

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 May 2015

Public Authority: Great Yarmouth Borough Council

Address: Town Hall
Hall Plain
Great Yarmouth
Norfolk
NR30 2QF

Decision (including any steps ordered)

1. The complainant has made a request to Great Yarmouth Borough Council ("the council") for information relating to financial assistance for property development. The council disclosed some information and withheld the remainder under the exemption provided by section 40(2) of the Freedom of Information Act ("the FOIA"). The complainant disputed the application of section 40(2), and whether all relevant information had been identified.
2. The Commissioner's decision is that the council has correctly withheld the information under section 40(2), and that all information has otherwise been disclosed.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 21 June 2014, the complainant wrote to the council and requested the following:

"Grant, Subsidy, Financial Award, Money or other Assistance – new home construction, conversion of existing buildings to homes (flats)

Provide: from June 16, 2009 to June 17, 2014, full details, to include the specific amount of any Grant, Subsidy, Financial Award, Money or other Assistance given to all persons, owner, developer, company, builder or other entity involved in the building/development of conversion of existing buildings to homes (flats), where application

was; processed, received, arranged, coordinated or in any way assisted by GYBC officials, employees or persons acting on behalf of GYBC, and; what review, checks, assessment, investigation, inspection, means-test, enquiry was made by GYBC as to the financial circumstances of the applicant(s) and recipient(s). The above request is to include property developments at:

(i) [redacted addresses]

(ii) [redacted address]"

5. The council responded on 23 July 2015, and disclosed some information but withheld the remainder under section 40(2).

Scope of the case

6. The complainant contacted the Commissioner on 13 August 2014 to contest the council's response. The Commissioner identified that the complainant had disputed the council's response on 29 July 2014, but stated that he was not requesting an internal review. However, the Commissioner provided the council with the opportunity to provide this before continuing in the complaint.
7. The council provided its internal review on 22 October 2014. It disclosed further information that it had previously withheld under section 40(2), but confirmed that a proportion was still withheld under that exemption.
8. The complainant subsequently confirmed that he disputed the application of section 40(2), and later, whether all information had been otherwise provided.
9. The Commissioner therefore considers the scope of this case is the determination of whether the council has correctly applied section 40(2), and whether any further information is likely to be held that falls within the scope of the request.

Reasons for decision

Section 40(2) – the personal data of third parties

10. Section 40(2) provides that:

"Any information to which a request for information relates is also exempt information if–

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied."

11. Section 40(3) provides that:

"The first condition is–

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–

(i) any of the data protection principles..."

Is the withheld information personal data?

12. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

"...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 data controller or any person in respect of the individual..."

13. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance the Commissioner has reviewed the withheld information, and has identified that the information specifically relates to named individuals, the address of the property which they own or otherwise reside in, and the financial assistance that they have received from one of three grant schemes for property development that the council administers.

Would disclosure breach the data protection principals?

14. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.

15. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

16. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
17. In this case the council has advised that it believes the individuals would hold an expectation that their personal data would remain confidential, due to it relating expressly to their home life. The council has also detailed how two of the three grant schemes consider the occupier's vulnerability (such as whether they are elderly or have young children) in deciding whether to issue a grant, and that the remaining grant scheme has the criteria that the owner of the property must be able to supply 40% of the total sum required for refurbishment. Disclosure would therefore place this information in the public domain.

The consequences of disclosure

18. The council considers that disclosure would cause an unwarranted intrusion into the home life of private individuals, either in respect of their financial ability, or else whether they might be classed as vulnerable.

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

19. In the circumstances of this case, the council has outlined that it has released information that pertains to limited companies, but considers that the remaining withheld information relates to the home life of private individuals, who would hold a strong expectation of confidence.
20. It is evident to the Commissioner that the awarding of grants represents the expenditure of public monies, and that there is public interest in ensuring that such expenditure meets any predefined conditions and is administered properly. However, it is clear in this case that the disclosure of the withheld information would place details about private individuals, including their financial status or any assessed vulnerability, into the public domain. In particular, the disclosure of addresses with occupants who have been deemed as vulnerable may place those individuals at risk of harm.

Conclusion

21. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in

understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.

22. In the circumstances of this request, the Commissioner has reviewed the withheld information and the nature of the relevant grants, and has identified that the withheld information clearly relates to the home life of private individuals. It is further evident that the disclosure of the information would provide information about either the financial circumstances of an individual, or else whether they had been deemed as vulnerable. There is no suggestion that these individuals would have a reasonable expectation of their personal data being disclosed into the public domain, and such disclosure may present a risk of harm to those individuals who had been closed as vulnerable by making their addresses public. The Commissioner has therefore concluded that disclosing this information would not be fair under the first principle of the DPA, and that the exemption provided by section 40(2) is engaged.

Section 1(1) – the duty to make information available on request

23. Section 1(1) states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.
24. The FOIA provides a right of access to information in recorded form, and only that which exists at the time of the information request. The FOIA does not require a public authority to generate new information, such as in the form of an explanation or opinion, in order to respond to a request.

The complainant's position

25. The complainant has referred the Commissioner to a newspaper article from April 2012 that references the Homes and Communities Agency awarding a grant to a housing association for the repair of empty homes located within Great Yarmouth. The complainant believes that information about this grant would have fallen within the scope of the request, and was not disclosed.

The council's position

26. The Commissioner has first requested information from the council about the searches for relevant information that it has undertaken.
27. The council has confirmed that it has consulted with the Group Manager's in the two sections that allocate grants; namely the Health and Wellbeing service, and the Conservation service. These managers organised a search for relevant information held on the council's

networked computer drives in both spreadsheet and report form. Whilst relevant information was retrieved by the Health and Wellbeing service, no relevant information was retrieved from the Conservation service, due to that service only holding information about grants issued for the repair of buildings, as opposed to the development of buildings into homes. The council has further confirmed that no information is held outside its networked computer drives, such as on local devices, as council policy forbids this.

28. In respect of the newspaper article that the complainant has referenced, the council has responded that this article does not change the council's position. The council has elaborated that the information published was premature, due to the proposed grant money only being available subject to the housing association being able to meet certain conditions, which it subsequently failed to do. As such, no relevant information is held which would have fallen within the scope of the request.

The Commissioner's conclusion

29. In the circumstances of this complaint, the Commissioner must decide on the balance of probabilities whether further information is likely to be held by the council.
30. In reaching a decision, the Commissioner has considered both the breadth of searches that the council has undertaken, and the centralised storage of any held information on the council's networked servers. The Commissioner has also considered the council's reasoning for why the newspaper article referenced by the complainant does not alter its position. Having considered these factors, and in the absence of any clear contradictory evidence, the Commissioner has concluded that no further relevant information is unlikely to be held.

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: 0870 739 5836

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

Andrew White
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