

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 August 2012

Public Authority: Caerphilly County Borough Council

Address: Penallta House
Tredomen Park
Ystrad Mynach
Hengoed
CF82 7PG

Decision (including any steps ordered)

1. The complainant requested details relating to a lease agreement and payments made under the terms of the agreement by a named individual in respect of a specific property. Caerphilly County Borough Council ('the Council') withheld the information under section 40(2) of the FOIA. The Commissioner's decision is that section 40(2) is engaged with respect to the requested information and that the information was therefore correctly withheld. The Commissioner does not require any steps to be taken.

Request and response

2. On 15 January 2012, the complainant wrote to the Council and requested information in the following terms:

"I would like to invoke my rights under the 'freedom of information act' to show 'what' payments were made, and by whom, if it was other than [named individual]. It appears he may have a different contractual agreement, than myself and others have with you. If this is so, under the Freedom of Information act, I would like to invoke my rights to see this agreement".
3. There followed an exchange of correspondence between the Council and the complainant in which he provided some background information and context relevant to his request.

4. The Council issued a refusal notice on 12 February 2012 stating that the information requested was exempt under section 40(2) of the FOIA as the information constituted the personal data of a third party and disclosure would breach the first data protection principle under the Data Protection Act 1998 ('the DPA').
5. On 4 April 2012 the complainant requested an internal review of the Council's handling of his request.
6. The Council provided the outcome of its internal review on 22 May 2012 and upheld its decision that the information requested was exempt under section 40(2) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 1 June 2012 to complain about the way his request for information had been handled and his dissatisfaction with the Council's refusal to release the information he had requested.
8. During the course of the Commissioner's investigation, the Council advised that copies of leases are public documents and are available to applicants by other means via the Land Registry. It confirmed that, as a result, it considered the information to be exempt under section 21 of the FOIA. However, as the Council failed to advise the complainant of this in its original response, it provided a copy of the lease in question. As such, this information is not considered further within this notice.
9. The scope of the Commissioner's investigation has therefore been to establish whether the remaining withheld information should be disclosed, or whether the Council was correct to withhold it under section 40(2) of the FOIA. The outstanding information comprises details of payments made to the Council by a named individual under the terms of their lease agreement.

Reasons for decision

Section 40 – personal information

10. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the DPA.

11. In this case, the Council argued that the requested information is the personal data of the individual(s) referred to in the request and that disclosure under the FOIA would breach the first data protection principle.

Is the requested information personal data?

12. 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 relates to a living individual who can be identified:

- from that data,
- or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

13. The withheld information in this case refers to details of payments made by a named individual to the Council, under a lease agreement for their property. The Council is of the view that the information relates to the individuals residing at the property because it has biographical significance for them, is used to inform decisions affecting them and has them as its main focus.

14. The Commissioner accepts that the requested information is linked to the individuals in question as it relates to payments which they made in respect of the lease agreement for their property. The Commissioner is therefore satisfied that the information requested constitutes personal data, within the definition at section 1(1) of the DPA.

Would disclosure breach one of the data protection principles?

15. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:

- personal data shall be processed fairly and lawfully; and
- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

16. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

Expectations of the individuals concerned

17. The Commissioner has considered the reasonable expectations of the individual in terms of what would happen to their personal data. These expectations can be shaped by factors such as an individual's general expectation of privacy and also the purpose for which they provided their personal data.
18. The Council confirmed that, as a matter of course, it does not publicise or provide details of service charge payments made by individual lease holders, or details of who makes the payments, to third parties. The Council is of the view, therefore, that the individual in question would not have expected their personal data to be disclosed into the public domain. The Council also confirmed that it had sought consent from the individual in question and consent was refused.
19. When considering what information third parties should expect to have disclosed about them, the Commissioner considers that a distinction should be drawn as to whether the information relates to the third party's public or private life. The Commissioner's view is that information which relates to an individual's private life (i.e. their home, family, social life or finances) will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). In this case, it is clear that the withheld information relates to the individual's private life. The Commissioner also notes that the individual concerned has specifically refused consent to disclosure.
20. The Commissioner agrees with the Council that private individuals would have a reasonable expectation that this type of information would not be publicly disclosed.

Consequences of disclosure

21. In light of the nature of the information and the reasonable expectations of the individual concerned, as noted above, the Commissioner is satisfied that release of the withheld information would not only be an

intrusion of privacy but could potentially cause unnecessary and unjustified distress to the individuals in this case.

General principles of accountability and transparency

22. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure.
23. The complainant (who also has a similar lease agreement with the Council) has argued that he has a legitimate interest in accessing the withheld information to assess whether the Council is treating all its leaseholders consistently. He wants to ensure that the individuals concerned are making payments in accordance with the provisions of their lease agreement.
24. The Council acknowledged that there is always a legitimate public interest in the principle of the FOIA in terms of promoting openness, transparency and accountability. However, the Council states that it has to consider whether there is a genuine legitimate interest in disclosure as opposed to public curiosity. In this case, the Council does not consider that any of the typical genuine public interest arguments in favour of disclosure are applicable.
25. The Council explained both to the complainant and the Commissioner that the amount of service charges payable in respect of leasehold properties varies depending on a number of issues including the date of the lease, the insurance premium payable, and any repairs element for each property. The Council also confirmed that, whilst all leaseholders were charged for the same elements, the exact costs varied from property to property. The Council stated that it had explained this to the complainant in an attempt to allay any concerns he may have had about any difference in payments made by individual leaseholders.
26. The Commissioner has considered whether there is a legitimate interest in the public accessing the withheld information. The Commissioner notes that the complainant has personal reasons for requesting the information. The complainant believes that he has a legitimate interest in disclosure of the requested information in order to satisfy himself that the individuals concerned are making payments to the Council in accordance with their lease agreement.
27. The Commissioner accepts that there is a general public interest in terms of transparency and accountability of public sector organisations and a more specific interest in accessing information about the way the Council manages such lease arrangements. However, the Commissioner

does not consider that any legitimate public interest extends to the level of information about payments made by individual leaseholders. Therefore the Commissioner is unable to conclude that disclosure of the withheld information is necessary to meet a legitimate public, rather than personal, interest.

28. In view of the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. As the Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met. The Commissioner therefore upholds the Council's application of the exemption provided at section 40(2) of the FOIA.

Right of appeal

29. 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

30. 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.
31. 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

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