

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2022

Public Authority: Royal Borough of Greenwich
Address: The Woolwich Centre
35 Wellington Street
London
SE18 6HQ

Decision (including any steps ordered)

1. The complainant has requested information about a named third party.
2. The Commissioner's decision is that Royal Borough of Greenwich was entitled to withhold the requested information under section 40(2) of FOIA as it is personal data of a third party and its disclosure would be unlawful.

Request and response

3. On 7 June 2021, the complainant wrote to Royal Borough of Greenwich ("the public authority") and requested information about an individual's occupation of council housing.
4. On 28 June 2021, the public authority responded. It refused to provide the requested information. It cited the following exemption as its basis for doing so:
 - Section 40(2) (personal data)
5. The complainant requested an internal review. The public authority sent her the outcome of its internal review on 26th July 2021. It upheld its original position.

Reasons for decision

6. This reasoning covers whether the public authority has correctly applied section 40 of FOIA to the request.
7. Section 40(2) of FOIA says that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.
8. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA 2018 personal data relating to criminal convictions and offences includes personal data relating to-:
 - (a) The alleged commission of offences by the data subject; or
 - (b) Proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings including sentencing.
9. Having viewed the information request the Commissioner is satisfied that the complainant was seeking criminal offence data of a third party.
10. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed (which includes confirming or denying whether the information is held in response to a FOI request) if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.
11. When considering the disclosure to the world at large required by the FOIA, the Commissioner determines it likely that only two of the Schedule 1, Part 3, conditions might ever justify such processing of personal information of this type. These are:
 - a. that the data subject had given their explicit consent for the public authority to provide a confirmation (or a denial) that information is held; or (para 29)
 - b. that the data subject has manifestly made the information public themselves (para 32).
12. Neither relevant conditions have been met. The Commissioner has seen no evidence or indication that the data subject has consented to the disclosure of the information or that the information has been made manifestly public by the data subject.
13. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this

data would therefore contravene a data protection principle; set out under Article 5(1)(a) of the UK GDPR. The information is therefore exempt under section 40(2) of the FOIA.

Right of appeal

14. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

15. 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.
16. 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

Gerrard Tracey

Principal Adviser FOI

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF