

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 January 2018

Public Authority: Department for Communities and Local Government

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has asked the Department for Communities and Local Government ("the DCLG") for information contained in Continuous Recording of Social Housing Lettings and Sales ("CORE") database, including details of the local authorities where the properties located.
2. The Commissioner has established that the information contained in the CORE database, to the level required by the complainant, is normally made available to the public under special licence for non-commercial purposes. The DCLG determined that the complainant would be unable to obtain a special licence enabling her to access the information she seeks and therefore it has refused her request in reliance on section 40(2) and 41(1) of the FOIA.
3. The Commissioner's decision is that Department for Communities and Local Government has correctly applied section 40(2) to the contents of the CORE database. She has not found it necessary to consider the DCLG's additional application of section 41(1).
4. The Commissioner has also decided that the DCLG has breached section 16 of the FOIA by failing to advise the complainant about the availability of the details of local authorities where there are more than five lettings and sales of local authority properties.
5. The Commissioner requires the public authority to take no further action in this matter.

Request and response

6. On 13 April 2017, the complainant wrote to the Department for Communities and Local Government and asked to be given:

"All the data contained in Continuous Recording of Social Housing Lettings and Sales (CORE) database from 2000 to 2017, including details of the local authority the properties are in."
7. The complainant asked to be sent the information by email as a machine readable dataset and to be directed to "page references and URLs" if the information is already in the public domain. The complainant reminded the Department of its duty under section 16 of the FOIA should her request be considered unclear or refused under the "time restrictions" provided by the Act, and she signalled her willingness to adjust the parameters of the request.
8. The DCLG responded to the complainant's request on 27 April 2017. The Department confirmed that it holds the information she had asked for but refused to supply it in reliance on the exemption provided by section 21 of the FOIA – where the requested information is reasonably accessible to the applicant. The DCLG informed that the complainant could access the information at: <https://www.ukdataservice.ac.uk>.
9. On 4 May 2017, the complainant wrote to the DCLG to request an internal review. The complainant accepted that some of the information is available from the UK Data Service record, including Regional information. She pointed out that access to Local Authority information is not readily available and must be applied for.
10. The complainant explained that she had applied to access the data through the UK Data Service and that her request had been denied by the DCLG. The complainant therefore asserted that the data she requires is not reasonably accessible to her. Again, the complainant reminded the Department that it is required to advise and assist her in respect of her information request.
11. On 19 May 2017, the DCLG wrote to the complainant to inform her of the outcome of its internal review. The DCLG advised the complainant that the information she seeks is given different levels of protection through licences with different disclosure controls. It advised the complainant that, to access this data a special licence is required, although this is not available for commercial use.
12. On the grounds that, should the complainant apply for a special licence, that application would likely be rejected, the DCLG conceded that section 21 should not have been applied to her request.
13. The DCLG advised the complainant that the information available through 'Analyse CORE data' at local level includes personal information and sensitive data on households. That information must be adequately

protected and therefore the DCLG determined that it is exempt from disclosure by virtue of sections 41(1) and 40(2) of the FOIA.

Scope of the case

14. The complainant contacted the Commissioner on 13 June 2017 to complain about the way her request for information had been handled.
15. The complainant advised the Commissioner that the UK Data Service had classified her as being a non-commercial user of data, and that the DCLG's refusal under section 21 of the FOIA has rejected that classification.
16. The complainant brought the Commissioner's attention to the terms used in her request, whereby she stated:

"Please note, I would also request that if the data I am seeking is potentially restrictive for any reason, or there are concerns, that a member of the FOI team contacts me as I understand that under Section 16 of the Act, you are required to advise and assist requesters. For example I am not seeking any data that may be potentially disclosive. More broadly please get in touch as I am willing to adjust the parameters of the search in order to receive a response and get meaningful data."
17. The complainant informed the Commissioner that at no point did the DCLG get in touch with her to discuss how this request might be modified to yield meaningful information and avoid the Department's application of sections 41(1) and 40(2) of the FOIA.
18. The complainant emphasised that her request concerns "all the data from the CORE dataset, including details of the local authority" and she stated her acceptance that aspects of the dataset may be disclosive.
19. The complainant advised the Commissioner that she does not accept there is any way for her to reasonably know what is contained in the data which may be disclosive or a breach of the Data Protection Act without having the opportunity to discuss these matters with the DCLG and she pointed out that her request was intended to cover data already available to the public, such as that illustrated by dataset SN 7604 CORE, with the additional variable of 'local authority'.
20. Given that the public domain data gives the details of housing by region, the complainant advised the Commissioner that she is unable to see how releasing the local authority names could breach the Data Protection Act. Notwithstanding this, the complainant said she is willing to compromise with the DCLG if there are concerns about the number of

properties in a particular local authority that could potentially be disclosive and she stated that she would be prepared to limit the scope of her request to cover only those areas where there are more than 5 properties in any given local authority. The complainant informed the Commissioner that this is in line with the approach taken by the Office for National Statistics when considering the release of microdata.

21. Having considered this complaint, the Commissioner determined that she should investigate whether the DCLG has handled the complainant's request in accordance with the FOIA, and specifically whether the DCLG is able to provide the complainant with meaningful advice and assistance for enable her to modify her request for information. The Commissioner also determined that she should investigate the DCLG's reliance on sections 41(1) and 40(2) of the FOIA in the event that the Department was unable to offer any appropriate advice and assistance.

Reasons for decision

22. The DCLG has provided the Commissioner with information concerning the complainant's request including an illustrative sample of the CORE database and a 'data dictionary' to assist in its interpretation. The Commissioner has examined the illustrative sample provided by the DCLG.
23. The database sample consists of 5329 lines of information covering the time period of the complainant's request. For each line of information, data is given in respect of a large number columns, including a unique property reference number, full postcode, as well as information on the ages, sex, nationality and ethnicity of the tenants, the tenancy dates and property details, the landlord and the supporting housing scheme for supported housing. When taken as a whole, the information contained in the database allows the identification of tenants.
24. The DCLG informed the Commissioner that the CORE database collects data continually on the tenants and their tenancies for every social housing letting and sale. As well as the information listed in para 22, details are recorded of landlords and the supporting housing scheme for supported housing.
25. Due to the detailed information contained in the database, it would be possible to identify a known tenant from the information in the dataset.
26. The dataset also contains information which is sensitive to the person's whose tenancies are recorded on the database. Such sensitive personal data includes:

- The source of the referral for the letting (including categories such as social services, police/probation/prison, youth offending team, community mental health team, health service, voluntary agency);
 - The tenant's previous housing situation (including categories such as women's refuge, prison/approved probation, home office asylum support, children's home/foster care, hospital); and
 - The tenants' main reason for leaving their previous accommodation (including categories such as domestic abuse, racial harassment, hate crime, left home country as refugee, eviction or repossession).
27. The DCLG has advised the Commissioner that, in making her request, the complainant signed herself as a Data Journalist and she used an email address associated with a national newspaper.
28. The DCLG's initial response to the complainant was to refuse her request in reliance on section 21 of the FOIA, on the grounds that the information she had requested was reasonably accessible to her by other means. The DCLG accept that it was in error to apply section 21.
29. The DCLG's application of section 21 was withdrawn when it reviewed its handling of the complainant's request. It determined that the information the complainant seeks would not be reasonably accessible to her because a special licence is not available for commercial use and can only be used for non-commercial projects. The DCLG acknowledges that an application by the complainant for a special licence would likely be rejected, and therefore its application of section 21 of the FOIA would not be appropriate.
30. Notwithstanding its withdrawal of section 21, the DCLG explained that the information is exempt from disclosure under the provisions of section 41(1) in respect of information supplied in confidence and also under section 40(2) in respect of personal information.
31. A key issue for the DCLG is the fact that the complainant used her job title and a national newspaper's email address in making her request. From these facts the DCLG determined that the complainant is seeking the information for commercial use. This is important because; "If the intended use is defined as 'commercial', it is for the UK Data Service to create a commercial agreement and obtain permission from the data owner(s) before such access can be provided"
32. The DCLG has drawn the Commissioner's attention to the following website, which makes clear that studies requiring completion of a

Special Licence or for users to hold ONS Accredited Researcher status, are not available for commercial use.

<https://www.ukdataservice.ac.uk/get-data/how-to-access/registration/commercialusers>

33. The DCLG has advised the Commissioner that the information it holds in the CORE dataset is provided at "record level", referring to a particular letting or sale. Depending on the type of licence, some variables are excluded.
34. In respect of a special licence, personal information and sensitive data on households must be adequately protected and the DCLG maintains the position that this information is exempt from disclosure under the exemptions at section 41(1) and section 40(2). The DCLG considers that section 41(1) applies to the information if it was, "obtained by a public authority from any other person and the disclosure of the information by the public authority would constitute a breach of confidence actionable by that or any other person".
35. The DCLG argues that the statistical data is confidential because it relates to identifiable entities (including members of the public or corporate organisations), it is not in the public domain and its disclosure would cause damage harm or distress: It is essentially private information which has been provided with an expectation that it should be used for statistical purpose only and therefore it has been supplied with an expectation of confidence.
36. Any disclosure to approved researchers – those who have been granted access to this information through a special licence, does not constitute release in to the public domain or a breach of this confidence.
37. The DCLG has confirmed that it publishes data from the CORE database at national and local authority level as part of the Social housing lettings statistics, and through the interactive reporting available at Analyse CORE data. The interactive reporting tool which is available through the Analyse CORE data page allows users to view data via predefined reports at local authority level. The published data is protected to avoid identification of individuals and the disclosure of sensitive information.
38. Data at record level is deposited with the UK Data Archive and released through the UK data service. This allows users to access record level data via different layers of protection through licences with different disclosure controls. The end user licence provides access to datasets that do not contain 'private' information as defined by the Code of Practice for Official Statistics. CORE data is made available through licences at a regional level, where the letting/sale is located. Access to the data is restricted to persons under 'special licence' as the data

constitutes private information as defined by the Code of Practice for Official Statistics.

39. In order to protect the data to the relevant standards, the Department had followed recommendations from the Statistical Disclosure Control Unit at the Office for National Statistics. This guidance includes clear and transparent governance arrangement for the granting of licences which is in line with Government Statistical Service recommended practice.

Section 40(2) – personal data

40. The DCLG has advised the Commissioner of its view that the CORE dataset as a whole identifies social housing tenants and it should all be treated as personal data.
41. The DCLG removes information from the dataset supplied to the UKDA to make it difficult to identify individuals. The end user licence which the complainant would need to apply for provides access to CORE data which is no longer identifiable or personal, however, the local authority information is not available from that version of the data.
42. For the Special Licence, the DCLG removes the property identifiers and the postcode information from the dataset in order to minimise the risk of identifying individuals. Nevertheless, it may still be possible to identify a tenant if the tenant is known and the local authority has very small numbers. This is the reason why this information is only available for research and statistical purposes that justify the remaining risk.
43. Personal data is defined by section 1 of the Data Protection Act 1998. This states:

“personal data” means 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.”
44. The Commissioner readily accepts that some of the information which the DCLG is withholding from the complainant satisfies the definition of personal data and moreover, satisfies the definition of sensitive personal data as it includes whether a tenant has been referred from prison or mental health services, or whether there are disabilities or victims of domestic abuse and hate crime.
45. In order to disclose the withheld information under the FOIA – and into the public domain, the DCLG would need to ensure that such disclosure would not contravene first data protection principle.

46. The first data protection principle requires personal data to be processed fairly and lawfully, for at least one of the conditions in Schedule 2 of the Data Protection Act to be met, and in the case of sensitive personal data, at least one of the conditions in Schedule 3 to be met.
47. In this case, the withheld personal data is such that the Commissioner is satisfied that the DCLG is not able to satisfy any of the conditions in Schedule 3 of the Data Protection Act in order for it to place sensitive personal data into the public domain. This fact, together with the circumstances in which the information was provided in confidence to the DCLG is sufficient for the Commissioner to decide that the DCLG is entitled to rely on section 40(2) of the FOIA in respect of the information it is withholding.
48. The Commissioner has considered the representations made by the DCLG in respect of the sensitivity of the data contained in the CORE database. It is not difficult for the Commissioner to accept that data at record level should be given significant protection.
49. It is not without good reason that access to the CORE database requires a person to hold a special licence. Such a licence provides checks and protections of the sensitive personal data contained in the database which are necessary and proportionate. The Commissioner has therefore decided that the DCLG has correctly applied section 40(2) to information contained in the database.
50. The DCLG's ability to rely on section 40(2) of the FOIA in respect of the contents of the CORE database means that it is not necessary for the Commissioner to consider the DCLG's additional application of section 41(1).

Section 16 – Advice and assistance

51. In her complainant to the Commissioner, the complainant has asserted that the DCLG failed to provide any advice and assistance in respect of her request for information.
52. The DCLG acknowledge that it was unable to provide the exact information she had requested. Nevertheless it did provide the complainant with a link to the UK Data Service and further information about the UK Data Service. It also provided the complainant with an internal review response which provided her with a link and details of published information.
53. Notwithstanding the above, the DCLG regrets that it is not able to advise the complainant further in this matter. This is because a special licence is not available for commercial use.

54. In respect of the possibility of disclosing the identities of local authorities where there are more than 5 properties, the DCLG advise the Commissioner that this information is available with the summary tables published alongside the National Statistics at:

<https://www.gov.uk/government/statistics/social-housing-lettings-in-england-april-2015-to-march-2016>

55. These table provide the number of lettings for each local authority but exclude those cases where there are three or fewer lettings to avoid possible identification of the tenants.

56. The DCLG rejected the UK Data Service's classification of the complainant as a non-commercial user of the data. Following this rejection it was not possible for the complainant to reasonably access the information she seeks. The complainant's use of her email signature and job title indicated that she is seeking the information for commercial use and therefore she would not be able to secure a special licence to access the data she requires. This is confirmed by the information available to the complainant at:

<https://www.ukdataservice.ac.uk/get-data/how-to-access/registration/commercialusers>

57. This web address states:

"Non-commercial use: Any individual employed by, or undertaking research for, any organisation, may use data even if this entails monetary reward, where a public good results from the use. Public good can be defined as an activity which widens access to information sourced from our collection and has social or economic benefit..." and

"Studies requiring completion of a Special Licence or users to hold ONS Accredited Researcher status, are not available for commercial use but can be used for non-commercial projects as defined above..."

58. The DCLG has advised the Commissioner that, if the complainant is interested in information at local authority level, she should be able to obtain what she needs from the publicly available tables. If she is interested in information at record level for each individual letting, then the information on where the letting is located increases the possible risk of identification and the potential disclosure of very sensitive information, including information on disability, ethnicity, and routes of referral into social housing or reasons for housing. This information is only released for research and statistical purposes and not for commercial use.

59. The Commissioner acknowledges the difficulty of providing advice and assistance in connection to a database containing sensitive personal information. She considers that the DCLG has provided the complainant with advice and assistance in respect of the parameters of the complainant's original request and in the circumstances of that request.
60. The Commissioner notes that the DCLG failed to advise the complainant about the availability of the publicly available details of local authorities where there are more than five properties. She considers that this lack of engagement is sufficient for her to decide the DCLG has breached section 16 of the FOIA in this regard.

Right of appeal

61. 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

62. 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.
63. 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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