

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 July 2013

**Public Authority:** Castle Point Borough Council  
**Address:** Kiln Road  
Thundersley  
Benfleet  
Essex  
SS7 1TF

#### **Decision (including any steps ordered)**

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1. The complainant has requested council tax payment information in relation to a residential property.
2. The Commissioner's decision is that Castle Point Borough Council (council) has correctly applied section 40(2) of FOIA to all of the requested information. However, as the refusal notice did not specify an exemption or provide the complainant with information about its internal review process and the right to complain to the Commissioner, The Commissioner has found that the council breached section 17 of the FOIA.
3. The Commissioner does not require the council to take any steps.

#### **Request and response**

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4. On 14 October 2010, the complainant wrote to the council and requested information in the following terms:

*"I would be grateful for any information you would give me regarding continuity of Council Tax payment for the property known as [Property name]."*

5. The council responded on 01 November 2010. It stated that:

*"Under the Data Protection Act 1998 no information about a third party may be released unless it is ordered by the court."*

6. An internal review was requested by the complainant on the 14 September 2012.
7. The council provided the outcome of its internal review to the complainant on 23 October 2012. It maintained its position not to release the information as it would breach the Data Protection Act 1998 (DPA).

### **Scope of the case**

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8. The complainant wrote to the Commissioner on 24 October 2012 to complain about the way his request for information had been handled. The council originally refused the information in both the initial response and in the internal review stating only that disclosing the requested information would breach the DPA.
9. During the Commissioner's investigation the council responded to the Commissioner and stated that it refused to release the requested information under section 40(2) of the FOIA.
10. The Commissioner considers this complaint to relate to whether the council should release the council tax records of a third party living at the specified property.

### **Reasons for decision**

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#### **Section 40 – the exemption for personal data - third party personal data**

11. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles.
12. In this case, the council argued that the information requested, being council tax records, is all third party personal data of a specified person/s. The information withheld states the full name and address of the occupant/s of the property. The council also argues that the information relates to an individual's private life, in this case, their home, financial and health information and to release the information under the FOIA would not be fair processing and would therefore breach the first data protection principle. The council also state that providing information to the council for the purposes of tax collection an individual reasonably expects this information to be held for that purpose alone and not to be released to third parties. The council advises all individuals

that their data will only be shared with agencies for the purpose and identification of fraud.

13. Lastly the council state that some of the information requested is sensitive personal data. Section 2 of the DPA defines sensitive personal data as personal data which consists of information on the following:

- An individual's mental or physical health
- Their political opinions
- Their sex life
- Their racial or ethnic origin
- Their religious beliefs
- Whether they are a member of a trade union
- The commission or alleged commission of an offence by them, or
- Any proceeding for any offence they have committed or are alleged to have committed.

14. The Commissioner has considered the withheld information and is satisfied that the information is third party information and therefore falls within the definition of 'personal data' as set out in section 1(1) of the DPA as the council tax records contain the personal data of the occupant/s of the specified property. He is also satisfied that some of the information falls into one or more of the above categories and is therefore sensitive personal data as defined at section 2 of the DPA.

***Would disclosure breach one of the Data Protection Principles?***

15. The Commissioner considers that the most relevant principle in this case is the first principle.

**The first data protection principle.**

16. In determining whether a disclosure is fair under the first principle of the DPA for the purposes of section 40 of the FOIA, the Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency, as well as any legitimate interests which arise in the specific circumstances of the case.

*Reasonable expectations*

17. The complainant argued that the information requested should be disclosed on the basis that the information would help support their case that land at the bottom of the specified property owned by the complainant's father was indeed his and not that of the person who the council tax records relate to. He also considers that it was in the public interest to be made aware of the situation to prevent any further fraudulent activity of this kind by the person to whom the council tax records relate.
18. The council argues that the council tax records are considered to be personal information about a third party and that this third party would have a legitimate expectation that their council tax records would not be disclosed to a third party, or in to the public domain which is essentially what disclosure under the FOIA would represent.
19. When considering what information third parties should expect to have disclosed about them, the Commissioner considers that a distinction should be drawn as to whether the information relates to the third party's public or private life. The Commissioner's view is that information which relates to an individual's private life (i.e. their home, family, social life or finances) will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). In this case, it is clear that the withheld information relates to the individual's private life.
20. The Commissioner considers that information held in council tax records contains financial information and sensitive personal data about an individual/s, and as such there would be a reasonable expectation on the part of the individual who the council tax records relate, that this information would not be disclosed into the public domain. In addition to this, the council has explained that individuals are informed that their data will only be shared with agencies for the purpose and identification of fraud. This strengthens an individual's reasonable expectation that their council tax information would not be disclosed to the world at large.

*Consequences of disclosure*

21. The council considers that the consequence of disclosure of this information is potentially damaging to the individual/s as the complainant intends to use the information to pursue a civil claim against them.
22. The Commissioner considers that disclosure of the information could cause considerable unwarranted distress to the individual/s as it would

essentially be putting their council tax information into the public domain for all to see. This is particularly the case given that some of the withheld information constitutes sensitive personal data about the individual/s.

*Legitimate interests of the public*

23. Although the exemption contained in section 40(2) if found to be engaged is absolute and therefore not subject to the public interest test, the Commissioner will still consider legitimate interests in favour of disclosure.
24. The council argues that while the information is of particular interest to the complainant it is not in the general public interest. The council argues that an individual's council tax records which would show council tax paid by an individual for specific periods, any absences of the property and exemptions for council tax or benefits received is not a matter of public interest. On the contrary the council states that it is in the public interest to maintain a level of confidence that the council will securely hold this information and not provide it to any third parties who request it to ensure public confidence in local authorities' data management.
25. The complainant argues that the information should be released as it is in the public's interest that the individual/s in question are shown to have committed fraud.
26. The Commissioner does understand there is a high personal interest for the complainant to gain the information however it is not in the wider public interest to know the personal information held in a specific individual's council tax records. The Commissioner agrees with the council's argument that it is in the public interest to maintain a level of confidence that the council will securely hold this type of information and not provide it to any third parties who request it thus ensuring public confidence in local authorities' data management.

**Conclusion**

27. Having considered all the circumstances of the case, the Commissioner has concluded that it would be unfair to the individual/s concerned for the council to disclose the information and to do so would contravene the first principle of the DPA.

## **Procedural breaches**

### **Section 17(1)**

28. Section 17(1) of the FOIA states 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.
29. Neither in the refusal letter dated 1 October 2010 or the internal review dated 23 October 2012 did the council advise of any exemption that it was relying on to refuse the information other than to state it would breach the DPA to release the information. Therefore the Commissioner finds that the council has breached section 17(1) of FOIA.

### **Section 17(7)**

30. Section 17(7) advises that a refusal notice must contain particulars of any procedure provided by the public authority for dealing with complainants about the handling of requests for information or state that the authority does not provide such a procedure. It must also contain the particulars of the right conferred by section 50 for the requester to raise a complaint with the Commissioner.
31. The council did not inform the applicant in its refusal letter dated 1 October 2010 of any procedures it has for dealing with complaints about the handling of the request. This led to the excessive delay of almost two years between the request and conducting the internal review. Therefore the Commissioner finds that the council has breached section 17(7) of FOIA.
32. The Commissioner does not require the council to take any steps in relation to these breaches in this case. However, he would like to take this opportunity to remind the council of the need to comply with section 17 in future requests to ensure that a delay of this scale in conducting internal reviews is not repeated.

## **Right of appeal**

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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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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.

**Signed .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**