

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 August 2007

Public Authority: Barrow Borough Council
Address: Town Hall
Barrow-in-Furness
Cumbria
LA14 2LD

Summary

The complainant requested information from Barrow Borough Council (the Council) relating to the rent arrears on individual garages. The Council withheld the information on the grounds that the exemption under section 40 (personal data) of the Act applied. The Commissioner has decided that the Council was correct to apply the exemption under section 40 of the Act to the requested information, and therefore the Council is not required to take any further steps in respect of this complaint.

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 7 August 2006 the complainant sent a letter to the Council requesting rental information about garages on a specified street, in particular, which were not paying rent and/or were in excessive arrears and by how many weeks.
3. On 8 August 2006 the Council refused to release the requested information on the grounds that the exemption under section 40 of the Act applied stating, "This exemption applies because the information you have requested relates to information which constitutes personal data of a third party. Release of such would contravene the First Data Protection Principle which dictates that personal data should be processed 'fairly and lawfully'". The Council also informed the complainant of his right of appeal.

4. In his letter of 10 August 2006, the complainant expressed his disagreement with the Council's decision and stated that he was seeking information regarding the state of rent of all the garages on a particular street.
5. The Council carried out an internal review of its decision not to disclose the requested information, and communicated the outcome of the internal review to the complainant in a letter of 15 August 2006. It upheld its original position to apply the exemption under section 40 of the Act. At the same time, the Council offered to provide the complainant with a collective figure of outstanding rent on all the garages in question.

The Investigation

Scope of the case

6. On 20 August 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The Commissioner's investigation focussed on determining:
 - whether the requested information constituted personal data; and
 - whether its disclosure would constitute a breach of the Data Protection Act 1998 (the DPA).

Chronology

8. The Commissioner reviewed copies of correspondence that had passed between the Council and the complainant.
9. On 25 May 2007, the Commissioner wrote to the Council to request a copy of the withheld information. Upon its receipt, the Commissioner considered the nature of the withheld information.
10. On 9 July 2007, the Commissioner requested a confirmation from the Council as to whether the tenants of the garages in question were private individuals or businesses.
11. Having received a response from the Council that the tenants were individuals, on 10 July 2007 the Commissioner communicated to the complainant his preliminary view on the Council's application of the exemption under section 40 of the Act and invited the complainant to withdraw.
12. In its letter of 16 July 2007, the complainant asked for clarification as to why the Commissioner was considering the Data Protection Act 1998 (the DPA) in relation to his information request made under the Act.

13. On 20 July 2007, the Commissioner provided the explanation with respect to the exemption under section 40 of the Act, which is directly related to the DPA, and informed the complainant that, since he had not agreed with the Commissioner's preliminary view, a Decision Notice would be issued.

Analysis

Exemption

Section 40 – Personal information

14. The Commissioner has considered whether the Council correctly applied the exemption under section 40 of the Act in refusing to disclose the requested information.

15. 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.”

The first condition is satisfied where disclosure of the personal information would contravene either one or more of the data protection principles as set out in Schedule 1 of the DPA, or section 10 of the DPA (the right to prevent processing likely to cause damage or distress).

The second condition is satisfied where the personal information would be exempt from disclosure to the data subject (the person to whom the data relates) under the DPA.

16. In its letters to the complainant of 8 August 2006, the Council stated that the requested information was exempt from disclosure under section 40 of the Act. It stated that to release the information requested would breach the first data protection principle, which states:

“personal data shall be processed fairly and lawfully...”

17. Personal data is defined in section 1(1) of the DPA 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,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual”.

18. If information about a garage is linked to its owner or tenant, the data about the garage will be personal data about that individual. Obtaining tenancy details (i.e. whether a garage is in arrears and by how much), means obtaining information about its tenant. Such information, combined with the information already available (e.g. tenant's name, garage address), not only would serve to identify the person, but could also be used to reveal further personal data, thereby building up a comprehensive picture of an individual.
19. Disclosure under the Act is equivalent to disclosure to the public at large, and the Commissioner believes disclosure in these circumstances would be unfair. It would enable a third party to know whether tenants are fulfilling their financial obligations, which could in turn cause them unnecessary or unjustified distress. In addition, Council tenants do not have a reasonable expectation that this information might be disclosed to others.

The Decision

20. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act by correctly applying the exemption under section 40 of the Act to the requested information.

Steps Required

21. The Commissioner requires no steps to be taken.

Right of Appeal

22. 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 30th day of August 2007

Signed

**Jane Durkin
Assistant Commissioner**

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

Legal Annex

General Right of Access

Section 1(1) provides that –

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

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

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that –

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Personal information

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).”

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by

the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either-

(i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Section 40(6) provides that –

"In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded."

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

Data Protection Act 1998 – Schedule 1

Principle 1 provides 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."