

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2016

Public Authority: Nottingham City Council
Address: Guildhall
Nottingham
Nottinghamshire
NG1 4BT

Decision (including any steps ordered)

1. The complainant has requested details of information held by the authority as regards a legal action for non-payment of business rates by a charity. Some information was disclosed by the council however some information was withheld under section 40(2) (personal data). The council also confirmed that it did not hold some information. During the course of the investigation the council disclosed some information which it had initially decided to apply section 40(2) to, but continued to withhold a small amount of information.
2. The Commissioner's decision is that the council has correctly applied Regulation 40(2) to the information. He has also decided that on a balance of probabilities the council was correct to say that it does not hold further information requested by the complainant.
3. The Commissioner has however decided that the council failed to comply with the requirements of section 10(1) in that it failed to disclose information to the complainant within 20 working days of the receipt of the request.
4. The Commissioner does not require the council to take any steps.

Request and response

5. On 19 May 2015 the complainant wrote to the council and requested information in the following terms:

*"1. All copies of the signed leases in relation to the above account or any other account in the name of Conserve Africa foundation
2. All correspondences from [name redacted] or any other claiming to represent Conserve Africa Foundation and from the landlord who contacted the Council to let them know that Conserve Africa is renting the property and is liable for business rates, e.g. the person who contacted the Council in the first place or who signed the leases
3. How much business rates were charged to Conserve Africa Foundation and for what each period?
4. What is the value of the properties?
5. Amount awarded for business rates relief
6. Rateable value for each property
7. The contact details of the landlord (name, telephone No, email address and postal address of the landlords)
8. Total charges and rateable values for the period of 2012-2016
9. Amount of empty property charges
10. Total liability for each property
11. Total amount already paid for each property
12. The address of the properties
13. Outstanding business rates to pay
14. Details of any other account in the name of Conserve Africa Foundation.
15. The Receipt and the details of the person who paid the court fees about the winding petition against Conserve Africa Foundation (Court Ref [redacted])"*

6. The council responded on 17 July 2015. It responded in the following terms:

1. Council does not hold the relevant information
2. Information provided to complainant redacted under s 40(2)
3. Information provided
4. Council does not hold the relevant information
5. Information provided
6. Information provided
7. Withheld under section 40(2)
8. Information provided
9. Information provided
10. Information provided in response to request 3
11. Information provided in response to request 3
12. Information provided in response to request 3
13. information provided
14. information provided
15. information not held

7. Following an internal review the council wrote to the complainant on 15 October 2015. It upheld its previous position.

Scope of the case

8. The complainant contacted the Commissioner on 19 September 2015 to complain about the way his request for information had been handled. He considers that the council would hold at least some of the information which he had requested. He also considers that the council was not correct to apply section 40(2) to withhold personal data.
9. The Commissioner considers that the complaint is that the council was not correct to apply section 40(2), and that the complainant considers that the council will hold more data falling within the scope of his request.

The landlords

10. The council initially withheld the names of the landlords who own the properties which were leased by, or on behalf of the Conserve Africa Foundation by the former trustee. The council withheld this information under section 40(2). The council holds this information as it was informed of the lease and the agreement that liability for business rates should be transferred to Conserve Africa.
11. During the course of the Commissioner investigation the council confirmed to the Commissioner that it had disclosed the names and addresses of the individuals which it held in respect of the landlords of the relevant properties on 4 February 2016. It also confirmed to the Commissioner that this was the only information it held about the landlords which it had previously withheld in respect of the requests for information. The Commissioner has not therefore considered the application of section 40(2) to the information about the landlords, other than his consideration of section 10 below.

Other complaints

12. The complainant has made a large number of further complaints (and sent in voluminous amount of further information) to the Commissioner since the scope of his complaint was first set out to him, and since the investigation of his complaint began.
13. For the absence of doubt these additional matters have not been considered further in this decision notice. The decision notice only considers the request made to the council on 19 May 2015 and the subsequent response and internal review response.

Reasons for decision

A brief background

14. The Conserve Africa Foundation (Conserve Africa) is a charity which was wound up in August 2015 following unpaid debts. The complainant believes that the debts resulted due to a trustee of the charity entering into a lease for a particular property and thereby incurring liability for business rates when the council refused to accept that the property was subject to charitable relief on business rates. The complainant argues that the trustee was acting without proper authority to do so from the charity, and that liability for the property should not therefore have been passed on to Conserve Africa. He argues that the trustee had not informed the director or other trustees of the charity of the lease nor the liability issues which arose as a result of the lease. He believes the council should have carried out proper checks that the trustee had the proper authority to enter into the agreement prior to shifting liability for business rates from the landlord to Conserve Africa. Part of his research into this is the evidence which the council had available when transferring liability for business rates from the landlord to the charity.

Section 1(1)(a)

15. Section 1(1)(a) of FOIA states that

"Any person making a request for information to a public authority is entitled –

to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(a) if that is the case, to have that information communicated to him."

16. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
17. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

18. The Commissioner therefore wrote to the council asking it a number of questions relating to the searches it had carried out in order to determine that a copy of the lease was not held.
19. The council provided the following in response to the Commissioner's questions.
20. The council said that in response to the request it had carried out searches in Northgate, its system to manage non-domestic business rates information, and Images, which is the electronic document management system which underpins Northgate and holds physical documents related to a non-domestic business rate account.
21. The council said that it does not retain information in paper form. All documentation is scanned on to Northgate and Images. All searches were therefore carried out for information held electronically.
22. The council confirmed that no officers hold information on personal drives or laptops. All relevant information would be on Northgate or Images.
23. The searches were carried out using search terms such as the property reference number in Images, and for Northgate, the account number or the name of the organisation. The key official also conducted a search of their email using the name of the organisation, the requestor and the named person within the request.
24. The council confirmed that information falling within the scope of questions 1 and 15 has never been held by the council where it has indicated that it does not hold relevant information.
25. The council confirmed that it holds a records management policy. It said that it is not a statutory requirement for it to obtain a copy of the lease (question 1) and as such there is no business purpose for it to hold this information.
26. The Commissioner has considered the response of the council. He considers that given the details of the searches carried out by the council and its confirmation that for some information (such as the lease) it would have no business reason for holding the information then the council was correct, on a balance of probabilities, to state that it does not hold the information.

Section 40(2)

27. The council has withheld the name of one individual as regards part 2 of the request in addition to the name of the landlords which the

complainant requested. It has also withheld the name of the landlord as regards part 7 of the request. In both cases it applied Regulation 40(2).

28. Section 40(2) of the Act states that:

"Any information to which a request for information relates is also exempt information if-

(b) it constitutes personal data which do not fall within subsection (1), and

(c) either the first or the second condition below is satisfied."

29. 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...

30. The Commissioner has considered the most relevant data protection principle, which in this case is the first data protection principle. 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."

31. In his approach to the application of the first data protection principle the Commissioner concentrates in the first instance on whether the disclosure of the information would be 'fair'. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject, and the potential consequences of disclosure and balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

32. The council retained its application of section 40(2) for the information falling within part 2 of the request, (other than the names of the landlords).

33. The council has disclosed the correspondence which it holds however it has withheld the identity of one person from disclosure under section 40(2). It should be noted that the complainant will in all likelihood be able to identify the individual due to his dealings on behalf of the charity. He has made similar requests to other authorities where the Commissioner is aware that relevant information has been disclosed to him outside of the Act. In this sense the redaction of the information in the council's formal response is ineffective in preventing a disclosure of the identity of the individual to him, and the council is fully aware that that is the case.
34. However a personal ability to identify the individual from information already in their possession does not prevent the application of the exemption in this case. Responses to FOI requests as considered to be to the whole world rather than simply to the individual applicant for the information and the Commissioner (and the council) must consider the request as if it had been made by any member of the public. It cannot take the complainant's personal knowledge into account as a reason for to dis-apply section 40(2) where it would otherwise be applicable.
35. The council has firstly considered the expectations of the individual concerned. The Commissioner considers that the expectation of the individual would be that the information may be disclosed to senior managers and directors at the Conserve Africa Foundation if they had asked for it. The individual was ostensibly entering a contract on behalf of the charity and the reason for the correspondence was to confirm to the council a change of business rate liabilities and to put forward a claim for charitable relief.
36. However this expectation would not extend to a disclosure of their identity to the whole world in response to an FOI request, particularly under the circumstances of this case. The council argues that the complainant has made allegations about the individual which has led it to consider that the outcome of any disclosure would be likely to be an investigation. Whilst the Commissioner cannot comment on this, it is clear that the complainant is unhappy at the actions taken by the individual and a disclosure of the information under FOI is likely bring his allegations further into the public domain, to the detriment of the individual.
37. The information relates to an individual who no longer works for the charity, and therefore they are no longer acting in a public capacity in respect of the Conserve Africa Foundation. Again therefore the individual would not expect a disclosure of their identity under FOI to take place.

38. Given the nature of the allegations and the obvious acrimony between the parties, the council said that it had not sought the consent of the individual to the disclosure.
39. The Commissioner has considered the above and agrees with the council that the individual would have no expectation that their identity would be disclosed tied to the allegations made by the complainant in response to an FOI request.
40. The Commissioner has also considered whether the general public might have a legitimate interest in receiving that information which would be outweigh the expectations of the individual that that information would remain private. The complainant has a legitimate interest himself in receiving the information. He also accepts that the wider public also has a legitimate interest in understanding the events which led to action being taken to wind up the charity. A disclosure of this information on its own would shed little further light on this issue however.
41. The actions of the individual have not been tried in a court of law. There is therefore no weight which could or should be put onto any legitimate interests that the public might have for the information to be disclosed based purely on allegations about the legality of the individual's actions and the overall effect this might have had on the charity.
42. Having considered the above the Commissioner has decided that a disclosure of the information would breach the first data protection principle and therefore that the council was correct to apply section 40(2).

Section 10(1)

43. The complainant made his request for information on 19 May 2015. The council however did not respond until 17 July 2015.
44. Further to this it initially chose to rely upon section 40(2) for the information relating to the landlords. However it subsequently disclosed this to the complainant on 4 February 2016.
45. The above responses fell outside of the 20 working days provided to respond to a request required by section 10(1). The Commissioner's decision is that the council has failed to comply with the requirements of section 10(1).

Right of appeal

46. 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

47. 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.
48. 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
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