

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 1 November 2010

Public Authority: Wales Audit Office
Address: 24 Cathedral Road
Cardiff
CF11 9LJ

Summary

The complainant made a request to Wales Audit Office for the full contact details of a named tenant inspector. Wales Audit Office stated that the information requested was exempt under section 40(2) of the Act. The Commissioner has investigated and found that the withheld information is personal data and that disclosure would breach the first data protection principle. As such, the Commissioner considers the information to be exempt under section 40(2) of the Act.

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.

Background

2. Wales Audit Office (WAO) has been appointed by the Welsh Assembly Government to carry out the inspection of housing associations in Wales. Inspection is carried out under the Local Government Act 1998, as amended by the Public Audit (Wales) Act 2004.
3. Inspections are carried out by a group of inspectors and performance specialists, including a 'tenant inspection adviser'. Tenant inspection

advisers are tenants, employed by WAO, to provide a service-user perspective and help inform inspection findings.

4. Although the complainant's request was for the contact details of a 'tenant inspector' and WAO's terminology appears to be 'tenant inspection adviser', this Notice will use the terminology 'tenant inspector' throughout. Despite the different terminology used, the Commissioner is satisfied that WAO understood the request since the individual in question was referred to by name by the complainant.

The Request

5. On 22 March 2010 the complainant wrote to WAO regarding various housing issues. Within this communication, the complainant made the following request:

"Below is details in relation to a Wales Audit Office in 2006, having made several inquiries to speak to [name of public official]!, it appears this individual appears not to exist, Although, i believe that this was her sisters maiden name?

Has anybody got her contact details?"

6. WAO acknowledged the request on 24 March 2010, and provided a full response on 16 April 2010. WAO confirmed that it held the contact details of the individual in question but stated that the information was exempt by virtue of section 40(2) of the Act. WAO stated that disclosure of the requested information would breach "the Data Protection Act 1998 data protection principles".
7. Within correspondence between WAO and the complainant, WAO made reference to the fact that the complainant claimed to have made a request for an internal review. The Commissioner did not have sight of such a request. Even so, WAO carried out an internal review of its decision to withhold the requested information.
8. On 17 May 2010 WAO issued the findings of its internal review. WAO upheld its decision to withhold the information requested under section 40(2) of the Act.

The Investigation

Scope of the case

9. On 2 June 2010 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 whether the contact details he had requested should be disclosed.

Chronology

10. On 6 September 2010 the Commissioner contacted WAO by telephone to discuss this case and to clarify what information it held that was relevant to the request.
11. On 6 September 2010 the Commissioner wrote to the complainant in an attempt to resolve his complaint informally. The Commissioner stated that his preliminary view was that the information was exempt from disclosure by virtue of section 40(2) of the Act.
12. The complainant wrote to the Commissioner on 16 September 2010 stating that he did not accept the Commissioner's preliminary view that the information requested was exempt from disclosure.

Analysis

Exemptions

Section 40(2)

13. Section 40(2) provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the Data Protection Act 1998 ('the DPA').

Is the information personal data?

14. In considering whether WAO has correctly applied section 40(2) of the Act to the withheld information, the Commissioner has first considered whether the withheld information can be considered to be "personal data".

15. According to section 1(1) of the DPA, personal data can be defined as follows:

"...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.

16. In considering whether the information requested is "personal data", the Commissioner has also taken into account his own guidance on the issue.
17. The two main elements of personal data are that the information must "relate to" a living person, and that person must be identifiable. Information will "relate to" a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts them in any way.
18. The Commissioner notes that the withheld information consists of a named individual's home address. As such, in this case, the Commissioner is satisfied that a living individual can be identified from the withheld information and he accepts that the address is personal data, as defined by the DPA.

Would disclosure contravene any of the principles of the DPA?

19. As the Commissioner is satisfied that the requested information constitutes the personal data of the individual in question, he has next considered whether disclosure would breach any of the data protection principles.
20. WAO has not specified which of the data protection principles disclosure would breach. The Commissioner considers the first data protection principle to be most relevant in this case and he has therefore considered whether disclosure would breach that principle.

First data protection principle

21. The first data protection principle has two main components. They are as follows:

- (a) The requirement to process all personal data fairly and lawfully; and
 - (b) The requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.
22. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle. The Commissioner's general approach to cases involving personal data is to consider the fairness element first. Only if he believes that disclosure would be fair would he move on to consider the other elements of the first data protection principle.

Would disclosure of the information be fair?

23. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced these against the general principles of accountability, transparency and legitimate public interest.

a) Expectations of the individuals concerned

24. WAO explained that it employed the person in question as a tenant inspector but that, due to the nature of the individual's terms of employment, that person was not based at WAO's offices and all contact between the individual and WAO was via the individual's home address.
25. The Commissioner is satisfied that the individual provided WAO with the details of his/her home address with an expectation of confidence. The Commissioner considers that the individual provided WAO with contact details for professional purposes in order that he/she could carry out the role of tenant inspector. As such, the individual in question would have had a reasonable expectation that his/her home address would not be disclosed publicly.
26. However, simply because an individual has an expectation that information held about them will not be disclosed, this does not necessarily mean that this expectation is a reasonable one. The Commissioner's guidance on 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 life. Although the guidance acknowledges that there are no hard and fast rules it states 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.”

27. The Commissioner recognises that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act. However, in this case the withheld information constitutes the home address of an individual and, while this is linked to that individual's public life insofar that he/she used that address as a base from which to work, the Commissioner considers that there would have been an expectation that the information would not be disclosed to the world at large. The Commissioner's view is that employed individuals working from home or using their home address as a base from which to work would have a general expectation that the address of the employer would be used for correspondence and other contact from third parties. The Commissioner considers that whilst public sector employees may have an expectation that some details about them in their work capacity may be disclosed they would not expect that information which relates to their home life – such as home addresses - would be made public.

b) Consequences of disclosure

28. WAO argued that disclosure of the withheld information in question would “be an unwarranted interference in [name of public official]'s privacy”.
29. The Commissioner is persuaded that disclosure of the withheld information in question would be unwarranted since such information is, by its nature, private to the individual in question and not information that he or she would want to be disclosed into the public domain.
30. When considering the consequences of disclosure of the withheld information, the Commissioner has also considered how this data could be used by the public. Disclosure under the Act represents disclosure to the public at large. Revealing to the public the address of the individual in question could lead to them being targeted by specific interested groups or specific marketing campaigns which could well cause the individuals some distress. In this particular case, the Commissioner considers that there is a strong possibility that, should the address be disclosed, the complainant would use it to correspond with the

individual to pursue housing related matters. This view is based on information provided to the Commissioner by the complainant.

31. The Commissioner has considered the submissions made by WAO and the nature of the withheld information and he is satisfied that disclosure of the information to the public and the associated loss of privacy have the potential to cause unnecessary and unjustified harm to the individual in this case.

Legitimate public interest and the general principles of accountability and transparency

32. The complainant indicated that he considered disclosure of the withheld information necessary to enable individuals living in the estate in question to bring any issues to the tenant inspector who represents them.
33. The Commissioner acknowledges that there is a public interest in being able to contact the tenant inspector to deal with residents' issues. However, the Commissioner does not consider there to be sufficient legitimate interest to circumvent existing procedures for complaints and issues relating to social housing. The Commissioner is aware that procedures are in place for complaints to be raised with the relevant housing association. There is, therefore, no legitimate public interest in the personal contact details of a specific tenant inspector. Therefore the Commissioner does not consider there to be sufficient legitimate interest for the personal contact details of an individual to be disclosed.
34. The Commissioner also considers that interested parties, such as tenants, are able to correspond with WAO directly if they wish to bring matters to the attention of the tenant inspector. It is not therefore necessary for the home address of the individual to be disclosed.
35. Therefore, in light of the reasons set out above, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the data subject.
36. As the Commissioner has decided that disclosure would be unfair, there is no need for him to go on to consider the other elements of the first data protection principle. The Commissioner therefore upholds WAO's application of section 40(2) because disclosure of this information would breach the first data protection principle.

The Decision

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

Steps Required

38. The Commissioner requires no steps to be taken.

Right of Appeal

39. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 1st day of November 2010

Signed

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

Legal Annex

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).”

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

Schedule 1

The first data protection principle

“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.”

The second data protection principle

“Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.”

The sixth data protection principle

“Personal data shall be processed in accordance with the rights of data subjects under this Act.”

Schedule 1 Part II(8) states:

“A person is to be regarded as contravening the sixth principle if, but only if –

(a) he contravenes section 7 by failing to supply information in accordance with that section.

(b) he contravenes section 10 by failing to comply with a notice given under subsection (1) of that section to the extent that the notice is justified or by failing to give a notice under subsection (3) of that section,

(c) he contravenes section 11 by failing to comply with a notice given under subsection (1) of that section.

(d) he contravenes section 12 by failing to comply with a notice given under subsection (1) or (2)(b) of that section or by failing to give a notification under subsection (2)(a) of that section or a notice under subsection (3) of that section.”

Schedule 2

Conditions relevant for purposes of the first principle: processing of any personal data:

- "1. The data subject has given his consent to the processing. 2. The processing is necessary-
- (a) for the performance of a contract to which the data subject is a party, or
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary-
- (a) for the administration of justice,
 - (b) for the exercise of any functions conferred on any person by or under any enactment,
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
 - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. - (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
- (2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied."