

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 June 2013

Public Authority: Rugby Borough Council
Address: Town Hall
Evreux Way
Rugby
CV21 2RR

Decision (including any steps ordered)

1. The complainant requested information relating to the addresses of taxi proprietors. Rugby Borough Council (the Council) refused to disclose that information citing section 40(2) of FOIA (personal information).
2. The Commissioner has concluded that disclosure of the withheld information would be unfair and thus is exempt from disclosure on the basis of section 40(2) of FOIA. He requires no steps to be taken.

Background

3. The Commissioner understands that Section 42 of the Town Police Clauses Act 1847 sets out the requirement for hackney carriage licenses to be registered.
4. The Council told the Commissioner:

"The Town Police Clauses Act does not fully specify the content of the register, however it is common practice for council's to provide on the register the name of the taxi driver, the registration number of the vehicle and the plate number. There are a lot of council's who publish this information on-line on their websites".

Request and response

5. Further to previous correspondence regarding information about taxis and taxi proprietors, the complainant wrote to Rugby Borough Council on 22 May 2012 and requested information in the following terms:

"Any chance of addresses please?"

6. Rugby Borough Council responded 25 May 2012. It told the complainant:

"the addresses are their private addresses so unfortunately we are unable to supply them because of data protection".

7. Following an internal review the Council wrote to the complainant on 26 July 2012. It confirmed that it considers that the addresses of hackney carriage proprietors are exempt under section 40 of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 2 August 2012 to complain about the way his request for information had been handled.

9. The Commissioner understands that the request is only about hackney cabs – ie taxis - licensed by the Council and not about private hire vehicles, and relates to the addresses of the proprietors of such vehicles.

10. With respect to the address information the complainant told the Commissioner:

"I believe this should be on the public register but they [the Council] disagree even though I have advised them of other authorities who have been asked for this data and have been supplied it".

11. 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 FOIA. Although the Commissioner understands from the complainant that some councils would appear to have complied with similar requests, he does not consider that this sets a precedent for disclosure under FOIA.

12. During the course of the Commissioner's investigation, the Council confirmed that it is relying on section 40(2) (personal information) in this case.

13. The Commissioner considers the scope of his investigation to be the Council's application of that exemption to the requested address information.

Reasons for decision

Section 40 personal information

14. Section 40 of FOIA provides an exemption from the right to know where the information requested is personal data protected by the Data Protection Act (DPA).
15. Personal data of any person other than the requester (third party data) is exempt under section 40(2) if disclosure would breach one of the data protection principles. Generally this will mean balancing the legitimate interests of the public in having access to the information against the interests of the individual under the first principle and, in particular, considering whether it is unfair to release the information.

Is the requested information personal data?

16. In the Commissioner's view, the two main elements of personal data are that the information must 'relate to' a living individual 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 on them in any way.
17. It has been established in a previous case heard by the Information Tribunal¹ that an address is personal data.
18. The Commissioner has considered whether any of the addresses falling within the scope of the request in this case may, in fact, be business addresses and thus could be disclosed without any personal data being disclosed. In that respect, the Council told the Commissioner:

"the information ... does not relate to their work".
19. Given that assurance, the Commissioner is satisfied that the withheld information represents personal data.
20. The fact that the information constitutes personal data does not automatically exclude it from disclosure. The second element of the test

¹ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i146/ENgland.pdf>

is to determine whether disclosure would contravene any of the data protection principles.

Would disclosure contravene a data protection principle?

21. The data protection principles are set out in schedule 1 of the DPA. The most appropriate and relevant principle in consideration of this case is the first principle.
22. The first principle deals particularly with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states that:

"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."

23. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA schedule 2 conditions (and schedule 3 conditions if relevant). If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.
24. The requested information in this case is clearly not 'sensitive personal data' as defined in the DPA. The Commissioner is therefore satisfied that schedule 3 of the DPA is not relevant in this case.

Would it be fair to disclose the requested information?

25. In considering whether it would be fair to disclose the requested information in this case, the Commissioner has addressed three factors: first, the individuals' reasonable expectations of what would happen to their information; second, whether the disclosure would cause any unnecessary or unjustified damage or distress to the individuals; and third, whether the legitimate interests of the public are sufficient to justify any negative impact to the rights and freedoms of the individuals in question.

Reasonable expectations

26. The issue for the Commissioner to decide is would it be reasonable for the taxi proprietors concerned to expect that their personal data would not be disclosed. In considering this matter, the Commissioner will

generally take into account the third parties' expectations both at the time the information was collected and at the time of the request, the nature of the information itself and the circumstances in which the information was obtained.

27. In assessing what information third parties should expect to have disclosed about them, the Commissioner considers a distinction should be drawn as to whether the information relates to the third party's public or private life. Where the information relates to the individual's private life (ie their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (ie their public life).
28. The Commissioner asked the Council to explain the circumstances in which it initially obtained the personal data and what the individuals were told about how their information would be used. In response, the Council told him:

"Taxi drivers are informed that certain information may be disclosed under the Freedom of Information Act, however, personal data will be protected unless it is official business data. We do not consider the homes of taxi drivers to be 'official business data'".

29. The Commissioner has considered this point and decided that the individuals concerned are not likely to have reasonably expected this address information to be disclosed.

Consequences of disclosure

30. In this case, the Council has not provided the Commissioner with any arguments in relation to the possible consequences of disclosure. As such, it has not provided any specific reasons or evidence as to why disclosure would cause significant distress or damage to the individuals concerned.
31. In the Commissioner's view, if someone has deliberately published certain information about themselves it is difficult to argue that there would be negative consequences from releasing the information under FOIA.
32. In this case, however, the Commissioner accepts that while some taxi proprietors may wish to put details of their address into the public domain, for example on advertising literature or websites, others may choose not to do so.
33. As the Commissioner considers that the addresses relate to the individual's private family life, he has also taken into account that any

consequences of disclosure extend beyond the proprietors themselves to their families.

34. Furthermore, in view of the reasonable expectation above, the Commissioner considers that disclosure could cause distress or result in unwanted contact.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

35. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to provide the information if there is an overriding legitimate interest in disclosure to the public. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public
36. The complainant explained his '*legitimate reasons*' for wanting the address information. However, release of information under FOIA is, effectively, a disclosure to the general public, not just to the person making a request. The fact that a person might need the information for their own particular purposes is not a relevant consideration: the Commissioner can only consider whether information being requested under FOIA should be released into the public domain.
37. In the Commissioner's view, there is always some legitimate interest in the disclosure of information held by public authorities in line with the general principles of promoting transparency and accountability.
38. However, in the circumstances of this case, given the nature of the withheld information and the reasonable expectations of the data subjects, the Commissioner considers that any legitimate interest in disclosure would be outweighed by the harm to the rights and interests of the data subjects concerned. In his view, there is no legitimate interest in disclosing the information that would justify an intrusion into the private lives of the individuals whose personal data fell within the scope of the request.
39. The Commissioner also fails to see, in the context of the request, what useful purpose could be served by the disclosure of the personal data in question.
40. The Commissioner has therefore concluded that, as disclosure of the personal data at issue in this case would breach the first data protection principle, the section 40(2) exemption is engaged. This is an absolute exemption, which means that if, as in this case, the condition is satisfied, there is no additional public interest test to consider.

Right of appeal

41. 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

42. 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.
43. 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

Jon Manners
Group Manager
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