

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 April 2023

Public Authority: The Royal Parks
Address: The Old Police House
Hyde Park
London
W2 2UH

Decision (including any steps ordered)

1. The complainant has requested information relating to properties managed by the Royal Parks ('TRP'). TRP disclosed information in response to the request but withheld some under section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that the withheld information engages section 40(2) as to disclose it would breach data protection principles.
3. The Commissioner does not require further steps.

Request and response

4. On 24 January 2023 the complainant requested:
 - "1. Do any of the Senior Management Team of the Royal Parks live in any Royal Parks properties?
 2. Which members of the team live in which property?
 3. What rent do each of the members pay to live in the respective property?
 4. Which Royal Parks properties are occupied by current employees?
 5. Which Royal Parks properties are occupied by former employees?

6. Which Royal Parks properties are occupied by relations of current or former employees (but not the employee themselves?)

7. Are any properties occupied by a former employee, current employee or relation, of a Royal Park affiliate? What is the name of that affiliate? Which properties?

8. What rental amount do each other these employees/former employees/relation of former employees pay for the respective property?

9. How long have each of the properties been occupied by each of the current/former/relation employees? Please list the name of the property and the duration of the time that they have been lived in.

Please redact any personal data if required to although under FOI my understanding is that the public nature of the charity and relationship to DCMS means that names must be disclosed.

I note that I am not requesting any commercially sensitive information given that I am only asking for data related to properties that have not been marketed to the public and hence have no bearing on the third party occupied properties."

5. TRP responded on 21 February 2023. In relation to questions 1-3, it confirmed that there are no members of TRP's senior management team living in any properties managed by TRP. In relation to questions 4-7, it confirmed that 18 residential properties, under the management of TRP, fell within the scope of the request. However, it declined to provide the addresses and numbers of each sub-category under section 40(2) (personal information). In relation to question 8, it confirmed that the fee paid by a current employee is 8.5% of their gross salary but the amount itself was exempt (for each sub-category) was exempt under section 40(2) and section 43(2) (commercial interests). In relation to question 9, it confirmed that all TRP properties which are occupied are done so under license. It provided contextual information surrounding the length of these licenses for each sub-category, again it withheld how long each property had been occupied for under section 40(2).
6. The complainant requested an internal review on 22 February 2023.
7. TRP provided the outcome to its internal review on 22 March 2023. It upheld its use of section 40(2) and section 43(2).

Scope of the case

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8. The complainant contacted the Commissioner on 22 March 2023 to complain about the way their request for information had been handled.

9. Since TRP has applied section 40(2) to all of the withheld information, the Commissioner will consider this exemption first. If he needs to, he will go onto consider TRP's application of section 43(2) in relation to question 8.
10. When requesting an internal review, the complainant also expressed concerns with the TRP's policy to allow individuals to live in the properties in question. The complainant believes the policy allows specific individuals the opportunity to live in TRP managed properties 'at heavily subsidised rates' for tax avoidance purposes. They believe the properties should be rented out to the public for a greater profit.
11. When providing its internal review outcome, TRP explained to the complainant that it's an operational requirement for employees to live in, or very near, the park in which they work to be able to deal with any out of hours incidents or emergencies. It confirmed HMRC was aware of the policy, as was the NAO. It confirmed that the properties in question could not be placed on the open market due to the Crown Lands Act of 1851.
12. It's not the role of the Commissioner to consider or comment on the complainant's concerns about this policy; it's solely his role to determine whether the request has been handled in accordance with FOIA.

Reasons for decision

13. Section 40(2) exempts information from disclosure if it's the personal data of any individual (other than the requestor) and disclosure would contravene one of the data protection principles.
14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable from that information.
15. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
16. On the surface the request asks for information about TRP managed properties and not any personal data. However, the Commissioner must consider whether anyone could be identifiable, either directly or indirectly, from this information. To reiterate, the information being withheld is that requested in questions 4-9 of the request. It covers the address of the properties currently occupied, by whom, the rent paid and how long each resident has been at that property.

17. In its internal review outcome, TRP explained 'Whilst your requests for information in these six questions may not constitute directly identifiable data, it could be indirectly identifiable because of the low number of individuals and properties involved and the public nature of these properties. An individual could easily be identified, for example, entering a property, perhaps wearing a lanyard or a uniform, and this information could be correlated and therefore make these occupants identifiable and therefore their personal information.'
18. The Commissioner's guidance on anonymisation¹ states 'the more precise a piece of geographical information - the more possible it becomes to analyse it or combine it with other information, resulting in personal data being disclosed.'
19. The Commissioner notes that TRP has, in response to the complainant's specific questions, confirmed that 18 properties fall within the scope of the request. TRP manages 10 parks; so that's an average of 1.8 people, again who fall within the scope of the request, occupying each property.
20. The Commissioner's guidance goes onto say 'Small numbers in small geographical areas present increased risk, but this does not mean that small numbers should always be removed automatically.' TRP must be able to explain how disclosure could lead to the identification of the inhabitants of the properties.
21. TRP has explained that 'there is a clear operational requirement for the Royal Parks to have employees living in, or very near, the part in which they work to be able to deal with out of hours incidents and emergencies and this is the primary reason that the vast majority of the 18 properties are occupied by our staff and the staff of affiliates (companies involved in the maintenance of the landscape.)'
22. Logically, there must be a way for individuals to report any such out of hours emergency or incident and the Commissioner considers it likely that such information is displayed on the park's noticeboard. Already, there's a chance that someone could take the information disclosed in response to this request, and pair it with information already in the public domain, to disclose personal data.
23. Neither TRP, not the Commissioner, are indicating that it's the complainant's intention to use the requested information to identify the individuals who live at the properties. However, he must remain mindful that disclosure under FOIA is disclosure to the world at large. As TRP has identified, it would not be difficult for an individual to use the

¹ [Anonymisation: managing data protection risk code of practice \(ico.org.uk\)](https://ico.org.uk)

information disclosed in response to the request, and study the property in question (which is located within a public park), to ascertain who lives at the property. By extension, they would also then be privy to other information, such as the rent paid on the property, how long that individual has lived at the property and the inhabitant's relationship to the TRP.

24. With the above in mind, the Commissioner is satisfied that the requested information is personal data. However, just because information constitutes personal data does not automatically exclude it from disclosure under FOIA. The Commissioner must now consider whether disclosure of the requested information would contravene any of the data protection principles.
25. The most relevant data protection principle in this case is principle (a) which states that "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"². In this case, the data subject's would be the individuals living in the properties in question.
26. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an FOI request if to do so would be lawful, fair and transparent.
27. In order to be lawful, one of the lawful bases listed in Article 6(1)³ of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.
28. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states: "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data."

² [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

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29. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under FOIA, it is necessary to consider the following three-part test:

i) Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;

ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

30. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may represent legitimate interests; they can be the requester's own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin FOIA, or may represent the private concerns of the requestor.
31. It is important to remember that disclosure under the FOIA is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).
32. In this case it is clear that the complainant is seeking access to the withheld information for a specific reason: they disagree with TRP's policy. To reiterate, it's not the Commissioner's role to comment on the policy in question; however, it's valid that the complainant wants to find out more about the practicalities of the policy, so they can scrutinise it more closely.
33. With the above in mind, the Commissioner is satisfied that there is both a private and wider legitimate interest in disclosure.
34. The Commissioner must also consider if disclosure is necessary for the purpose that this legitimate interest represents or if there is an alternative method of doing so.

35. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under FOIA is necessary to meet the legitimate interest identified, or whether there is another way to do so that would interfere less with the privacy of individuals.
36. The Commissioner is satisfied that the specific information requested in this case has not otherwise been made available to the public. Therefore, there are no less intrusive means of achieving the private legitimate aim identified in stage (i).
37. Since the Commissioner is satisfied that disclosure is necessary for the purpose that this legitimate interest represents, he will now go onto consider whether the identified interests in disclosure outweigh the interests or fundamental rights and freedoms of the data subject.
38. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
39. In performing this balancing test, the Commissioner has considered the following:
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
40. In the Commissioner's view, the balancing test should take into account whether the data subjects concerned have a reasonable expectation that their information would not be disclosed. This expectation may be influenced by a number of factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose which this personal information serves.
41. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the data subject(s).
42. This is an interesting case in that the information relates to both an individual's private life (where they live) and potentially their professional life (whether or not the individual is a current employee of TRP).

43. TRP is responsible for managing London's eight largest green spaces - with this responsibility comes a certain amount of scrutiny and the need for transparency. However, the Commissioner is not convinced that the rights and freedoms of the data subject(s) in this instance (who will expect that their contact details be in the public domain for operational reasons) would expect that their personal data would be disclosed to the world at large via FOIA.
44. The Commissioner accepts that the complainant considers the withheld information is necessary to help them understand the policy in more detail. However, he considers that TRP has largely met the legitimate interest in the information that it has disclosed (including the total number of properties that fall within the scope of the request and further information relating to the licensing and rent of the properties) and the responses that it gave to the complainant's specific concerns.
45. Having considered the likelihood of identification due to the small numbers involved, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals in this specific case and considers that there is no legal basis for the TRP to disclose the withheld information and to do so would be in breach of principle (a). TRP is therefore entitled to rely on section 40(2) of the FOIA to refuse to provide the information. The Commissioner hasn't gone onto consider TRP's application of section 43(2) to a little of the same information.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Alice Gradwell
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