

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2013

Public Authority: City and County of Swansea
Address: Civic Centre
Oystermouth Road
Swansea
SA1 3SN

Decision (including any steps ordered)

1. The complainant requested information about a pest control matter at a specific property. The City and County of Swansea ('the Council') provided some information but stated that other information was exempt under section 40(2). The Commissioner has investigated and found that the remaining information is exempt from disclosure under sections 40(1) and 40(2) of FOIA as it contains the personal data of the complainant and the personal data of third parties. The Commissioner does not require any steps to be taken.

Request and response

2. On 5 July 2011, the complainant wrote to the Council and requested information in the following terms:
 - "1. I would like the specific name of the Department that is 'monitoring' the situation at [address of property] – for example is either the Pest Control Department or the Housing Department under the Environmental Health Department.
 2. The name of either the Pest Control Officer or Housing Officer that is 'monitoring' the property of [address of property]. Please note in letters that I have received from information from [name of Council officer] – you have already informed that the 'Authority is monitoring the situation' so some information has already been provided.

3. I would also like the pest control reports for [address of property] – as the rodents I believe coming from this property into my and hence is therefore affecting my property as well as that of [address of property].
 4. I would like to know (As I have previously requested in letters that have been signed for or sent by registered post) if under 'Third Party information' any request was made to [name of individual] in regard to the pest control reports and if no request was made – I would like you to justify the reasoning and action why you chose not to try to get consent or why it was not considered appropriate to try to do so in the circumstances and the dates of these requests and why I was not informed of the refusal".
3. The Council responded on 22 August 2011 and treated the request under the provisions of both the FOIA and the Data Protection Act 1998. It responded to questions 1 and 4. In relation to question 2 the Council confirmed that there are 8 Pest/Animal Control Officers and 1 Pest/Animal Control Supervisor who worked within the Pest Control Unit. The Council advised that, depending on operational matters, any one of these officers would be required to attend the property and as such there is no specific one officer designated with the task so the Council would be unable to provide the name of one specific officer. In relation to question 3, the pest control reports for the property, the Council stated that this information was considered to be third party personal information and did not fall within the remit of a subject access request. The Council stated that it had treated this part of the request under the FOIA and considered the information to be exempt under section 40(2) of the FOIA.
 4. On June 2012 the complainant requested an internal review of the Council's handling of the request.
 5. The Council provided the outcome of its internal review on 22 June 2012. The Council confirmed that information relating to questions 1 and 4 had already been provided. In relation to question 2, the Council provided the names of the nine officers working within the Pest Control Unit and confirmed that any one of the officers may have been required to attend the property. The Council also upheld its decision that the pest control reports for the property (question 4) were exempt under section 40(2) of the FOIA.

Scope of the case

6. The complainant first contacted the Commissioner 14 December 2011 to complain about the way their request for information had been handled. The Council had handled the request under both the FOIA and the Data Protection Act 1998 ('the DPA') as a subject access request.
7. The Council originally identified the complainant's own personal data and responded accordingly. This Council's handling of the request under the DPA has been considered by the Commissioner separately as it falls outside the scope of the FOIA, and of this case. However, the Council considered that the request for the pest control reports for the property in question should be dealt with under the FOIA.
8. During the course of the Commissioner's investigation, and based on clarification that the complainant provided to the Commissioner, the Council disclosed some additional information relevant to question 2 of the request, namely the names of Pest Control Officers who visited the property in question between February 2011 and June 2011.
9. In view of the above, the Commissioner considers this complaint to relate to whether the Council should disclose the pest control reports for the property in question.

Reasons for decision

Section 40 – the exemption for personal data - the complainant's own personal data

10. Where requested information constitutes the personal data of more than one individual, then all individuals are data subjects for the purposes of section 40 of the FOIA. In situations where a request is made by one of the data subjects the Commissioner's approach is to consider the information under the section 40(1) exemption.
11. There is no right of access to personal data about oneself under the Act, as section 40(1) provides that information is exempt if it constitutes the personal data of which the applicant is the data subject. Personal data is defined in section 1 of the DPA 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.

12. The complainant has raised a number of allegations about a pest control problem at a specific property. Some of the pest control reports contain some information relating to the complainant, including their name and contact details, details of reports provided to the Council and details of telephone exchanges between him/her and the Council about the matter. The complainant is clearly identifiable from the pest control reports relating to the matters s/he reported to the Council and the information is significant and biographical to him/her. The Commissioner is satisfied that the information is their personal data.
13. The Commissioner therefore finds that section 40(1) is engaged and as this is an absolute exemption there is no public interest test to apply.
14. The Commissioner notes that the complainant made a subject access request for "the pest control reports for [address of property]". Having viewed copies of the withheld information, the Commissioner notes that some of the information could be released without disclosing the complainant's own personal data. The Commissioner has therefore gone on to consider whether the Council was correct to apply section 40(2) of the FOIA to the information contained within the pest control reports which is not the complainant's own personal data.

Section 40 – the exemption for personal data - third party personal data

15. 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.
16. In this case, the Council argued that the requested information is the personal data of the occupier of the property, who is referred to by way of their name and address in both the request and the withheld information. The withheld information also contains details of persons (including the complainant) who made complaints about the property in question. The Council argues that disclosure under the FOIA would constitute unfair and or unlawful processing and would therefore breach the first data protection principle.
17. The withheld information in this case comprises pest control reports relating to a specific property. The pest control reports contain information about the person who made the complaint/allegation – the "client" and information about the address/person complained about. The pest control reports vary in terms of the level of information contained within them, but generally contain information about the allegations made, and actions taken by the Council in response to the allegations, including exchanges with the Client and actions taken in

respect of the property/person complained about such as site visits, remedial actions taken.

18. The Commissioner has considered the withheld information and is satisfied that, in the context of the request, it falls within the definition of 'personal data' as set out in section 1(1) of the DPA as it constitutes the personal data of either the owner of the property which has been the subject of the complaints received by the Council, and clients who complained to the Council about the property in question. The Commissioner has already considered that some of the information constitutes the complainant's own personal data. He is satisfied that the information contained within the pest control reports that is not the complainant's own personal data constitutes the personal data of third parties other than the complainant.

Would disclosure breach one of the Data Protection principles?

19. Having accepted that some of 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 most relevant principle in this case is the first principle.

The first data protection principle

20. In determining whether a disclosure is fair under the first principle of the DPA for the purposes of section 40 of the FOIA, the Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency, as well as any legitimate interests which arise in the specific circumstances of the case.

Reasonable expectations

21. The complainant argued that the requested information should be disclosed on the basis that s/he made the allegations against the property in question and their property is being affected by the pest problem at the property in question.
22. The Council argues that the information on a person's property file is considered to be personal to the occupier of the property and the individual in this case would have a legitimate expectation that information about a pest control matter at their property would not be disclosed to a third party, or into the public domain which essentially is what disclosure under the FOIA would represent. The Council confirmed that it sought the views of the occupier of the property in question and the individual did not consent to the disclosure.

23. 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 individuals' private lives. The Commissioner also notes that one of the individuals concerned (the occupier of the property) has specifically refused consent to disclosure.
24. The Commissioner considers that the issue of pest control is quite a sensitive and emotive matter and as such that there would be a reasonable expectation on the part of occupiers of properties which had experienced a pest control problem that their personal information would not be disclosed into the public domain.
25. Although the Council did not submit specific representations in relation to the clients who complained about the property, the Commissioner considers that where individuals submit complaints to a local authority about a pest control issue there is a reasonable expectation that their personal information will be used by the Council to investigate the matter in question but that it would not be disclosed to the public at large.

Consequences of disclosure

26. In the absence of specific arguments from the Council as to what the consequences of disclosure could be in this specific case, the Commissioner has considered what consequences may be likely to result.
27. The Commissioner considers that disclosure could cause considerable personal distress to the occupier of the property as it would essentially be putting information into the public domain that their property has been the subject of pest control problems.
28. The Commissioner recognises that the subject of pest control problems is an emotive one and one which often provokes a vigorous response from local residents concerned about any impact the matter may have on their homes and lives.
29. The Commissioner also considers that disclosure could lead to potential conflict, or worse, between the occupier of the property and other members of the community (including the individuals who made complaints to the Council about the property). He considers that

disclosure has the potential to cause significant unwarranted harm to the interests of both the occupier of the property and the persons who made the complaints to the Council.

30. The Commissioner has considered 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 individuals in question in this case.

General principles of accountability and transparency

31. 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.
32. The Council has confirmed that any public health problems at the property in question have been thoroughly investigated and resolved to the satisfaction of the public health officials and the occupier of the property.
33. The complainant has argued that as the pest control matter is also affecting their own property, they should be provided with the requested information in order to understand the actions taken by the Council to resolve the problem.
34. In considering such matters, the Commissioner is mindful that whilst an individual may be aware that information does or does not exist because of their involvement in events, it does not follow that the general public is also aware of the existence of that information. Disclosure under the FOIA is a disclosure to the world at large. In a case such as this one, the decision for the Commissioner is whether the information requested should be placed in the public domain. The Commissioner recognises that the complainant has personal reasons for making the request in this case. However, neither the identity of the applicant nor any purely personal reasons for wanting the requested information is relevant to the consideration of a freedom of information request. FOIA is about disclosure to the public and public interests. It is not about specified individuals or private interests. In addition, the Commissioner notes that the withheld information also contains the personal data of other third parties who reported pest control problems at the property in question to the Council.
35. The Commissioner considers that there is a legitimate public interest in public authorities being transparent in the way they discharge their duties in order to promote accountability and public confidence. The Commissioner also accepts there is a legitimate interest in individuals

having access to information that helps them understand the reasons why decisions that affect them are taken by public authorities, and in them having the ability to challenge those decisions and to participate in the debate around them.

36. Having considered all the circumstances of the case, the Commissioner has concluded that it would be unfair to the individuals concerned to disclose the withheld information and to do so would contravene the first principle of the DPA. As disclosure would not be fair, the Commissioner has not gone on to consider whether disclosure is lawful or whether one of the Schedule 2 DPA conditions is met.

Right of appeal

37. 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

38. 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.
39. 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
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