

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2015

Public Authority: London Borough of Islington
Address: Town Hall
Upper Street
London
N1 2UD

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Islington ("the Council") relating to the reasons behind why a specific property was allowed an extension of time to buy the freehold.
2. The Commissioner's decision is that the Council has correctly withheld the information under section 40(2) of the FOIA.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 17 August 2015, the complainant wrote to the Council and requested the following information:

In 2007 London Borough of Islington announced that it would sell off its commercial property portfolio. I understand the purchasers of [redacted information] was granted an extension to the deadline to buy the freehold. Please provide me with a copy of all recorded information held by the Council in relation to the reasons why the purchaser of [redacted information] was granted an extension to complete the purchase of the property. [redacted information] that I got more time than anyone. My bank phoned on the 16th to be told the money was to be by 11 o clock. My bank could not guarantee the time but it would have been that day.

5. On 18 August 2015, the complainant submitted another information request to the Council for the following information:

In 2007 London Borough of Islington announced that it would sell off its commercial property portfolio, At the time leaseholders "[...]" to match a price to buy their property. The deadline was the 10th August but many leaseholders broke the deadline and exchanged on the 15th. I got a further extension on the 15th between 5/6pm until 11 o clock on the 16th. The bank could not guarantee the money by 11 but phoned the council and said the money will be in the chaps but can't guarantee a time but certainly that day. They were told a deadline was at 11 o clock I was then told about 216 pro ex "[...]" before the 16th. I since found out [redacted information] exchanged after the 16th. How can this be fair. I want to know the reason for this.

6. The Council responded and applied section 40(2) to both requests.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. Specifically he disagreed with the Council's application of section 40 to the information he sought.
8. The Commissioner has had to consider whether the Council was correct to apply section 40(2) to the requested information.

Reasons for decision

9. Section 40 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.
10. Taking into account his dual role as regulator of both the FOIA and the Data Protection Act 1998 (the "DPA") the Commissioner has considered whether the Council was correct to withhold the reasons why a specific property was allowed an extension of time to buy the freehold under section 40(2).

Is the withheld information personal data?

11. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

"...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 data controller or any person in respect of the individual..”

12. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
13. The information sought in the requests relates specifically to why an individual in a property got an extension of time to buy their property. As the requests identify the property, the Commissioner considers that if the requested information was disclosed, the individual living at the property could be identified. Further to this, the complainant has knowledge of the data subject and the property and therefore the data subject would be identifiable to the complainant.
14. The Commissioner is therefore satisfied that information sought is personal data in accordance with section 1 of the DPA.

Would disclosure breach the data protection principles?

15. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
16. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

17. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
18. The Council explained that the data subject would have a reasonable expectation that it would process their personal data securely and with confidentiality and in line with the DPA.

The consequences of disclosure

19. When considering the consequences of disclosure, the Council explained that disclosure of the requested information would be a breach of a third party's personal data. It further argued that there was a risk that releasing the information may cause distress to the data subject.
20. The Council advised the Commissioner that it was not prepared to contact the data subject to seek consent to disclosure of the requested information. It explained that due to the time that has elapsed, it may not have the correct contact details. It also explained that contacting the data subject for consent may be distressing for them.

The legitimate public interest

21. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms or legitimate interests 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.
22. The Commissioner acknowledges that the complainant has an interest in the requested information. However the Commissioner must consider the legitimate public interest in the requested information rather than the interests of the requester. The Commissioner considers that there is very little public interest in the requested information, other than the interests of the complainant.
23. The Commissioner has reviewed the withheld information and he accepts that disclosure of the information would reveal a data subject's personal data and it would not be in the legitimate public interest for this information to be disclosed.
24. On this basis, the Commissioner has determined that the Council was correct to apply section 40(2) to the request.

Right of appeal

25. 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

26. 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.
27. 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

Chris Hogan
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