

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 August 2014

Public Authority: London Borough of Hammersmith and Fulham

Address: Town Hall
Kingstreet
Hammersmith
London
W6 9JU

Decision (including any steps ordered)

1. The complainant has requested correspondence between the London Borough of Hammersmith and Fulham (the "Council") and a named individual.
2. The Commissioner's decision is that the Council has correctly applied the exemption set out at section 40 of FOIA.
3. The Commissioner requires the public authority to take no steps.

Request and response

4. The Council received a request for information from the complainant on 18 February 2014. He sought the following information:
"Please provide copies of all correspondence from 2012 onwards between the Council and [named individual] with regards her tenancy".
5. The Council responded on 18 March 2014. It stated that it held the information. However it was exempt from release under section 40(2) of FOIA.
6. Following an internal review the Council wrote to the complainant on 21 May 2014. It upheld its previous decision.

Scope of the case

7. The complainant contacted the Commissioner on 22 May 2014 to complain about the way his request for information had been handled.
8. The Commissioner has had to consider whether the Council was correct to rely upon section 40 of FOIA.

Reasons for decision

9. Section 40 of FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
10. Taking into account his dual role as regulator of both the FOIA and the Data Protection Act 1998 (the "DPA") the Commissioner has considered whether the correspondence between the Council and the named individual can be withheld under this exemption.

Personal data

11. In order to establish whether this exemption applies the Commissioner has first considered whether the withheld information is the personal data of a third party.
12. Personal data is defined in the DPA as information about a living individual who can be identified from that information, or from that information and other information in the possession of, or likely to come into the possession of, the data controller. Therefore the central question is whether the disclosure of any of the withheld information would lead to the identification of the individuals.
13. The Commissioner considers that the withheld information relates specifically to the named individual and her tenancy with the Council.
14. With this in mind, the Commissioner has concluded that the withheld information in its entirety constitutes personal data and therefore he has concluded that the information falls within the scope of the exemption.
15. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of the FOIA are met. The relevant condition in this case is section 40(3)(a)(i), where disclosure would breach any of the DPA principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first DPA principle which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in schedule 2 should be met

and (in circumstances involving the processing of sensitive personal data) at least one of the conditions of schedule 3 should be met.

16. The Council considers that in providing the requested information, it would breach the first principle of the DPA.
17. The Council concluded in its response that it would not be fair to the named individual who would have no expectation that the requested information would be made publically available in response to an FOI request. In addition, the Council did not identify any appropriate condition in either schedule 2 or 3 that would justify disclosure.

The Commissioner's response to fairness

18. The Commissioner has first gone onto consider whether disclosure of this information would be 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 any unnecessary or unjustified damage or distress to the individual concerned); and
 - The balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectation of the data subject

19. The Council explained:

"The requested information is for copies of correspondence between H&F and a named individual, relating to that individual's private life. It is likely to included details of their name, home address and tenancy arrangements with H&F, which may also include financial information".

20. The Council further explained:

"Individuals will have an expectation that personal information held by H&F in relation to H&F services will be used by H&F in order to manage delivery of that service, they would not expect their information to be disclosed in response to a request under the FOIA. Additionally, although there appears to be information in the public domain regarding the individual concerned, we have no reason to believe that this is as a result of the named individual's actions. It is therefore our opinion that

the individual would have a reasonable expectation that the requested information would not be disclosed.

21. Given the nature of the requested information, the Commissioner considers that it would be within the reasonable expectations of the data subject for this information to not be put in the public domain.

Would disclosure cause damage and distress to the data subject?

22. The Council considers that disclosure of the requested information *"could lead to the individual being subject to harassment and intrusion into their private life"*.

23. The Commissioner acknowledges this point and considers that information of this nature may cause damage and distress to the data subject if it were disclosed.

The legitimate public interest

24. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the individual 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.
25. In considering the legitimate public interests, the Council referred to the Commissioner's guidance. The Commissioner guidance explains that 'public interest' means *"the public good, not what is of interest to the public and not the private interest of the requester"*.¹ It confirmed that it was not in the public good for this information to be released.
26. The complainant argued that it is in the public interest for this information to be released. Specifically he argued that information regarding the tenancy is in the public domain and as taxpayer funds are used to house the named individual it is in the legitimate public interests for this information to be released.
27. The Commissioner understands that the complainant's argument regarding information already in the public domain refers to media publicity relating to the named individual's tenancy.

1

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/the_public_interest_test.ashx

28. In his guidance, the Commissioner states:

"The public interest is not necessarily the same as what interests the public. The fact that a topic is discussed in the media does not automatically mean that there is a public interest in disclosing the information that has been requested about it".²

29. Taking this into account, the Commissioner is not satisfied that the complainant's arguments justify disclosure of the requested information.

30. On this basis, the Commissioner has determined that disclosure of the requested information would be an unwarranted intrusion into the named individual's private life. Consequently as he considers that disclosure would be unfair, he has concluded that the Council was correct to withhold the requested information under section 40(2) of FOIA.

2

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/the_public_interest_test.ashx

Right of appeal

31. 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

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

32. 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.
33. 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

Gerrard Tracey
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