

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2015

Public Authority: London Borough of Hillingdon
Address: Civic Centre
High Street
Uxbridge
Middlesex
UB8 1UW

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Hillingdon ("the Council") relating to a residential property being used as a commercial premises.
2. The Commissioner's decision is that the Council has correctly applied section 40(2) of the FOIA to the request.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 8 January 2015, the complainant wrote to the Council and requested information in the following terms:
"All Council reports with regard to [redacted address] being used as commercial premises including the Council's actions, if any, to stop the constant commercial use of this property".
5. The Council responded on 5 February 2015. It explained that the requested information was exempt under section 40 of the FOIA.
6. Following an internal review the Council upheld its previous decision.

Scope of the case

7. The Commissioner received a complaint from the complainant on 17 March 2015.
8. Specifically, the complainant disputed the Council's application of section 40 of the FOIA to the request.
9. The Commissioner has had to consider whether the Council was correct to withhold the requested information under section 40 of the FOIA.

Reasons for decision

10. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the Data Protection Act 1998 (the "DPA") states that personal data must be processed fairly and lawfully.
11. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.
12. The withheld information consists of information relating to an individual's residential property.
13. The Commissioner is satisfied that information relating to whether a residential property is being used as a commercial premises is the personal data of the individual living at that property. The Commissioner considers that the requested information relates to a living individual who may be identified from that data. The requested information therefore constitutes personal data.

Would complying with section 1(1)(b) contravene the first data protection principle?

14. The first principle of the DPA states that personal data must be processed fairly and lawfully.
15. In considering whether it would be unfair to provide the requested names and whether this would therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:

- the consequences of disclosure;
- the data subjects' reasonable expectations of what would happen to their personal data; and
- the balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

Reasonable expectations

16. The Council has explained that the data subject had no choice but to engage with the Council in order to respond to the complaints that were raised about the potential commercial use of his property. It also explained that the data subject was not informed that the information relating to the complaints would be disclosed and there was a reasonable understanding that it would be held in confidence. The Council therefore argued that the data subject would have no reasonable expectation that the information requested would be disclosed in response to an information request.

Consequences of disclosure

17. The Council has explained that if the information was disclosed, it would cause distress to the complainant as it would not be in his reasonable expectations that this information would be disclosed to the public in response to an information request.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

18. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
19. The complainant explained to the Commissioner that complaints have been made to the Council over a long period of time about the property being used as a commercial premise. He also argued that there is no evidence that the Council has taken any action to stop these activities by the owner of the property. He explained:

"These documents requested from London Borough of Hillingdon are an intrinsic part of the Complaint made and as such would not be in breach of the Data Protection Act 1998 as they will show the steps if any that London Borough of Hillingdon has taken or is taking to stop the constant commercial use of this Residential Property".

20. The Commissioner acknowledges that the complainant has an interest in the information that has been withheld. However, the Commissioner acknowledges that information relating to whether a residential property is being used as a commercial premises is the personal data of the individual living at the property and he has considered whether there is a pressing social need for this information to be disclosed. His decision is that the information would not be of interest to the public.
21. The Commissioner has been unable to identify any legitimate public interest that is more compelling than protecting the rights of the individual whose personal data is subject to the request.
22. On the basis that the data subject would hold a reasonable expectation that this personal data would not be disclosed, and that disclosure despite that expectation would result in distress, combined with the absence of a legitimate public interest that is strong enough to make disclosure necessary, the Commissioner finds that disclosure would be unfair and in breach of the first data protection principle.
23. The Commissioner's overall conclusion is, therefore, that the exemption provided by section 40(2) of the FOIA is engaged and the Council was not obliged to disclose this information.

Right of appeal

24. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Rachael Cragg
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Wilmslow
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SK9 5AF