheque was not retained and there is no indication of whether it was a business or personal cheque nor by whom the cheque was signed.
- 4.7 The Council also clarified that its policy is to retain the receipt record of payments for a period of six years. However it does not retain copies of cheques, nor does it transfer any of the details from cheques to receipts or to its computer system. The Council confirmed that, "at the time the FOI request was received, the Council did not hold any information on its financial systems that would have enabled it to establish the identity of persons paying the business rates on the tenanted portion of Eggesford Station Yard during the period 1997-2004".
- 4.8 In view of this the Commissioner is satisfied that the Council does not hold the rate payer identity information.
- 4.9 Having come to the conclusion in paragraph 4.8 the Commissioner then considered whether the Council had fulfilled its obligations under Part I of the Act.
- 4.10 Section 16 (1) provides that,
- "It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information".
- 4.11 In this case the Commissioner considers that the Council failed to provide adequate advice and assistance to the complainant in accordance with section 16 (1). He takes the view that it would have been appropriate to clarify what sort of information the Council's business rates system records.

- 4.12 The Council failed to comply with its obligation under section 1 (1) (a) of the Act as it did not inform the complainant that the rate payer identity information is not held.

Does the information constitute third-party personal data?

- 4.13 The DPA defines personal data in section 1 (1) 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”.

- 4.14 The Commissioner understands that the liability for business rates lies with the person or company occupying the property. The Council has also provided the Commissioner with confirmation from the tenant that they operate as a sole trader.
- 4.15 Though the occupancy information does not itself identify the tenant, it would be possible to identify them from that information together with other material in the public domain. If the occupancy information were released it would enable the public to infer information about the tenant’s financial liabilities and business activities. The Commissioner takes the view that information about the business activities of a sole trader and particularly their financial liabilities constitutes personal data because those activities or liabilities and the individual are inextricably linked.
- 4.16 The Commissioner takes the view that it would be reasonable for a member of the public to infer that a lower rate would be payable if at any time the property were empty. In addition there is a significant amount of information available in the public domain about the way in which business rates are calculated. As a result a member of the public is likely to be able to infer a considerable amount about the sole trader’s likely liabilities if the occupancy information were released. This point is addressed further in paragraphs 4.31 and 4.32 of this Notice.
- 4.17 To clarify the Commissioner’s decision is that where the liability for the business rates is the responsibility of the tenant operating as a sole trader, information about the rate payable constitutes third-party personal data. However the Commissioner also understands that for a limited period the

liable party was in fact a limited company. He has obtained details from Companies House which confirm that a company associated with the tenant was registered. The Commissioner is satisfied that where liability for the business rates fell to the company, information about the applicable rate during that period does not constitute personal data and therefore section 40 (2) does not apply.

- 4.18 Where the exemption does not apply the Council has contravened section 1 (1) (b) of the Act in failing to supply the information to the complainant. The Commissioner has specified the steps that must be taken in relation to that information in section 5 of this notice.

Would disclosing the sections of the occupancy information deemed third-party personal data breach the first data protection principle, thereby making it exempt under section 40 (2) of the Act?

- 4.19 Section 40 states that,

“ (1) 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.

(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.

Section 40 (3) states 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 the that Act (right to prevent processing likely to cause damage or distress)”.

- 4.20 The first data protection principle (‘the first principle’) states that -

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions of Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met”.

4.21 When determining whether disclosure would contravene the first data protection principle it is necessary to consider whether it would be unfair or unlawful to release the personal data to a member of the public. The Commissioner has interpreted this to mean any member of the public at large.

Is disclosure unlawful?

4.22 In the letter to the Commissioner dated 20 September 2005 the Council stated that to disclose the occupancy history would breach the first principle because it would be unlawful. This is because it claimed it would breach the Local Government Finance Act 1988 (‘LGFA’) and associated Regulations. It also stated that it may have been more appropriate to rely upon the exemption in section 44 (1) (a). This exempts information if its disclosure is prohibited by or under any enactment.

4.23 The Commissioner asked the Council to specify the relevant provision within the LGFA but it was unable to do so. The Council was unable to provide any further evidence to satisfy the Commissioner that the LGFA prohibited the disclosure of the personal data. The Commissioner also reviewed the LGFA and associated regulations and was unable to locate any relevant provision prohibiting disclosure. In light of this the Commissioner is not persuaded that the exemption in section 44 (1) (a) is relevant, neither is he satisfied that disclosure of the information would be unlawful.

Is disclosure unfair?

4.24 When assessing the question of fairness the Commissioner has considered whether information about the occupancy of the site could be obtained elsewhere. He has also considered the level of information in the public domain and specifically what the public could infer about the tenant’s financial position if the requested information were released.

4.25 Arguably a member of the public could deduce whether the property was occupied or un-occupied by visiting it. However this would not enable someone to confirm the rate that the Council had applied to that premises at a particular time. The Commissioner is satisfied that a member of the public could not confirm whether the occupied or un-occupied rate was applicable unless that information was disclosed by the Council.

- 4.26 As already mentioned the Commissioner recognises that releasing the occupancy information would not only reveal information about the tenant's activities, it would also enable a member of the public to infer information about the tenant's financial responsibilities because of the other information that is already available in the public domain about the way that business rates are calculated.
- 4.27 Business rates (also known as non-domestic rates) are a means by which businesses and other occupiers of non-domestic property indirectly contribute towards the costs of services provided by local authorities. Each non-domestic property has a rateable value which broadly represents the annual rent the property could have been let for on the open market on a particular date, on fully repairing and insuring terms.
- 4.28 The rate is assessed and set by the Valuation Office Agency (VOA). To ensure fairness a valuation date is set so that all properties are valued at the same point. This is reviewed periodically by the VOA. The most recent valuation date was set at 1 April 2003 and the new rateable values came into effect on 1 April 2005. At the time the request was made the previous rating list (2000) applied and was accessible via the VOA website. In the course of his investigation the Commissioner was able to access the rateable value for each section of the property at Eggesford Station Yard via the website.
- 4.29 The government website dedicated to business rates (www.mybusinessrates.gov.uk) explains that local authorities calculate the business rates bills by multiplying the rateable value of a property by a factor set by central government (expressed as pence in the pound) and known as the multiplier, or Uniform Business Rate (UBR). In 2005/06 the multiplier is 41.5p, so if the rateable value of a property is £10,000, the local authority would multiply it by 41.5p to get a total for the year of £4,150, before any rate relief is applied.
- 4.30 The site also clarifies that where a property is empty or unused no business rates are payable for the first three months that it is vacant and, after that, an empty property rate of 50% of the normal bill applies. However on industrial buildings, listed buildings and small properties with rateable values of less than £2,200, there are no rates to pay even after the first three months.
- 4.31 If the occupancy information were disclosed the public could not ascertain the precise amount payable by the tenant if the property was occupied because they would not have details of any applicable rates of relief. Nevertheless it would be possible to deduce a considerable amount about the likely liabilities of the tenant given the amount of information in the public domain about business rates and how they are calculated.

- 4.32 The Commissioner recognises that there is an argument that in view of the amount of publicly available material it would not be unfair to release the occupancy information on the tenanted section of the property. However he takes the view that disclosure would be unfair precisely because of the volume of material that is available publicly and what this would allow the public to deduce about the tenant's tax liabilities.
- 4.33 In reaching this decision the Commissioner has had particular regard for the expectations of the tenant about their transactions with the Council and has considered whether they would be reasonable. The tenant operates a private business where the level of public scrutiny is arguably lower than for public organisations. The Commissioner is satisfied that the tenant is likely to reasonably have expected that details of their financial dealings with the Council would remain private. In addition in reaching this view the Commissioner has been mindful of the fact that the payment of non-domestic rates is a legal obligation and therefore the tenant does not have a choice about interacting with the Council. Further the Commissioner has found no evidence in the correspondence or on the Council's website that would have set an expectation for the tenant that such information might be disclosed to a third-party.
- 4.34 The Commissioner has also taken into account that, in accordance with the section 45 Code of Practice, the Council contacted the tenant to seek consent to the disclosure of the requested information and that this was refused.
- 4.35 To summarise, the Commissioner has concluded that it would be unfair to disclose those parts of the occupancy information which constitute third-party personal data and breach the tenant's right to privacy. The material is not available in the public domain and if released it would enable a member of the public to infer a considerable amount about the financial liabilities of the tenant. The Commissioner is mindful that the tenant has not consented to the disclosure and in his view it would not be reasonable for them to have expected that the information would be released.
- 4.36 Therefore the Commissioner is satisfied that the exemption in section 40 (2) applies by virtue of subsection (3) (a) (i) because disclosure would breach the first data protection principle. As previously mentioned in view of this decision, the Commissioner is satisfied that it is not necessary to make further comment on the application of subsection (3) (a) (ii).

Supplementary Issue

Refusal Notice

- 4.37 Section 17 (1) requires that,

“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”.

When reviewing the correspondence on this matter the Commissioner considered the adequacy of the Refusal Notice issued by the Council and has determined that it failed to comply with the requirements of section 17 (1).

- 4.38 The Refusal Notice informed the complainant that the information requested was exempt under section 40 (2). However, in the Commissioner’s view it did not adequately explain why the exemption applied and therefore breached section 17 (1) (c). In order to satisfy section 17 (1) (c) the Council should have clarified why in its view the occupancy information constitutes third-party personal data and explained which parts of section 40 (3) were satisfied and why.

5. Action Required

- 5.1 In exercise of his powers under section 50 of the Act the Commissioner requires that the Council shall, within 30 days of the date of this Decision Notice, disclose those parts of the occupancy information which do not constitute personal data to the complainant. Therefore the Council should notify the complainant which business rate applied to the tenanted section of the property when the liable party was a limited company. In doing so it should also clarify the dates that this rate applied.
- 5.2 In relation to the breaches of sections 1 (1) (b), 16 (1) and 17 (1) (c) the Commissioner has not ordered any remedial steps. He has decided that the issues relating to those breaches have been adequately addressed in this Decision Notice and therefore no purpose would be served by ordering the Council to take further steps in that regard.

6. Right of Appeal

- 6.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "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@dca.gsi.gov.uk

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

Dated the 12th day of June 2006

**Richard Thomas
Information Commissioner**

**Information Commissioner
Wycliffe House
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Wilmslow
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SK9 5AF**