



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 5 June 2006

Public Authority: Waveney District Council

Address: Town Hall
High Street
Lowestoft
Suffolk
NR32 1HS

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has dealt with the Complainant's request in accordance with Part I of the Act

- 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 whether, 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 - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.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.



2. The Complaint

2.1 The Complainant has advised that on 14th July 2005 the following information was requested from the Public Authority in accordance with section 1 of the Act.

2.2 "... a list of members of the newly created Shadow Housing Board"

2.3 The Public Authority responded to this request on the 21st July 2005 by providing a list of names sitting on the Shadow Board. The Public Authority gave details of the Shadow Housing Board's composition breaking it down into its Councillor Members, Tenant Members and Independent Members. The Public Authority also gave details of political parties to which Councillor Members on the Shadow Board belonged.

The Public Authority's response also advised that the Councillor Shadow Board Members could be contacted "at their usual contact addresses" and gave an internet website address from which their contact addresses could be obtained.

The Public Authority's response did not provide addresses of any individual Tenant or Independent Members on the Shadow Housing Board. The Public Authority instead provided intermediary contact details to whom any correspondence relating to the Tenant and Independent Members could be sent. The intermediary was stated to be a Lead Officer. The Lead Officer appears to be an officer of the Public Authority.

2.4 On the 25 July 2005 the Complainant subsequently requested:

(By reference to the Shadow Board Members to be) "provided with the full addresses of the Tenant and Independent Members"

2.5 On the 3 of August 2005 the Public Authority issued a refusal notice. The refusal notice stated that the (subsequently requested) information "was personal data about an individual whose disclosure would breach the data protection principles in the Data Protection Act 1998. The Public Authority accordingly relied upon Section 40(2) of the Act which it stated was an absolute exemption from disclosure of the subsequently requested information.

2.6 An internal review carried out by the Public Authority was communicated to the Complainant via letter of 12 October 2005. The internal review upheld its previous refusal notice on the same basis.

2.7 The Complainant alleges that: he has not been provided with the names and addresses of the Tenant Members and Independent Members of the Shadow Housing Board to which he believes he is entitled.



The Complainant asserts that the Shadow Housing Board oversees the spending of some public money and makes decisions affecting the Public Authority's tenants. Accordingly the Complainant believes that the full names and addresses of the members serving on the Board is the minimum amount of information required to enable them to be properly identified to members of the public and to meet proper standards of public accountability.

3. Relevant Statutory Exemptions under the Act

3.1 The Public Authority has applied Section 40(2) of the Act as an exemption from disclosure of the requested information.

Section 40(2) of the Act states:

"40. - (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, 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)."

3.2 Interpretation of the above is applied per subsection (7) as below:

"(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."

- 3.3. To summarise under Section 40(2) of the Act any information to which a request for information in which the applicant is not the data subject would be exempt from disclosure if to do so would contravene any of the data principles (the "Principles") set out in Part I of Schedule 1 of the Data Protection Act 1998 or would be exempt if the information would have been exempt from disclosure had it been requested by the data subject.

Any information falling within Section 40(2) is subject to an absolute exemption. Accordingly any public authority seeking to apply Section 40(2) need not consider the public interest if the exemption can be applied

4. Review of the case

- 4.1 The Commissioner has considered all of the correspondence provided to him as referred to above.

Specifically the Commissioner has also had regard to the time period of replies, and also the basis for the exemption relied upon by the Public Authority.

- 4.2 In view of the nature of the information sought, the Commissioner also considered the availability of the requested addresses of Tenant and Independent Members of the Shadow Housing Board by other means.

Specifically the Commissioner investigated whether the address details might be contained in the Register of Interests required to be held by the Public Authority under and in accordance with the Model Code of Conduct established by the Standards Board of England.

The Commissioner made direct enquiries of the Standards Board of England, the Public Authority's Monitoring Officer and the Complainant.

Based on his enquiries and representations made to him the Commissioner is satisfied that the Tenant and Independent Members of the Shadow Housing Board are not bound to declare their address details on a register open to public inspection.

5. The Commissioner's Decision



Application of Section 40(2)

- 5.1 The Commissioner is satisfied that the Public Authority has complied with the first part of the complaint having communicated to the Complainant the names of the Tenant and Independent Members of the Shadow Housing Board appointed as at the date of the Complainant's first request of the 14 July 2005. The names were communicated to the Complainant in the Public Authority's letter dated the 21 July 2005.
- 5.2 The Commissioner is satisfied that the addresses of Tenant and Independent Members of the Shadow Housing Board requested amount to personal data as defined under Section 1(1) of the Data Protection Act 1998.

Having concluded from his own enquiries that the address details of the Tenant and Independent Members of the Shadow Housing Board are not required to be entered onto the Public Authority's Register of Interests, the Commissioner considers that the individuals concerned should be able to serve on the Shadow Housing Board without their private addresses being made available to the general public. The Commissioner considers that it is sufficient for official business that business contact details are made available as in this instance.

The Commissioner is satisfied, in other words, that disclosure of the personal data would contravene the first Principle of the Data Protection Act 1998 in that disclosure would be unfair and unlawful processing of personal data.

In having regard to the first Principle the Commissioner does not consider any of the conditions set out in Schedule 2 of the Data Protection Act 1998 have been met so as to legitimise the processing of the personal data.

Other matters

- 5.3 Although not directly covered by the provisions of the Act, the Commissioner has also considered the way in which the Public Authority has handled the request for a review of its refusal of the complainant's request for information.

Although the Public Authority has carried out an internal review following a formal complaint by the Complainant, the Commissioner is dissatisfied with the Public Authority as to the length of time taken to communicate the results of such a review.

Specifically the Complainant made a formal complaint to the Public Authority on the 11 August 2005 and the result of the complaint was sent in a letter to him dated 12 October 2005, some 8 weeks later.

Pursuant to Section 45 of the Act the Secretary of State for Constitutional Affairs has issued a Code of Practice ("the Code") for public authorities such as the Public Authority to follow. The Code provides guidance as to desirable practice for a public



authority to follow in connection with the discharge of its functions under Part I of the Act.

In accordance with Paragraph 39 of the Code the complaints procedure "should encourage a prompt determination of the complaint". In this instance while the Commissioner accepts that the Public Authority's complaints procedure may encourage such expedition, he finds that the Public Authority has not acted within such a spirit. The Commissioner finds 8 weeks to be an excessive period of time to make a determination upon a single issue. However this is not in itself a contravention of the Act.

6. Action Required

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 does not require the Public Authority to take any further steps.

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

- 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.

FS50103031



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Dated the 5th day of June 2006

Signed

**Phil Boyd
The Assistant Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**