

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 August 2015

**Public Authority:** The London Borough of Hackney  
**Address:** Hackney Town Hall  
Mare Street  
London  
E8 1EA

### Decision (including any steps ordered)

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1. The complainant has requested information about complaints and grievances raised within three identified teams with Hackney Homes, which is part of the London Borough of Hackney (the "Council"). The Council provided some information. However it withheld part of the request under section 40(2) of the FOIA and explained that some of the required information is not held.
2. The Commissioner's decision is that the Council is correct to apply section 40(2) to the withheld information and that it does not hold the remaining information. No further steps are required.

### Request and response

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3. On 11 April 2014 the complainant made the following request for information under the FOIA for:
  1. *"The total number of complaints and grievances that have been raised within the Housing Disrepair Team, the Performance and Standards Team and the Complaints Team using the applicable Hackney Homes grievance procedure at the time, during the period beginning July 2002 to date, including the dates when raised.*
  2. *The total number of complaints and grievances that have been raised within the Housing Disrepair Team, the Performance and Standards Team and the Complaints Team using the applicable Hackney Homes grievance procedure at the time, during the period beginning July 2002 to date, that have been upheld by Hackney Homes in the first instance.*

3. *The total number of complaints and grievances that have been raised within the Housing Disrepair Team, the Performance and Standards Team and the Complaints Team using the applicable Hackney Homes grievance procedure at the time, during the period beginning July 2002 to date, that have not been upheld by Hackney Homes in the first instance.*
4. *The total number of complaints and grievances that have been raised within the Housing Disrepair Team, the Performance and Standards Team and the Complaints Team using the applicable Hackney Homes grievance procedure at the time, during the period beginning July 2002 to date, that have been upheld by Hackney Homes on appeal.*
5. *The total number of complaints and grievances that have been raised within the Housing Disrepair Team, the Performance and Standards Team and the Complaints Team using the applicable Hackney Homes grievance procedure at the time, during the period beginning July 2002 to date, that have not been upheld by Hackney Homes on appeal.*
6. *The total number of complaints and grievances that have been raised within the Housing Disrepair Team, the Performance and Standards Team and the Complaints Team using the applicable Hackney Homes grievance procedure at the time, during the period beginning July 2002 to date, that have been upheld by Hackney Homes on appeal that did receive a response/decision and outcome letter within the timescales prescribed in the grievance procedure in force at the time of the initial complaint/grievance as well as the total number of those that did not receive a response/decision and outcome letter within the prescribed timescales.*
7. *The total number of complaints and grievances that have been raised within the Housing Disrepair Team, the Performance and Standards Team and the Complaints Team using the applicable Hackney Homes grievance procedure at the time, during the period beginning July 2002 to date, that have not been upheld by Hackney Homes on appeal that did not receive a response/decision and outcome letter within the timescales prescribed in the grievance procedure in force at the time of the initial complaint/grievance as well as the total number of those that did receive a response/decision and outcome letter within the prescribed timescales.*
8. *The total number of complaints and grievances that have been raised within the Housing Disrepair Team, the Performance and Standards Team and the Complaints Team using the applicable Hackney Homes grievance procedure at the time, during the period beginning July 2002 to date, that*

- (1). Did and did not receive an initial response to their complaint / grievance within the timescale prescribed in the applicable grievance procedure.*
9. *(2) Did and did not receive an initial decision letter in response to their complaint/grievance within the timescale prescribed in the applicable grievance procedure.*
10. *(3) Did and did not receive their final outcome decision letter in response to their complaint/grievance appeal, within the timescale prescribed in the applicable grievance procedure.*
11. *The total number of persons within the Housing Disrepair Team, the Performance and Standards Team and the Complaints Team who have been dismissed, investigated, disciplined or made redundant by Hackney Homes subsequent to or concurrent to any ongoing complaint/grievance by such person(s) during the period beginning July 2002 to date."*
4. The Council responded on 20 May 2014 to each of the above requests:
1. Total number of grievances – 10.  
The Council applied section 40(2) to the request for the dates of these grievances as it considered disclosure would not be fair and would breach the first data protection principle.
  2. Grievances upheld – 0
  3. Grievances not upheld – 10
  4. Grievances upheld on appeal – 0
  5. Grievances not upheld on appeal – 4
  6. Complaints and grievances upheld on appeal that did receive a response/decision and outcome letter within the prescribed timescales and the number that did not – 0 to both questions.
  7. Total number of grievances not upheld at appeal receiving an outcome letter within prescribed timescales - 0.  
  
Total number of grievance appeals not receiving an outcome letter within prescribed timescales - 4.
  8. 9. and 10. Total number of grievances receiving an outcome letter within prescribed timescales is 1.

Initial responses to grievances and initial decisions going back to 2002 – not held (records generally limited to outcome letters and original grievances).

11. The Council applied section 40(2) to this information as it considered disclosure would not be fair and would breach the first data protection principle.
5. The complainant requested an internal review on 28 August 2014.
6. On 5 November 2014, at internal review, the Council repeated the above response.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 6 September 2014 to complain about the way his request for information had been handled. This complaint was one of a number of concerns he had raised with the Commissioner as he had made a number of FOIA requests and subject access requests ("SARs") to the Council under the Data Protection Act 1998 (the "DPA").
8. The Commissioner first addressed the complainant's cases regarding his data protection concerns and his SARs and then addressed this FOIA request with the Council in March 2015.
9. The complainant argued that he:
  - does not accept the application of section 40(2) to requests 1 and 11;
  - considers the response to request 6 does not make sense; and
  - does not accept that the Council does not hold the information required at request 8, 9 and 10.
10. The Commissioner informed the complainant that as it appeared he was satisfied with the response to requests 2,3,4,5 and 7 he did not intend to include them in the scope of the case. The complainant did not challenge this.
11. With regard to request 6, the complainant argued that the response cannot be 0 to both parts of the question. This is because he considered the total should add up to 4 i.e. the same number as the response to questions 4 and 5.

12. However the Commissioner noted that request 6 only concerns complaints and grievances upheld on appeal and that the Council's answer is therefore consistent with request 4. He therefore informed the complainant he did not intend to include this request in the scope of the case. The complainant did not challenge this. (The Council has since confirmed to the Commissioner that his interpretation of this response is correct).
13. The Commissioner therefore considers the scope of the case to be concerned with the Council's application of section 40(2) to requests 1 and 11 and with the Council's position that it does not hold the information requested with respect to request 8, 9 and 10.

## **Reasons for decision**

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### **Request 1 and 11**

#### **Section 40(2)**

14. Section 40(2) of the 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. The first principle of the DPA states that personal data must be processed fairly and lawfully.

#### **Is the data personal data?**

15. 'Personal data' is defined under section 1(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 the data controller or is likely to come into the possession of the data controller.
16. The withheld information in this case comprises the dates of ten grievances raised in a given time period within three identified teams (request 1) and the total number of persons in the same teams who have been dismissed, investigated, disciplined or made redundant following a complaint or grievance during the same time period (request 11).
17. The Council has argued that the complainant referenced only three teams and that the total number of staff within these teams is currently approximately 11/12 members.
18. With respect to request 1, the Council has argued that the teams are too small for the Council to be satisfied that staff members cannot be identified from disclosure of dates as to when grievances were raised.

19. The Council has explained that the complainant was located within one of the teams and would be aware of at least some issues that may have been raised during his employment with Hackney Homes. Further, other staff members within those teams could be aware of issues that may have taken place at a certain time and be aware of the staff members involved.
20. The Council has argued that by disclosing the dates of the grievances, information could be learnt about staff members that may not be in the public domain, by linking the dates around certain issues that may have been raised and the staff involved, to the date of the grievances.
21. With respect to request 11, the Council has argued that it considers the information cannot be sufficiently anonymised due to the small number of people involved (under 5 staff members).
22. The Council acknowledges that a number in itself is not personal information, however it has argued that the smaller the number of individuals, the greater the risk of someone being identified. It considers that the three relevant teams are too small for the Council to be satisfied that staff members cannot be identified from disclosure of numbers of staff who were dismissed, investigated, disciplined or made redundant.
23. As the complainant was located within one of the teams he would be aware of any staff members who have left the Council. The Council has that it is possible that the complainant may be aware of other information that could be linked to the withheld information. Other staff members within those teams may also be aware of people who have departed.
24. The Council has therefore argued that the disclosure of the number of people who departed under the given circumstances, might enable a third party to learn information about individuals that is not in the public domain.
25. In view of the above, the Commissioner is satisfied that the requested information relate to living individuals who may be identified from that data. The requested data therefore constitutes personal data.

**Would complying with section 1(1)(b) contravene the first data protection principle?**

26. The first principle of the DPA states that personal data must be processed fairly and lawfully.
27. In considering whether it would be unfair to provide the requested information and whether this would therefore contravene the

requirements of the first data protection principle, the Commissioner has taken the following factors into account:

- the consequences of disclosure;
- the data subjects' reasonable expectations of what would happen to their personal data; and
- the balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

### **Reasonable expectations**

28. The Commissioner considers that the individuals concerned in raising grievances at the Council would have a reasonable expectation that their identities would remain private and not be disclosed to the public under the FOIA. They would therefore have an expectation that the Council would not disclose information which may enable their identification.
29. Likewise, the Commissioner is satisfied that any employee who had been dismissed, investigated, disciplined or made redundant following a complaint or grievance would have a reasonable expectation that their identities would remain confidential.

### **Consequences of disclosure**

30. The Council has argued that disclosure of the withheld information in this case could have a negative impact on a person within their business and private life.
31. The Commissioner considers that as disclosure of the requested information would be contrary to expectations and therefore unfair, such disclosure may cause some distress to the individuals concerned if it led to their identification.

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

32. The Commissioner is satisfied that the interest in disclosure must be in the public interest and not in the private interest of the individual requester. The Council has argued there is no public interest in disclosure in this case.
33. In such cases the Commissioner acknowledges that there is a tension between public access to information and the need to protect personal information. As far as possible, a public authority must be transparent and accountable for its actions. However, these individuals are not senior public figures and do not hold an elected office.

34. The Commissioner is therefore satisfied that providing the requested information is likely to lead to identification and is therefore unwarranted by reason of prejudice to the rights, freedoms and legitimate interests of the individual in question.
35. In view of the above, the Commissioner is satisfied that the Council is correct to refuse these names under section 40(2) of the FOIA.

### **Requests 8, 9 and 10**

36. The complainant has argued that the Council must hold the information required at requests 8, 9, and 10.
37. The Council has explained that with respect to request 10, one outcome decision letter was sent within the timescales. It has confirmed that of those that went to appeal, none went out on time.

### **Information not held**

38. With respect to requests 8 and 9, the Council has explained that it does not hold initial decision letters or initial response letters. This is because it only retains the original grievance and the final outcome letter. It therefore cannot provide this information as it is not held.
39. The Council has confirmed it does not have a written policy regarding the retention of initial response letters. However these are kept up to the issue of the final outcomes letter.
40. The Council only keeps a log of the dates when outcome letters are sent. It has confirmed that Hackney Homes do not have a business need to retain initial letters.
41. In view of the above, the Commissioner is satisfied that on the balance of probabilities, the Council does not hold the information required at requests 8 and 9.



## Right of appeal

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42. 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)

43. 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.
44. 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**