

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 5 February 2007

Public Authority: Transport for London ('TfL')
Address: Windsor House
42-50 Victoria Street
London
SW1H 0TL

Summary

The complainant requested details of compensation payments made to residents of a specific road under the Land Compensation Act following the building of the A12 Hackney M11 Link Road. The public authority confirmed to the complainant the number of compensation offers that had been accepted by residents but refused to disclose details of the size of compensation payments made to each resident on the basis of the exemptions contained at section 40 and 43. The Commissioner's decision is to uphold the public authority's application of 40(2) to withhold the information. As the Commissioner is satisfied that the section 40(2) has been applied correctly, he has not considered the public authority's decision to apply section 43.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On the 7 June 2005 the complainant submitted a request to TfL for information about compensation payments made by TfL to residents of a particular street affected by the building of the 'A12 Hackney – M11 Link Road'. The complainant specifically requested:

'I would be obliged if you would send me details of all offers of compensation that have been made to residents, past and present in Addison Road, E11 in relation to compensation for the M11 Link Road.'

I would also like to know how many offers have been accepted and the dates of acceptance'.

3. On the 27 June 2005 TfL informed the complainant that it would not release the information requested in the first part of his request on the basis of the exemptions contained within sections 40 and 43(2) of the Act. TfL explained to the complainant that section 40 exempts personal information from disclosure in circumstances where disclosure would breach the Data Protection Act ('DPA') and as the complainant's request involved financial information relating to individuals' property the exemption applies.
4. With regard to section 43(2) TfL explained to the complainant that because some of the offers of compensation remained unaccepted and the terms of the compensation are still in discussion, disclosure of the information would prejudice TfL's commercial interests because residents would be able to compare offers that had not yet been finalised. TfL explained to the complainant that it accepted that there was a narrow public interest in disclosure because this would assist residents in their negotiations with TfL. However, TfL informed the complainant that it believed that this was outweighed by the greater public interest in fulfilling TfL's duty to protect the public purse when negotiating these offers of compensation.
5. However, in its letter of 27 June 2005 TfL provided the following response to the second part of the complainant's request:

'Notwithstanding, in response to your second question I can advise that 19 of the 22 offers of compensation made to date in relation to properties on Addison Road have been provisionally accepted. One of the 3 offers that has not been accepted was made in respect of your own property [number redacted]. All 19 accepted offers have been agreed since the 1 April 2005'.
6. The complainant contacted TfL on 12 July 2005 and informed it that he was unhappy with the decision to withhold the requested information from him and asked TfL to conduct an internal review into its handling of his request.
7. On the 15 August 2005, TfL wrote to the complainant and informed him that it had conducted an internal review of its handling of his request and that this review upheld the original decision to withhold this information on the basis of the exemptions contained within section 40 and sections 43(2) of the Act.

The Investigation

Scope of the case

8. On 2 October 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant alleged that TfL were incorrect to rely on the exceptions cited above as a basis for withholding the requested information. The Commissioner understood that by the

'requested information', the complainant meant the size of compensation offer made to each resident and whether those offers had been accepted. The complainant provided the Commissioner with a number of reasons as to why he considered that disclosure of the requested information was in the public interest.

Chronology

9. The Commissioner contacted TfL on 23 November 2006 and asked for a copy of the requested information. The Commissioner also asked TfL to provide him with an explanation of why it considered the exemptions contained within section 40 and 43 to apply in this case. The Commissioner specifically asked TfL to identify which of the principles of the DPA it considered would be breached by disclosure of this information.
10. TfL acknowledged receiving the Commissioner's letter on 27 November 2006 and provided him with a substantive response to his letter on 15 January 2007.
11. With this letter TfL provided the Commissioner with a spreadsheet which contained the information which was withheld from the complainant at the time of the request. This information consisted of the names of residents, their addresses, compensation offers and confirmation that the offer had been accepted or rejected. TfL explained to the Commissioner that it considered all of this information to be personal data as defined by the DPA and therefore potentially exempt under section 40(2) of the Act.
12. TfL explained to the Commissioner that it believed that individuals in question would have no reasonable expectation that details of their personal compensation offers would be released in response to an information access request or otherwise. TfL also confirmed that at no point were the residents informed that details of their compensation claim or final settlement could be potentially disclosed to a third party. TfL highlighted to the Commissioner that it had a duty of care to protect the financial details of the residents and to release this information would not only break this duty, but would also be unfair.
13. TfL also argued that it considered the information in this case to be personal information which relates to the individuals' private lives and therefore this information was different to personal data relating to an individual's public role.
14. TfL confirmed that it considered that disclosing this information would be likely to contravene principles one (fair and lawful processing) and six (processing in line with the rights of individuals) of the DPA.
15. With regard to the application of section 43, TfL provided the Commissioner with summary of its reasons as outlined to the complainant (in paragraph 4) as to why it considered the requested information to be exempt under section 43(2). TfL also explained to the Commissioner that all of the compensation offers had been settled and the period in which residents could apply for compensation had now ended. (The Commissioner understood the fact that all compensation offers had been settled to mean that all residents had either accepted the offer made to them or chosen to reject the offer made to them). TfL explained to the

Commissioner that as the compensation process had ended it therefore believed that the requested information would now not be exempt by virtue of section 43(2). TfL confirmed that it had recently received several requests for this particular kind of information relating to the M11 link road, but section 43 had not been used to withhold this information.

Analysis

16. Although TfL applied more than one exemption to the requested information, as the Commissioner found that the section 40 exemption had been correctly applied he did not consider the application of the section 43 exemption.

Section 40

17. Section 40(2) provides an exemption for information which is the personal data of any third party, where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998. (The relevant sections of section 40 are included in the legal annex attached to this notice).

18. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal information 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...”*

19. The Commissioner considers that details of individuals' addresses constitutes the personal information of the data subject which could lead to their identification and therefore this part of the requested information falls within the scope of the exemption provided by section 40.
20. The Commissioner has also considered whether the compensation offer and the fact that this offer has been accepted or rejected is personal data. Whilst this part of the requested information did not include the identities of the individuals concerned, the Commissioner believes that those individuals could be identified from the data requested. This is because the information requested relates to a relatively small group of people and this therefore makes it easier to identify the individuals. Furthermore having reviewed the details of the compensation offers the Commissioner is aware that it may be possible to identify a pattern of how the compensation offers were made, and consequently this could lead to the identification of the individuals concerned.

The first data protection principle

21. The first data protection principle requires that the processing of personal data should be fair and lawful and that personal data should not be processed unless at least one of the conditions in Schedule 2 of the DPA is met.
22. In considering whether the disclosure of the requested information would be fair the Commissioner has considered the reasonable expectations of the data subjects as to how the information would be used by TfL and what the effect of disclosure would be on the data subjects.
23. The Commissioner notes that TfL did not inform residents at any stage of the compensation process that details about their claim or final settlement would be potentially released at any time to a third party. The Commissioner has also taken into account the fact that at the time the compensation payments were being allocated there was an element of secrecy surrounding the process. Although TfL has explained that this was largely because of their belief that in order to protect public monies it needed to negotiate the settlements on a case by case basis, the Commissioner considers that this approach would have led the residents to assume that details of their individual settlements were unlikely to be made public in the near future. Consequently, the Commissioner accepts that the residents had a reasonable expectation that information of the nature requested would not be disclosed.
24. The Commissioner accepts this information relates to individuals' homes and personal finances, and by extension their private and family lives. Therefore, the Commissioner is of the view that this information about these individuals deserves protection because disclosure would constitute an unfair infringement of their private lives.
25. This conclusion is consistent with the Commissioner's guidance issued on section 40 of the Act. This guidance suggests that 'information which is about the home or family life of an individual, his or her personal finances, or consists of personal references is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned'. The Information Tribunal acknowledged this approach in a recent decision on the application of section 40 (*House of Commons v Information Commissioner and Norman Baker MP*): 'We accept the approach of the Commissioner's Guidance which recognised that in determining fair processing regard can be made as to whether the personal data relates to the private or public life of the data subject to whom it relates' (paragraph 77).
26. In light of the above the Commissioner believes that to disclose the information requested would breach the fairness element of the first data protection principle and therefore the exemption provided by section 40(2) of the Act is engaged. As the Commissioner has decided that the exemption is engaged on the basis that the first principle would be breached, he has not considered TfL's assertion that the sixth principle would also be breached.

The Decision

27. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

28. The Commissioner requires no steps to be taken.

Right of Appeal

29. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 5th day of February 2007

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 40

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

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

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

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
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”