

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

### **Decision notice**

**Date:** 15 September 2014

**Public Authority:** London Borough of Hammersmith & Fulham  
**Address:** Information Management Team  
Smartspace 3<sup>rd</sup> Floor  
Hammersmith Town Hall  
King Street  
London  
W6 9JU

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

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1. The complainant has requested information from London Borough of Hammersmith & Fulham (the "Council") relating to specific properties and the "*Decent Homes Programme*" that were sold at auction and details of repairs to these properties.
2. The Council disclosed some of the requested details and applied section 40(2) of the FOIA to the remaining parts of the request.
3. The Commissioner's decision is that the Council has correctly applied section 40 of the FOIA to the request.
4. The Commissioner does not require the Council to take any steps.

#### **Request and response**

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5. On 24 February 2014, the complainant wrote to the Council and requested information in the following terms:
6. *"According to your planning database, numerous applications for external works to be undertaken by your Decent Homes Contractors were made from 2005 to 2011. Your Decent Homes programme also confirms that internal works were also carried out to the properties listed below. The list of properties below are some of those that have*

*been sold at auction since 2011. Given that the Decent Homes Programme was supposed to bring these properties up to current standards, I would like to know why these properties were sold and if it was due to the cost of repairs, what were these repairs and how much was the estimate in each instance.*

*This list is as follows:*

*[58 named addresses]"*

7. The Council responded on 5 March 2014. It stated that compliance with the request would exceed the appropriate costs limit under section 12 of the FOIA. It also noted that if the request was narrowed in scope, so as to bring it within the appropriate limit, it believed that it was likely that the requested information would be exempt under section 40(2).
8. Following an internal review the Council wrote to the complainant on 16 May 2014. It confirmed that it would take less than 18 hours to locate and retrieve the requested information. Therefore, the Council overturned its decision to apply section 12.
9. The Council disclosed some information in an anonymised format. However, it withheld the remaining information under section 40(2).

## **Scope of the case**

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10. The complainant contacted the Commissioner on 6 May 2014 to complain about the way his request for information had been handled.
11. The Commissioner will consider whether the Council was correct to apply section 40(2) of the FOIA to the request.

## **Reasons for decision**

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### **Section 40(2) personal data**

12. 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 Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
13. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

"personal data" means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."

14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that, in its internal review response, the Council considers that disclosure would breach the first data protection principle.
15. The Council has argued that if it were to combine the addresses listed in the request with other information that it holds, it would be able to identify individuals from this data. It has also argued that if the requested information were to be disclosed this, together with other publicly available information (such as the electoral roll), could lead to the identification of individuals.
16. The Council has argued that the disclosure of this information would be in breach of the first data protection principle. In particular it has argued that as this information relates to the residential properties of individuals, disclosure could cause distress to those individuals by releasing information about the physical condition of their homes.
17. The complainant has disputed the private nature of the information in question. He has pointed out that the addresses of these properties were already in the public domain, together with a large amount of information about the sale of those properties. He has also argued that,  
  
*"...a search of the Council Planning database using the addresses of sold properties often reveals applications for development made by the purchaser. This will reveal the name and address of the applicant and the proposed development. If the property is subsequently sold on, the sale price can be gained from property websites which will reveal how much the property has increased in value since the sale by the Council. All of this demonstrates that the Council is falsely claiming to protect the privacy of residents."*

18. The complainant is seeking information into the sale of residential properties which had previously had work carried out (or planned) by the Council. He has argued that,

*"...the Council claim to have brought 99.6% of its property up to Decent Homes standards at the cost of over £90 million of public funds. Sales of properties now approaching 3000 have been subject to expenditure under this programme. There is therefore a public interest in knowing if this money is well spent."*

He has also argued that there is a public interest in increasing public understanding of the sale of Council property when there is an "acute housing need" in the Borough.

### **Is the information in question personal data?**

19. The Commissioner considers that the remaining requested information is personal data. This is because it is highly likely that individuals living at the properties in question could be identified from the addresses and other information in the public domain.

### **The Commissioner's approach to fairness**

20. The Commission has gone on to consider whether disclosure of this information would be in breach of the first principle of the DPA. This requires, amongst other things, that the processing of personal information is fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:

- The individual's reasonable expectations of what would happen to their information;
- The consequences of disclosure, (if it would cause an unnecessary or unjustified damage or distress to the individuals concerned); and
- The balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

### **Reasonable expectations of the individuals**

21. The Commissioner considers that the information in question would give a detailed insight into the physical state of the homes of private individuals. Given this he considers that the individuals in question would have a reasonable expectation that the requested information would not be disclosed. He is of the view that it would be within the reasonable expectations of the individuals for their addresses and details of their homes not to be put in the public domain.

### **The consequences of disclosure**

22. The Commissioner considers that disclosure of the requested information would amount to an invasion of privacy into the home lives of private individuals. This would cause unnecessary damage and distress to those concerned if it were disclosed.

### **The legitimate public interest**

23. The Commissioner considers that the public's legitimate interests must be weighed against any prejudice to the rights of freedoms and legitimate interests of the individuals concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
24. The Council has acknowledged that there is a public interest in transparency. However, it has disputed the complainant's arguments about the public funding of the Decent Homes programme and his comments about housing shortages in the Borough. It has also argued that,

*"The existence of planning information or area based information on the Decent Homes checker does not provide confirmation that Decent Homes work was actually completed. It only confirms that planning permission was sought and that the contractor undertook some works in that area. Therefore properties which were sold due to cost of repairs exceeding £15,000 may not have previously had Decent Homes work completed on them. Additionally the sale price sought for properties would take into account any value added to the property as the result of Decent Homes work being completed on them."*

25. The Commissioner has also noted the complainant's arguments as set out at paragraph 18 above. Having done so, he considers that there is a strong legitimate public interest in the disclosure of this information. However, whilst he accepts this, he does not consider that this justifies

the consequences to the individuals living in these properties, were this information to be disclosed.

26. Taking this into account, the Commissioner has determined that disclosure of the requested information would be an unwarranted intrusion into the private lives of private individuals.

### **Conclusion**

27. Therefore the Commissioner considers that the disclosure of this information would be unfair, and in breach of the first data protection principle. Consequently as the Commissioner has concluded that the Council was correct to withhold the information in question under section 40(2) of the FOIA.

## Right of appeal

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28. 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: 0870 739 5836

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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**