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## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 4<sup>th</sup> May 2006**

**Name of Public Authority:** Mid Devon District Council  
**Address of Public Authority:** Phoenix House  
Phoenix Lane  
Tiverton  
Devon  
EX16 6PP

#### **Summary Decision and Action Required**

**The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1(1).**

**The complainant had made a request for a list of council properties owned by the public authority. This had been refused on the basis of section 40 of the Act on the ground that the information in question constituted personal data of which the applicant was not the subject and that the disclosure of that information would constitute a breach of one or more of the data protection principles. The Commissioner considered that no such breach would occur and that it was not correct, therefore to rely upon the exemption.**

**In the light of this conclusion, the Commissioner requires the Council to provide the complainant with the requested information within 20 working days of receipt of this decision notice.**

- 1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner**
  - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, 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').**



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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- the application has been withdrawn or abandoned,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.

## **2. The Complaint**

2.1 The Complainant has advised that on 21 June 2005 the following information was requested from the Public Authority in accordance with section 1 of the Act.

2.2 "The names and addresses of the tenants of council housing owned by the Council."

2.3 The complainant received a prompt response from the Council informing him that the information requested is held but cannot be provided since "the information requested is considered exempt under section 40(2) of the Freedom of Information Act – Personal Information."

2.4 The Council offered the complainant an internal review of its decision which was requested by the complainant on 30 June 2005. In requesting an internal review, the complainant modified his request, restricting it to "the addresses of all residential properties owned by the Council." The review was completed on 8 July 2005. It upheld the original decision to refuse the request albeit that request had been submitted in modified form.

## **3. Relevant Statutory Obligations under the Act**

3.1 In summary the Act provides that any person is entitled to make a request for information but that that request may be refused without regard to the public interest if it is subject to an absolute exemption. Among the absolute exemptions is one relating to personal information. Where the information requested constitutes personal data of which the applicant is the subject, the information is exempt if



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disclosure would contravene any of the data protection principles. The relevant provisions are as follows.

**3.2 Section 1(1)** 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.”

**3.3 Section 2(2)** provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply to it if or to the extent that –

- (a) the information is exempt information by virtue of a conferring absolute exemption...

**3.4 Section 2(3)** provides that –

“For the purposes of this section the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption ...

- (f) in section 40 ...  
subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section...”

**3.5 Section 40** provides –

(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.



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(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, 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.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
  - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
  - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.



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(7) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

#### **4. Review of the case**

- 4.1** The complainant, who is a member of the Council, stated that he requested the names and addresses of tenants so that he could send them information concerning the proposed transfer to council housing stock to a Registered Social Landlord. He stated that he wished to do this before a ballot of tenants in October 2005. In the light of the timetable for a ballot, the complainant asked for his complaint to be considered as a matter of urgency.
- 4.2** Before the Freedom of Information Act came into force, there was no general right of access to personal data of which an applicant was not the data subject. Many data controllers took the view that disclosures of personal data could only be made with the consent of data subjects or where a specific statutory provision required disclosure. Although this view was somewhat misplaced, the Commissioner had no grounds for challenging it since the non-disclosure of third party data does not give rise to a breach of the Data Protection Act.
- 4.3** Given the stated urgency of the case, and given that the precise grounds for the refusal of the request (whether because the Council believed that there would be a technical breach of the Data Protection Act or whether it believed that disclosure of the requested information would result in unfairness to some data subjects) the Commissioner agreed to attempt to expedite the complaint. This was done through the issuing of a draft decision notice on 9 August 2005. The Council was invited to indicate either that it was happy to accept the course of action set out in the draft, in which case the complaint could be resolved informally, or that it disagreed with the proposed steps, in which case the Commissioner would deal with the complaint through the issue of a decision notice. The thinking was also that the Commissioner could issue an uncontested notice if the authority wanted to have some more concrete reassurance that it would not breach the Data Protection Act.
- 4.3** The draft notice and an attached "statement of reasons" accepted that the names and addresses of the tenants of council properties originally requested were personal data and that at least some of the addresses alone, the subject of the modified request, would be personal data since it was likely that the complainant would be able to link these to information in his possession about voters in his



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ward, thus inferring that those voters were council tenants. However, it was argued that, subject to safeguards, it would be possible for the Council to satisfy the complainant without breach of the Data Protection Act.

- 4.4** In particular, it was argued that the complainant had a legitimate interest in the information requested and that this appeared to outweigh any likely unfairness to data subjects. It was also suggested, if the Council had continuing concerns that it could minimise any perceived risks by conducting a mailing to tenants on behalf of the complainant or by placing restrictions, if necessary to be agreed with the Commissioner, upon the uses to which the complainant might put any information disclosed to it.
- 4.5** The purpose of the Draft Notice was to provide the authority with reassurance that its disclosure to the complainant would not breach the Data Protection Act if, in fact, it was otherwise willing to provide the information requested to the complainant. In the event, it became clear that the Council objected in principle to the disclosure of the requested information to the applicant. It did, however, make representations to the Commissioner. These comprised a letter of 1 September 2005 from the Director of Community Services and are summarised below.
- 4.6** In addition to these representations, the Commissioner also received an e-mail of 31 October 2005 from the Information Management and E-Government Officer for the Council, confirming points made in a telephone call. This presented arguments as to why the addresses of council properties alone could constitute personal data and as to why it would be unfair to some data to provide selections of addresses based on certain criteria, for instance a set of addresses of council staff or benefit recipients. These issues are not disputed by the Commissioner.
- 4.7** The Commissioner also received a quantity of correspondence regarding public statements made or proposed to be made by both the Council and the complainant. Although these are not relevant to the Commissioner's decision, they did suggest that a further attempt to arrive at an informal resolution of the complaint would not be possible.
- 4.8** Responding to the argument made in the Draft Decision Notice that the complainant had a legitimate interest in the information requested, the Council pointed out that in this instance he was acting not as a member of the Council fulfilling official duties but as the leader of a political group on the Council. It was also pointed out that the request was not simply in relation to council properties in the complainant's ward but to properties in general. It was further argued that the impression given by the complainant to the Commissioner, namely that hitherto council tenants had been given a misleading impression of the consequences of the proposed transfer to council housing stock to a Registered Social Landlord, was not an accurate one.



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**4.9** The Council further argued that disclosure of the addresses of properties would have an adverse affect on vulnerable tenants who might be caused “fear, worry or concern” by the receipt of material with inaccurate or misleading content. The authority provided some arguments in support of its contention that the applicant had previously made unfounded allegations about the consequences of stock transfer. The Council also made the point that even though it accepted that the complainant would mainly seek to contact tenants by mail, there was the risk that some tenants might be approached in person and that this could be particularly distressing.

**4.10** Finally the Council submitted that the safeguards suggested by the Commissioner in the Draft Decision Notice would not adequately overcome the risks to tenants.

## **5. The Commissioner’s Decision**

**5.1 The Commissioner’s decision in this matter is that the Public Authority has not dealt with the Complainant’s request in that it failed to communicate to the Complainant such of the information specified in his request as did not fall within any of the absolute exemptions from the right of access. The Commissioner’s reasons are set out below.**

**5.2** The Commissioner is satisfied that the information requested is personal data. His reasons are as follows:

**5.2.1** The original request for information made by the complainant was for “the names and addresses of the tenants of council housing owned by the Council.” This information clearly constitutes personal data of which the complainant is not the data subject.

**5.2.2** The modified request was for the addresses of council properties alone. The Commissioner is satisfied that in the hands of the Council, this information does constitute personal data, since the addresses can be linked to particular tenants. The Commissioner is also satisfied that in the hands of the complainant some of the requested information would or would be likely to constitute personal data. This is because as an elected member of the Council, the complainant can be expected to have in his possession lists of voters in his ward or to come into possession of such lists in the normal course of events. By combining the addresses supplied by the Council and the names and addresses of voters, the complainant would be able to infer that certain individuals were council tenants. As the Council points out in its submissions to the Commissioner, the electoral roll is available for inspection at the Council’s offices. Taking a view of the exemption which involves ignoring the circumstances and motives of an applicant for third party data (see paragraph 5.3), even if the applicant did not have a voters’ list in his possession, it is clearly quite



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likely that the complainant or another person would come into possession of such a list at some point in the future.

**5.3** Although the Commissioner accepts that at least some of the requested information constitutes personal data, he is not satisfied that its disclosure to a member of the public would contravene the data protection principles. The Commissioner's reasons are as follows:

**5.3.1** The Commissioner considers that the relevant principle is the first data protection principle. This provides:

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

- (a) at least one of the conditions in 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."

**5.3.2** There is no suggestion that the information requested by the complainant is "sensitive personal data" as defined in the Act. Schedule 3 of the Act is thus not relevant.

**5.3.3** In considering whether personal data would be processed fairly if it were disclosed to the complainant, the Commissioner has considered whether there would be any unfairness to the subjects of those data. Although he accepts that there would be unfairness to individuals if they were publicly identified as members of a vulnerable group, for instance asylum seekers, benefit recipients or women who have left violent partners, he does not consider that there would be any general unfairness to individuals in being identified as council tenants. In taking this view, he is mindful of the low inherent sensitivity of the data and of the fact that in practice the fact that a particular property is or is not owned by the Council will be generally known to neighbours or because it is part of a known council housing estate.

**5.3.4** The Commissioner is willing to accept that in theory there may be particular properties which are not generally known to be owned by the Council, the disclosure of the addresses of which might result in unfairness to some individuals. If for instance, the Council had housed some vulnerable individuals at a secret location and this fact could be inferred from the address, then the Commissioner would accept that this information could be withheld. The Commissioner has no reason to suppose that this is an issue although recognition of the risk is reflected in the steps specified in the next section of the Notice.

**5.3.5** Given the low sensitivity of the information requested and the absence of any unfairness to the individuals concerned, notwithstanding the Council's reservations





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about the likely content of any mailing which the complainant may make, the Commissioner is satisfied that any processing of personal data could be carried out in reliance on Condition 6 of Schedule 2. This provides personal data may be processed lawfully if:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”

- 5.4** Although the Commissioner does not consider that the release of the requested information to the complainant would breach any of the data protection principles, he recognises that the Council continues to have some reservations. Although not part of the decision which the Commissioner is required to make under s.50 of the Act, he would not raise any objections to the Council drawing the attention of the complainant to any requirements of the general law regarding the content of mailings or to any responsibilities which he may acquire in his own right as a data controller under the Data Protection Act 1998.

## **6. Steps required under section 50(4) of the Act**

- 6.1** In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that:

Mid Devon District Council shall, within thirty days of the date of this Notice, provide the complainant with the addresses of the residential properties owned by it. The Council may exclude from the list of addresses any in respect of which data subjects have exercised their right under section 10 of the Data Protection Act 1998 to object to the disclosure of their personal data. The Council may also exclude from the list of properties any addresses whose disclosure to a member of the public might reasonably be considered likely cause distress to any resident of those properties. If any such exclusions are made, the Council must give a fresh refusal notice to the complainant, stating the exemptions in the Act upon which it relies.



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## **7. Right of Appeal**

7.1 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](mailto:informationtribunal@dca.gsi.gov.uk)

7.2 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 fourth day of May 2006**

**Signed .....**

**Graham Smith**  
**Deputy Commissioner**

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