

Freedom of Information Act 2000 (Section 50)

Decision Notice

22 June 2010

Public Authority: Borough of Poole Council
Address: Civic Centre
Poole
BH15 2RU

Summary

The complainant requested the Council to release the addresses of properties where the Council Tax payer had 'gone away' owing Council Tax in excess of £1000 for the accounts period 2008/2009. The Council refused to disclose this information citing section 40(2) of the Act. The Commissioner has investigated the complaint and concluded that disclosure of the requested information would breach the Data Protection Act and therefore that the Council was correct to rely on section 40(2) of the Act.

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. On 4 April 2009 the complainant contacted the Council to make the following information request:

"I believe that Council Tax payers have a legitimate right to know the addresses of the properties where the Council Tax payer has 'gone away' owing Council Tax in excess of £1000 which is grossly unfair on [the] rest of Poole's residents who struggle to pay this."

3. The Council responded on 7 April 2009. It stated that it is of the view that the address of a property is personal information which could be used to identify an individual and for this reason the requested information is not published.
4. The complainant contacted the Council on 6 September 2009 to request an internal review. He clarified that he required the requested information for the account year running up to 31 March 2009.
5. The Council responded on 9 October 2009. It confirmed that for the accounts period 2008/2009 there were three individuals who were no longer residents of the borough who had 'gone away' with outstanding council tax debts of £1000 or more. It informed the complainant that it felt the disclosure of the addresses of these properties would breach the Data Protection Act 1998 ('the DPA').
6. A further response was issued by the Council on 23 November 2009. This advised the complainant to refer the matter to the Commissioner if he remained dissatisfied.

The Investigation

Scope of the case

7. On the 25 November 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the Council's decision to withhold the requested information under the Act.
8. During the Commissioner's investigation the complainant referred to information he had obtained from the Council's website which disclosed the names and addresses of properties subject to council tax arrears which had been written off in June 2009. Although of interest, this information has not been taken into account by the Commissioner when reaching his decision. This is because this information post dates the request and the statutory time for compliance. When making decisions of this nature, the Commissioner will only consider the circumstances at the time of the request or at least by the time of compliance with sections 10 and 17 of the Act i.e. 20 working days from the receipt of the request which in this case was 4 May 2009.

Chronology

9. The Commissioner wrote to the Council on 30 November 2009 to request a copy of the withheld information.
10. The Council responded on 17 December 2009 providing the addresses of the three properties concerned. It reiterated that it felt disclosure of this information under the Act would breach the DPA.
11. The Commissioner wrote to the Council on 17 February 2010 to request some additional information. As the Council had previously referred to disclosure breaching the DPA, he assumed that it wished to rely on section 40(2) of the Act and requested further more detailed arguments to support the application of this exemption.
12. The Council responded on 23 March 2010 explaining in further detail why it is of the view that the requested information is exempt from disclosure under section 40(2) of the Act.

Analysis

Exemptions

Section 40(2) – personal data

13. Section 40(2) of the Act states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the DPA.
14. In this case, the Council argued that the requested information is the personal data of a third party and that disclosure under the Act would breach the first data protection principle of the DPA.
15. Firstly, the Commissioner must consider whether the requested information is personal data. Personal data is defined in Section 1 of the DPA as follows:

““personal data” means 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.”

16. Following the Information Tribunal's decision in the case of *England and London Borough of Bexley v Information Commissioner (EA/2006/0060 & 0066)*, the Commissioner is satisfied that the address of a residential property constitutes personal data for the reasons explained below.
17. If the address of a property is known, it is possible in many cases to identify the owner and if rented the name of a tenant from other information which is in the public domain, for example, Land Registry, the electoral roll or talking to neighbours of that property. More obviously, in the hands of the Council itself it is possible to identify an owner and/or tenant from the address of a property, as the addresses of properties are held with ownership details on the Council Tax register.
18. Secondly, the Commissioner must establish whether disclosure of that data would breach any of the data protection principles under the DPA. As stated above, the Council claimed that disclosure would breach the first data protection principle.
19. The first data protection 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 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.”
20. In its submissions to the Commissioner, the Council argued that disclosure in this case would not only release the address of three properties from which a living individual could be identified but would also release the fact that those individuals had defaulted on their Council Tax liabilities. Disclosure would effectively be releasing information about a small sub-set of properties which have been identified for a particular reason. The Council confirmed that disclosure would be invasive and breach the privacy of the individuals concerned.
21. The Commissioner has given this matter careful consideration. He accepts that from the address of a property an individual can be identified and that disclosure in this case would also say something

- about those individuals i.e. that they have defaulted on their Council tax liabilities. Disclosure could also lead to other presumptions being made about those individuals, for example, that those individuals are experiencing financial difficulties or are bad debtors. Releasing this type of information about a select number of individuals into the public domain would be unfair and could cause these individual's undue distress.
22. It is the Commissioner's view that an individual's financial liabilities are a personal and private matter and that disclosure in this case would release specific information relating to the private lives of those individuals concerned. The Commissioner has made a distinction between information which relates to one's public life and information which relates to one's private life in other Decision Notices he has issued on section 40(2) of the Act. It is generally his view that information relating to one's private life should not be disclosed as this would be unfair and an inappropriate intrusion into the private life of that individual.
 23. As an individual's financial affairs are a private and personal matter, the Commissioner accepts that the individuals concerned in this case would have a reasonable expectation that the requested information would not be released into the public domain unless this were to happen as a result of formal legal proceedings for the recovery of unpaid Council Tax of which the individuals would be given notice.
 24. The Commissioner accepts that there is a legitimate interest in the disclosure of this type of information. He accepts that Council Tax is a substantial liability for many members of the public and that there is therefore an interest in obtaining information from public authorities regarding outstanding Council Tax liabilities and those debts that are written off. However, the Commissioner notes that in this case the Council is already open and transparent about the way Council Tax is written off and publishes quarterly on its website the amounts it had decided to write off. As explained previously in this Notice, it would more than likely be possible to identify the three individuals in this case from the addresses of the properties concerned if this were released. Disclosure would therefore effectively "name and shame" certain individuals for allegedly having defaulted on their Council Tax and this would be an unwarranted intrusion into their private lives.
 25. For the reasons explained above, the Commissioner is satisfied that disclosure of the requested information would be unfair and in breach of the first data protection principle. He has therefore concluded that section 40(2) of the Act is engaged in this case.

26. As section 40(2) of the Act is an absolute exemption, there is no need for the Commissioner to go on and consider the public interest test.

Procedural Requirements

27. The Council's Refusal Notice dated 7 April 2009 was inadequate and did not conform to the requirements of the Act. Section 17(1) of the Act stipulates that if a public authority wishes to claim that information is exempt information it should provide the applicant with a notice that states that fact, specifies the exemption in question and why that exemption applies. Although the Council wished to rely on section 40(2) of the Act, its Refusal Notice did not state this fact or explain why this exemption was engaged. The Commissioner has therefore found that the Council was in breach of section 17(1) of the Act in this case.
28. Section 17(7) of the Act also stipulates that the Refusal Notice should inform the complainant of his right to request an internal review and of the public authority's procedure for dealing with such complaints. It also stipulates that the Refusal Notice should inform the complainant of his right to refer the matter to the Commissioner under section 50 of the Act. The Commissioner notes that the Council's Refusal Notice did not contain this information. He has therefore found that the Council was in breach of section 17(7) of the Act in this case.

The Decision

29. The Commissioner's decision is that the Council dealt with the following elements of the request in accordance with the requirements of the Act:
- it acted appropriately by withholding the requested information under section 40(2) of the Act.
30. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- it breached section 17(1) of the Act by failing to issue an adequate Refusal Notice to the complainant which stated clearly the exemption it wished to rely on and why it applied; and
 - it breached section 17(7) of the Act by failing to inform the complainant in the Refusal Notice it issued of his right to request an internal review and of his right to refer the matter to the Commissioner under section 50 of the Act.

Steps Required

31. The Commissioner requires no steps to be taken.

Other matters

32. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Concerning the complainant's request for an internal review, the Commissioner notes that the Council took over 20 working days to respond. The complainant's request was made on 6 September 2009. However, the Council did not respond until 9 October 2009.
33. There is no timescale laid down in the Act for a public authority to complete an internal review but the Commissioner has issued guidance which recommends 20 working days from the date of request as a reasonable time for completing an internal review and (in exceptional circumstances) no more than 40 working days. Also, Part VI of the Code of Practice issued under section 45 of the Act states in this regard:
- "41. In all cases, complaints should be acknowledged promptly and the complainant should be informed of an authority's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the authority should inform the complainant and explain the reason for the delay."*
34. The Commissioner notes that, in failing to advise the complainant of the estimated date for completion of the internal review and in failing to complete the internal review within a reasonable timescale the Council failed to conform to Part VI of the section 45 Code of Practice.

Right of Appeal

35. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 22nd day of June 2010

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Freedom of Information Act 2000

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."

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."

Data Protection Act 1998

Definition of personal data

"“personal data” means 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.”

First data protection principle

“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.”