

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

### **Decision notice**

**Date:** 16 December 2013

**Public Authority:** London Borough of Islington  
**Address:** 222 Upper Street  
London  
N1 1XR

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

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1. The complainant has requested the rental income received from a restaurant in Finsbury Square in London. The London Borough of Islington (the "Council") refused to provide this information citing section 40(2) (unfair disclosure of personal data) as its basis for doing so. It upheld this at internal review.
2. The Commissioner's decision is that the Council has correctly relied upon section 40(2).
3. No steps are required.

#### **Request and response**

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4. On 15 May 2013 the complainant requested information of the following description:  
  
"Please also could I ask for rental income RECEIVED from Le [sic] Paquette restaurant in the middle of Finsbury Sq for years 2009, 2010, 2011 and 2012".
5. He had asked for other information in the correspondence but these other requests are not part of his complaint in this case.
6. On 21 June 2013 the Council responded. It refused to provide the requested information. It cited section 40(2) (Unfair disclosure of personal data) as its basis for doing so. It explained that the restaurant was operated by a sole trader and that disclosure would compromise that person's privacy.

7. The complainant requested an internal review on 21 June 2013. The Council sent him the outcome of its internal review on 17 July 2013. It upheld its original position. It explained that the amount paid to the Council was linked to the sole trader's income and that it was therefore their personal data.

## Scope of the case

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8. The complainant contacted the Commissioner on 1 August 2013 to complain about the way his request for information had been handled. He had initially contacted the Commissioner about this matter on 24 June 2013 but had not supplied evidence that he had applied for an internal review. The Commissioner is not obliged to consider complaints under section 50 where the complainant has not exhausted the public authority's internal review procedure.
9. The complainant disputed the Council's assertion that the requested amount was linked to the leaseholder's income. He claimed that the leaseholder had told him that the arrangement was a fixed rent.
10. The Commissioner has considered whether the Council is correct when it argues that the information is exempt from disclosure under section 40(2) of the Act.

## Reasons for decision

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11. Section 40(2) of FOIA states that personal data (which is not the personal data of the requester) is exempt if its disclosure would breach any of the data protection principles contained within the Data Protection Act ("DPA"). The term "personal data" is defined specifically in the DPA.<sup>1</sup>

## Does the requested information include third party personal data?

12. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance and considered the information in question.<sup>2</sup> He has looked at whether the information

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/1998/29/contents>

<sup>2</sup>

[http://www.ico.org.uk/for\\_organisations/data\\_protection/the\\_guide/~/media](http://www.ico.org.uk/for_organisations/data_protection/the_guide/~/media)

relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.

13. It is a well-established view of the Commissioner that information relating to sole traders is the personal data of that individual. Information about the business of a sole trader will amount to personal data, as information about the business will be about the sole trader. In this case, information about rental payments made by the restaurant to the Council show what payments that sole trader has paid to the Council each year. In other words, it discloses part of that sole trader's annual financial outgoings over a period of four years.
14. The Commissioner disagrees with the Council's view, as expressed to the complainant, that the information would disclose the sole trader's income. The information is too far removed from the sole trader's income to reveal what it is. Arguably, it may be possible to speculate what the sole trader's income is from the withheld information because the sole trader would, at least, need to earn enough to cover the rent they pay to the Council for the restaurant. However, the key point is that the information is, explicitly, a series of amounts which have been paid in rent by an individual to the Council.
15. The Commissioner is also satisfied that the sole trader can be identified from the information. A restaurant is a public-facing business and the Commissioner is satisfied that the sole trader in question is known locally.
16. The Commissioner also considers that information which shows how much a sole trader pays in rent for continued use of their business premises is biographically significant about that person. Rental payment is, inevitably, one of the largest costs that a person is obliged to meet on a regular basis. The payment of it is of considerable significance to that person.
17. Towards the end of the Commissioner's investigation, the complainant drew to the Commissioner's attention that the property had now been taken back by the Council. He speculated as to the extent of rental payment during the period and argued that where the figure was zero, this would not constitute personal data of the sole trader. He asked the Commissioner to take this into account.

18. The Commissioner disagrees with the complainant's contention on this point. In the Commissioner's view, any information about rental payments that an individual makes (whatever the amount) relates to that individual and is biographically significant about them.
19. The Commissioner is therefore satisfied that the information relates to the business of a living identifiable individual and is biographically significant about that person. It is, therefore, the sole trader's personal data.
20. The next question for the Commissioner to consider is whether disclosure of that information under FOIA would contravene any of the data protection principles of the DPA.

**Would disclosure contravene any of the DPA data protection principles?**

21. The data protection principle that is normally considered in relation to section 40 is the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

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 also met.'

22. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
  - The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
    - what the public authority may have told them about what would happen to their personal data;
    - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
    - the nature or content of the information itself;
    - the circumstances in which the personal data was obtained;
    - particular circumstances of the case, e.g. established custom or practice within the public authority; and
    - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
  - The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed?

- In consideration of this factor, the Commissioner may take into account:
- whether information of the nature requested is already in the public domain;
  - if so, the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
23. Furthermore, notwithstanding the individual in question's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
24. In considering 'legitimate interests', in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the individual in question, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
25. The Commissioner is entirely satisfied that any individual would not expect details of their financial obligations to the Council to be made public. He is also entirely satisfied that this expectation is reasonable. He has also been unable to identify any legitimate interest in disclosure that is more compelling than protecting the sole trader's legitimate interest in keeping his financial obligations private.
26. The Commissioner notes that the restaurant is located in Finsbury Square, an area of London currently under re-development (it is also affected by the Cross-rail project).<sup>3</sup> The complainant has also queried the veracity of valuations made in connection with the redevelopment of Finsbury Square.
27. The Commissioner accepts that there is a legitimate interest in knowing more about how money is generated locally for the public purse. He also recognises that there is a legitimate interest in obtaining information which provides more detail as to whether the Council holds realistic valuations for its assets at Finsbury Square.

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<sup>3</sup> <http://www.crossrail.co.uk/news/articles/helping-deliver-crossrail-changes-to-travel-around-liverpool-street-moorgate-tfl-press-release>

28. However, the Commissioner does not agree that the sole trader's reasonable and legitimate expectation of privacy can be set aside to serve those legitimate interests in this case.

**Section 40(2) - Conclusion**

29. In light of the above, the Commissioner has concluded that disclosure of the requested information would be unfair and that no Schedule 2 condition for disclosing that information can be satisfied. As such, disclosure would contravene the first data protection principle. The information is therefore exempt from disclosure under section 40(2) of the Act.

## Right of appeal

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30. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

31. 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.
32. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**