

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 January 2013

**Public Authority:** Northern Ireland Housing Executive  
**Address:** The Housing Centre  
2 Adelaide Street  
Belfast  
BT2 8PB

#### **Decision (including any steps ordered)**

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The complainant has requested information from the Northern Ireland Housing Executive ("NIHE") in relation to the service of an NIHE member of staff in relation to several complaints made by the complainant regarding alleged encroachment onto NIHE land by external contractors. The NIHE disclosed the majority of the requested information, however it redacted some details from it ("the withheld information) citing section 40(2) of FOIA as a basis for non-disclosure. The Commissioner's decision is that the NIHE has correctly applied section 40(2) (by virtue of section 40(3)(a)(i) of FOIA to the withheld information. He therefore orders no steps to be taken.

#### **Request and response**

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1. The complainant wrote to the NIHE and requested information in relation to a member of the NIHE staff and his service in relation to several complaints made by the complainant regarding alleged encroachment on to NIHE land by external contractors. The NIHE responded on 13 February 2012. It provided the complainant with information held by it in response to his request. It did not seek to withhold any information from the complainant at that stage.
2. Following a request for internal review, in which the complainant asked some follow-up questions, the NIHE wrote to the complainant on 27 March 2012. It disclosed some further information which was relevant to his request, however it redacted some information from an e-mail which was disclosed to him, citing section 40(2) of FOIA as a basis for non-disclosure.

## Scope of the case

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3. The complainant contacted the Commissioner on 23 April 2012 to complain about the way his request for information had been handled.
4. The Commissioner has considered whether section 40(2) of FOIA has been correctly applied to the withheld information.

## Reasons for decision

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5. Section 40(2) of FOIA provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
6. One of the conditions, listed in section 40(3)(a)(i), is where disclosure of the information to any member of the public would contravene any of the data protection principles as set out in schedule 1 to the Data Protection Act 1998 (the DPA.)
7. In its internal review response, the NIHE stated that the withheld information was exempt from disclosure under section 40(2) of FOIA. It clarified that the information was personal data from which individuals (other than the complainant) could be identified and that its disclosure would breach the first data protection principle.
8. The first data protection principle requires that the processing of personal data be fair and lawful and,
  - at least one of the conditions in schedule 2 is met, and
  - in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.
9. In order to reach a view on whether this exemption could be applied, the Commissioner initially considered whether or not the information in question was in fact personal data.

## Is the withheld information personal data?

10. Section 1 of the DPA defines personal data as data which relates to a living individual who can be identified:
  - from those data,
  - or from those data and other information which is in the

possession of, or is likely to come into the possession of, the data controller.

11. The withheld information consists of the personal opinions (expressed in confidence) of individuals. The Commissioner considers that the withheld information is personal data as specific living individuals could be identified from it.

**Would disclosure of this personal data be unfair and in breach of the first data protection principle?**

12. The personal data in this case would relate to the named individuals in a private capacity. This is significant in that the Commissioner has made a clear distinction in previous decisions between requests for information relating solely to professional matters and information relating to individuals outside their professional capacity. The Commissioner's position is that he considers it far less likely that disclosure of personal data relating to professional matters would be unfair than would disclosure of information relating to individuals in a non-professional capacity.
13. In deciding whether disclosure of personal data would be unfair the Commissioner has taken into account the following factors:
  - The individuals' reasonable expectation of what would happen to their personal data.
  - What damage or distress would the individuals suffer if the information was disclosed?
  - The legitimate interests of the public in knowing the withheld information
14. From the evidence provided, the Commissioner has no reason to believe that disclosure of the information requested is within the individual's reasonable expectations. The NIHE has explained that the individuals reasonably expect that the information will remain confidential due to the circumstances in which it was obtained by the NIHE.
15. The Commissioner is satisfied that the individuals in this case would have had a reasonable expectation that their personal information would be kept confidential and not passed on to third parties without their consent. The NIHE has confirmed that it has not sought the individuals' consent for disclosure of the information in this case as, given the assurance of confidentiality to the individuals at the time they provided the information, it would not consider it appropriate to now seek their consent to disclosure.

**What damage or distress would the individuals suffer if the information was disclosed?**

16. The Commissioner has taken into account the fact that the individuals provided the information under assurances that it would be kept in confidence. Therefore, the Commissioner considers that the emotional wellbeing of the individuals may be affected by disclosure even though the distress or damage caused may be difficult to clearly evidence.
17. The Commissioner considers that there is a real risk that release of the information would cause damage and intrusion to the individuals, particularly due to the fact that it is outside their reasonable expectations for information of this nature to be made available to the world at large.

**Is there a legitimate interest to the public in disclosure of the withheld information?**

18. The Commissioner considers that any public authority should be transparent and accountable regarding issues such as complaints from the public and the manner in which it has handled them. However, the Commissioner considers that, as the NIHE has disclosed all of the information it holds which is within the scope of the complainant's request other than the redacted personal details, this has demonstrated transparency on the part of the NIHE. No further legitimate interest of the public would be served by disclosure of the withheld information.
19. The Commissioner is of the view that the exemption under section 40(2) by virtue of section 40(3)(a)(i) of FOIA is engaged. In making this decision the Commissioner has first concluded that disclosure of the withheld information would constitute a disclosure of personal data. The Commissioner considers that it is clear that specific individuals could be identified from the withheld information.
20. Secondly, the Commissioner concludes that disclosure of this personal data would be unfair and thus would be in breach of the first data protection principle. In making this decision, the Commissioner has taken into account the lack of expectation on the part of the individuals named in the request that this information would be disclosed, the potential for detriment as a result of disclosure and that the NIHE has disclosed the majority of the requested information.

## Right of appeal

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21. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

22. 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.
23. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**