

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24 August 2009

Public Authority: London Borough of Newham
Address: Newham Dockside
1000 Dockside Road
London
E16 2QU

Summary

The complainant requested details of payments made to a former landlord by London Borough of Newham in May 2003, including the landlord's bank account details into which the money was paid. London Borough of Newham refused to disclose the information under s40 (2) of the Freedom of Information Act 2000. The Commissioner upholds the public authority's refusal and requires no action to be taken.

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 6 August 2008 the complainant submitted a request to London Borough of Newham, requesting "details of a payment of £709.46 made on 19 February 2003 to... (the former landlord), including the (landlord's) bank account details into which housing benefit payments were made."
3. London Borough of Newham provided a response to the complainant on 16 September 2008, 27 working days after the date of receipt. The public authority refused to disclose the information requested in relation to the bank details on the basis of the exemption contained in section 40(2) of the Freedom of Information Act 2000. The complainant had previously been provided with a schedule

showing payments which had been made to the landlord outside of the Freedom of Information Act 2000.

4. The complainant requested an internal review of the public authority's decision on 12 March 2009.
5. On 3 April 2009 the public authority wrote to the complainant with the result of the internal review it had carried out. London Borough of Newham upheld their decision to refuse disclosure of the bank details by virtue of the exemption contained in section 40(2).

The Investigation

Scope of the case

6. On 12 May 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

London Borough of Newham's application of section 40(2) in their refusal to disclose the bank details of a third party as requested by the complainant.

7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

8. The Commissioner wrote to the public authority on 12 May 2009 advising them that the case was being taken forward. He asked them to provide their arguments for withholding the information, along with a copy of the withheld information.
9. On 16 June 2009 the public authority responded to the Commissioner, providing their arguments for non-disclosure along with a copy of the withheld information.

Analysis

10. The full text of the relevant provisions of the Act referred to in this section is contained within the legal annex.
11. In considering whether the exemption is valid, the Commissioner has taken into account that the Act is designed to be applicant blind and that disclosure should be considered in its widest sense, which is to the public at large. In doing this the Commissioner has not taken into account the circumstances of the complainant. If information were to be disclosed it would, in principle, be available to any member of the public.

Exemption: Section 40(2)

12. Section 40(2) provides an exemption for information which is the personal data of a third party. Section 40(2) is contingent on two conditions and the public authority has informed the Commissioner that it is withholding the recorded information under section 40(2) by virtue of section 40(3)(a)(i) of the Act. This condition requires firstly for the information to be personal information under the DPA and secondly that the disclosure of it would contravene a data protection principle.

Is the information 'personal data'?

13. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It 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,

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

14. The Commissioner has viewed the information that was requested and is satisfied that the information relates to an identifiable living individual. The Commissioner accepts that information about an individual's affiliation with a bank is the individual's personal data as defined by the DPA.

Does the disclosure of the information contravene any data protection principles?

15. Having concluded that the information falls within the definition of 'personal data', the Commissioner must then consider whether disclosure of the information breaches any of the eight data protection principles as set out in schedule 1 of the DPA.
16. In this case the public authority has informed the Commissioner that it is the first data protection principle that it believes would be contravened by releasing the withheld information.
17. The first data protection principle requires that the processing of personal data should be fair and lawful and that at least one of the conditions in Schedule 2 of the DPA must be met. The term 'processing' has a wide definition and includes disclosure of the information under the Act to a third party.

18. In considering whether disclosure of this information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- The individual's reasonable expectation of what would happen to their personal data and whether disclosure would be incompatible with the purposes for which it was obtained;
 - Whether disclosure would cause any unnecessary or unjustified damage to the individual and whether the individual has refused to consent to disclosure.
19. The public authority stated that the information was obtained for the purposes of council business to enable them to carry out the payment of housing benefit. Disclosure of the withheld information would be unfair, may lead to the risk of fraud and undermine confidence and trust in the Council's ability to process personal data. It informed the Commissioner that it believed the release of the withheld information would be unfair to the data subject. The Council stated that they did not have consent for disclosure nor did it did not think that the data subject would have had a reasonable expectation of the withheld information being released in this case. Instead, there was an expectation of confidentiality and privacy. The Commissioner, having looked at the withheld information, is convinced that the reasonable expectations are a persuasive factor in indicating that the release of this information would be unfair.
20. The Commissioner's guidance "The Exemption for Personal Information" (version 3 11 November 2008) on the application of section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:
- "Whether the information relates to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life or finances). Information about an individual's private life will deserve more protection than information about them acting in an official or work capacity. You should also consider the seniority of their position, and whether they have a public-facing role. The more senior a person is, the less likely it is that disclosing information about their public duties will be unwarranted or unfair. Information about a senior official's public life should generally be disclosed unless it would put them at risk, or unless it also reveals details of the private lives of other people (e.g. the official's family)."*
21. On the basis of this guidance the Commissioner considers that landlords in receipt of payments from a public authority would expect that their bank account details are secure and not passed on to third parties without the explicit consent of the landlord in question.

22. The Commissioner has considered in detail the submissions of the public authority and in particular whether it felt that the release of the information would cause unnecessary or unjustified damage to the individual involved. Having considered the information the Commissioner is satisfied that the release the landlord's bank details could potentially cause unnecessary and unjustified damage in this case.
23. In finally considering the legitimate interests of the public, the Commissioner notes that the public authority has released information to the complainant about the payments made to the landlord in question in the form of a payment schedule. This information was provided outside the Freedom of Information Act 2000.
24. In considering how the factors balance, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the data subject. The central reason for this conclusion is that the legitimate expectations of the individual are that the information would not be provided and the overriding of these expectations cannot be justified in this case. As the release of the information would be unfair, the first data protection principle would be contravened and the information therefore engages the section 40(2) exemption.
25. As the Commissioner has found that disclosure would be unfair and therefore in breach of the first data protection principle there is no need to consider whether the release would also be unlawful, or if the processing of the personal data would meet one of the conditions of Schedule 2 of the DPA.
26. The Commissioner therefore upholds the public authority's application of section 40(2) by virtue of section 40(3)(a)(i).

Procedural Requirements

Section 10

27. Section 10(1) of the Act states that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

28. The Commissioner considers that London Borough of Newham has breached section 10(1) of the Act as it failed to respond to the request within twenty working days following the date of receipt.

The Decision

29. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

London Borough of Newham dealt with the request for information in accordance with the Act and that section 40(2) (by virtue of section 40(3)(a)(i)) was applied correctly to the withheld information.

30. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

London Borough of Newham have breached section 10(1) of the Act in failing to comply with section 1(1) within twenty working days following receipt of the request.

Steps Required

31. The Commissioner requires no steps to be taken.

Right of Appeal

32. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 24th day of August 2009

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Section 1

- (1) 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 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(6) provides that –

“In this section –
“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Section 40

- (1) 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.
- (2) 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.
- (3) 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 [1998 c. 29.] 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 [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] 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).

(5) 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) the 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 [1998 c. 29.] 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 [1998 c. 29.] 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).

(6) 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 [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] 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

Section 1 - Basic interpretative provisions

(1) In this Act, unless the context otherwise requires—

- “data” means information which—

(a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,

(b) is recorded with the intention that it should be processed by means of such equipment,

(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

(d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “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,

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;

- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
 - (a) organisation, adaptation or alteration of the information or data,
 - (b) retrieval, consultation or use of the information or data,
 - (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
 - (d) alignment, combination, blocking, erasure or destruction of the information or data;

- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

- (a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or
- (b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.