

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 April 2012

Public Authority: Wiltshire Council
Address: Chief Executive's Department
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Decision (including any steps ordered)

1. The complainant requested information from Wiltshire Council ("the council") relating to the tax records of a particular family. The council said that the information was exempt under section 40(2) of the Freedom of Information Act 2000 ("the FOIA").
2. The Information Commissioner ("the Commissioner") decided that the council correctly determined that the information was exempt, although it should have cited the exemption under section 40(5), the exemption that applies to circumstances where the public authority cannot confirm or deny whether the information is held because to do so would in itself reveal personal data which would breach the Data Protection Act 1998 ("the DPA").
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 26 August 2011, the complainant requested information from the council in the following terms:

"Between 1990 and 1994 the [name] family lived in our farm cottage at [address]. The house is also known as [address]. We would appreciate it if you could supply us with all their first names and dates of birth and any other information provided by them as a consequence of disclosure for tax purposes, whether it be rates, community tax or

council tax or any other type of tax. If for any reason, any one of them claimed an exemption or the tax was paid by another party please specify that reason and/or party".

5. The council replied on 31 August 2011 and said that the information was exempt from disclosure because it was the personal information of the family concerned. It referred to the DPA.
6. The complainant expressed dissatisfaction with the refusal on 6 September 2011.
7. The council replied on 20 September 2011. It said that it had now considered the request under the terms of the Freedom of Information Act 2000 ("the FOIA"). It said that the information was exempt under section 40(2).
8. An internal review was completed on 9 January 2012. The council said it wished to maintain its position.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way in which his request had been handled. He asked the Commissioner to consider whether the council had correctly refused to provide the information using the exemption under section 40(2).

Reasons for decision

Exemption: section 40(5)

10. Section 1(1)(a) of the FOIA provides that when a request for information is received, a public authority has a general duty to state whether or not it holds recorded information of the description specified in the request. This general duty is sometimes referred to as the duty "to confirm or deny" whether the information is held.
11. There are however certain reasons why a public authority would not have to comply with section 1(1)(a) under the FOIA. One such reason is that there is an exemption under section 40(5). This exemption provides that a public authority does not have to confirm or deny whether recorded information is held if to do so would in itself reveal personal data, the disclosure of which would breach the DPA.
12. The council did not seek to rely on the exemption under section 40(5). Instead, it applied section 40(2), but it did so without first seeking to

- establish whether the information was held in accordance with the general obligation under section 1(1)(a). Therefore, when the Commissioner asked for copies of the withheld information to be provided to him, the authority clarified that it was not actually sure whether it held the information and it did not consider that it would be an appropriate use of its resources to search for it, since the information, if it is held, would be exempt under section 40(2).
13. For clarity, the rationale provided by the council for the failure to confirm or deny whether the information was held was inadequate because it did not amount to a valid legal reason under the FOIA for not complying with section 1(1)(a). However, the Commissioner has a responsibility, as the regulator of the DPA, to take appropriate action to safeguard personal data in cases where a public authority has not cited appropriate parts of the legislation. In this case, the Commissioner decided that it was appropriate to exercise his discretion in this case to apply the exemption under section 40(5) on behalf of the authority.
 14. The Commissioner is satisfied that disclosing whether or not this information was held would have revealed "personal data". Personal data is defined by the DPA as any information relating to a living individual who can be identified. The request in question clearly asks about the complainant's former tenants, referring to their former address, the period of their tenancy and their surname from which they could be identified.
 15. A key consideration in cases such as this is whether the confirmation or denial would be fair. One of the principles of the DPA is that the disclosure of personal data should only occur in fair and lawful circumstances.
 16. In considering the issue of fairness, the Commissioner had regard to whether confirming or denying that such information was held would have been within the reasonable expectations of the individuals concerned at the time the request was made. The complainant has referred to the fact that the individuals were not on the electoral role and the names and other details are clearly not available elsewhere, hence the request. Compliance with section 1(1)(a) in this case would at the very least confirm to the general public the surname of the individuals who lived at the address during the time period in question and the Commissioner does not accept that this would have been within the reasonable expectations of the family concerned at the time the request was made.
 17. The complainant referred to historical information being available from the Wiltshire History Centre however the council has pointed out that the DPA only relates to living individuals. The complainant has also

referred to information about property owners that is available from the Land Registry. The information in this case is not about the owner of the property. It is about tenants and their tax circumstances. In the Commissioner's view, there is not an appropriate comparison to be drawn that would mean the tenants of the property ought to have had similar expectations. Public authorities do not reveal whether they hold information of this nature to the general public as a matter of routine.

18. The complainant has also referred to the fact that he considers that it would be "absurd" not to respond to the request because as the landlord, he would have held this information at some point. This argument is misconceived because the FOIA is concerned with disclosure to the general public rather than just the individual making the information request. It is not relevant that the complainant had some of this information in the past.
19. Given that there was no evidence to indicate that the individuals concerned would have had a reasonable expectation that the council would confirm or deny whether this information was held, the Commissioner considered that compliance with section 1(1)(a) in this case could cause distress because it would represent an unwarranted intrusion into their legitimate expectations of privacy.
20. There is always some legitimate public interest in the disclosure of information held by public authorities because this promotes the general aims of transparency and accountability. However, in this case, it is clear to the Commissioner the complainant is pursuing private interests and there is little wider public interest.
21. Taking all the above into account, the Commissioner concluded that it would not be fair in the circumstances for the council to disclose personal data about these individuals by complying with section 1(1)(a).

Right of appeal

22. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. 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

Andrew White
Group Manager
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Wycliffe House
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SK9 5AF