

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2012

Public Authority: Exeter City Council

Address: Civic Centre
Paris Street
Exeter
EX1 1JN

Decision (including any steps ordered)

1. The complainant requested the following information:
 - A list of all the residential and business properties owned or leased by Exeter City Council ("the Council")
2. The Council provided the information relating to business properties and withheld the information relating to residential properties.
3. The Information Commissioner's ("the Commissioner") decision is that the Council incorrectly withheld the requested information relating to residential properties.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the Freedom of Information Act ("the FOIA").
 - It should disclose the requested withheld information to the complainant.
 - The Council may exclude from the list of addresses any property which is used to house individuals requiring protection in a secret or confidential location and which is owned by the Council for this purpose.
5. The public authority 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 31 August 2010 the complainant wrote to the Council and made his request as follows:

“Your Decision party made formal request to have the complete list of all property, residential and business, owned by Exeter City council.

The party request also to have the complete list of all property, residential and business, leased or rented to Exeter City council.”

7. The Council responded on 24 September 2010 and provided a list of the commercial properties it owned, leased and rented. The Council explained that it refused to disclose the same information for residential properties because it was exempt from disclosure under section 40(2) of the FOIA as it was personal information.
8. The complainant informed the Commissioner that he did not receive this response and therefore chased a response to his request in a letter dated 13 April 2011. The Council repeated its earlier response on 21 April 2011.
9. On 13 May 2011 the complainant requested an internal review of the Council's decision.
10. The Council responded on 16 June 2011 maintaining its position.

Scope of the Case

11. The complainant contacted the Commissioner to complain about the way his request for information had been handled by the Council.
12. The Commissioner's investigation considered whether the Council's application of the section 40(2) exemption was correct.

Reasons for decision

Section 40(2) – Third party personal data

13. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 2 of the Data Protection Act 1998 (“the DPA”).

14. For clarity, the Council said that this exemption would cover the addresses of the residential properties of Council tenants because it considered such addresses to be personal data.

Is the withheld information personal data?

15. Personal data is defined by the DPA as any information relating to a living and identifiable individual. It has been established in a previous case heard by the Information Tribunal¹ that an address is personal data. Knowing the address of a property makes it likely that the identity of the person living there could be discovered using other sources of information such as the electoral roll. The Commissioner was therefore satisfied that the addresses represented personal data.

Would disclosure breach the Data Protection Principles?

16. The Data Protection Principles are set out in Schedule 1 of the DPA. The most appropriate and relevant principle in consideration of this case is the first principle which states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner balances the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations

17. The Council said that it had not advised its tenants that their addresses could be released into the public domain. It went on to explain that it considered that its tenants would expect the same rights of privacy as non-council tenants and those rights would be prejudiced if the addresses were disclosed. The Council also said that in June 2011 it had consulted an organisation that represents the views of council tenants called Tenants and Leaseholders Committee ("TALC") regarding the disclosure of council addresses. The Council stated that TALC was strongly opposed to disclosure of the information.
18. The Commissioner considered this point and decided that the council tenants are not likely to have reasonably expected this information to be disclosed. While the Commissioner notes the complainant's comment

¹ England and London Borough of Bexley v Information Commissioner (EA/2006/0060 & 0066).

that it is possible to determine the owner of a particular property using the Land Registry website, the Commissioner was not persuaded that there was any strong reason to doubt the Council's assertion that the individuals concerned would not expect their addresses to be disclosed.

Consequences of disclosure

19. The Council expressed particular concerns in relation to the disclosure of the addresses where the tenants could be considered to be vulnerable in some way due to age, disability or suffering financial constraints. It went on to explain its anxiety regarding approaches to tenants from an array of providers of goods and services who could potentially exploit their vulnerabilities.
20. The Commissioner accepts that some of the Council's tenants may be defined as 'vulnerable'. However his view is that a list of the Council's properties does not automatically identify the tenants of those properties as vulnerable. The Commissioner has taken into account that the complainant has not requested a sub-set of information which may have allowed him to deduce additional information about the data subjects.
21. The Commissioner accepts that a disclosure of a list of council properties may result in unwanted contact from vendors of goods and services. The Council cited hypothetical examples of tenants being approached by companies offering bogus or inappropriate services such as loans from unregulated companies charging excessively high rates of interest or offers to help with disrepair claims against the Council as a Landlord making offers of achieving compensation that may be unrealistic. However the Commissioner considers that such approaches could take place speculatively without the disclosure of the list.
22. The Commissioner notes the Council's concern that, if disclosed, the list may be published online. However the Commissioner would remind the Council that usually a disclosure under the FOIA is disclosure to the world at large. There are no limitations placed upon such a disclosure. Disclosure under the FOIA is not dependent on the applicant or the applicant's reason for making the request for information. However when considering the disclosure of personal data against Condition 6 in Schedule 2 of the DPA it is necessary to weigh the legitimate interests of the recipient of information against the rights of data subjects.

Would it be fair to disclose the requested information?

23. In deciding what is fair, the Commissioner balances the possible consequences of disclosure for the data subjects, including their reasonable expectations, with the general principles of accountability

and transparency and any legitimate interests arising from the specific circumstances of the case.

24. The Commissioner has relied on his earlier decisions in the following decision notices: Mid Devon District Council FS50082890 4.5.06; Braintree District Council FS50066606 3.1.07; London Borough of Waltham Forest FS50361181 19.12.11; and the Information Tribunal ('the IT') decision in Neath Port Talbot County Borough Council v Information Commissioner – EA/2011/0037. In the decision notices the Commissioner stated that: "he does not consider that there would be any general unfairness to individuals in being identified as council tenants". This consideration was reiterated in the IT decision on a related decision notice - FS50292926 - which stated that:

"disclosure would be fair because: a) the Tribunal is not persuaded that there would be any harm or distress resulting from disclosure; b) the disclosure of the disputed information will not automatically identify those who are vulnerable."

25. Taking the above factors into account, the Commissioner decided that the disclosure of the information would not be unfair because 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 information and the fact that whether a particular property is, or is not, owned by the Council will be generally known to neighbours or known because the property forms part of a recognised council housing estate. The Council is concerned that those tenants who have exercised their "right to buy" their property could be identified by exception, as not living in Council owned housing. The Commissioner does not consider that this is unfair to those occupants as the same information may be deduced about the occupants of any other property within the Council's jurisdiction.
26. The Commissioner's view is that there should be general transparency and accountability of the Council's actions. In this case disclosure of the addresses allows the public to be aware of the assets of the Council and specifically the actual housing stock owned by the Council.
27. The Commissioner accepts that there may be properties which are generally not known to be owned by the Council and therefore disclosure of such addresses may result in unfairness to some individuals. The Commissioner therefore accepts that if the Council has housed particularly vulnerable individuals in secret or confidential locations which are not "obviously in council ownership" and this fact could be inferred from the address, this information should be withheld.

28. The Council has drawn the Commissioner's attention to his own guidance with respect to condition 6 of Schedule 2 of the DPA and the three limbs of the test to be met to satisfy disclosure of personal data.
- Legitimate interests in disclosure
 - Disclosure must be necessary for a legitimate interest
 - Disclosure must not cause unwarranted interference
29. Notwithstanding the strong public interest in transparency referenced in paragraph 26 and the presumption of disclosure inherent in FOIA the Commissioner agrees that the test must be considered in each case. The Commissioner recognises that there is an important legitimate public interest in transparency surrounding council owned properties. His view is that in this case the information requested has low sensitivity and there is no significant interference with the privacy of the individuals living in council owned housing by disclosure of addresses alone without any further supplementary information such as tenant names or contact details.
30. In considering the issue of necessity, the Commissioner has considered whether there are any alternative means of meeting the identified legitimate interests and the extent to which those alternative means meet those legitimate interests. The Land Registry holds information on the ownership of properties which can be sought on line, although a charge is payable for each property search and the information is not available in an easily accessible format. The Commissioner is not satisfied that this is a ready alternative.
31. Setting aside any difficulties in respect of accessibility from the Land Registry, the Commissioner's view is that the requested information could be obtained by the public if they are minded to do so.
32. As a result of the reasoning in paragraphs 26 – 29 the Commissioner considers that disclosure of the requested information is necessary for the legitimate interest of the public in the transparency and accountability of the Council.
33. In the Commissioner's view, even where disclosure is necessary to address the legitimate public interest, it may still be unwarranted if there is a disproportionate detriment to the rights of the individuals concerned.
34. In this case the Commissioner has already concluded, when considering fairness above, that there would not be unwarranted harm or distress caused to the data subjects from the disclosure of the information.

35. The Commissioner's conclusion is that the Council incorrectly applied the exemption found in section 40(2) of the FOIA.

Section 31(1)(a) the prevention of crime

36. The Council did not rely on this exemption in its response to the complainant or in its internal review. It raised this point as an 'additional exemption' in its response to the Commissioner.
37. This exemption applies in circumstances where disclosure of the information would or would be likely to prejudice the prevention or detection of crime. It is qualified by a public interest test.
38. The Council considered that this exemption was engaged because there was a possibility that the addresses could be used to approach tenants offering "bogus" services. In support of this point the Council referred to another borough council who had been contacted by tenants complaining that they had been approached by people falsely claiming to be from the council. However, the Council did not determine whether the approaches to tenants would or would be likely to cause the prejudice relevant in this exemption. Furthermore, the Council did not provide the Commissioner with an evaluation of the public interest arguments in favour of, or against, maintaining the exemption.
39. The Prejudice Test is not a weak test. If disclosure is likely to cause prejudice a public authority must show that the likelihood of prejudice is real and significant, and certainly more than hypothetical or remote. The Commissioner's view is that the likelihood that the release of the addresses would significantly increase the number of fraudulent approaches to tenants is low. Fraudulent offers of services could be made at any time to any resident of any property whether owned by the Council or not.
40. For the reasons given above the Commissioner does not accept that disclosure of the information would be likely to prejudice the prevention or detection of crime and therefore he does not consider that the exemption is engaged.

Right of appeal

41. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

42. 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.
43. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF