

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 May 2015

**Public Authority:** Brighton and Hove City Council

**Address:** Kings House  
Grand Avenue  
Hove  
BN3 3LS

#### Decision (including any steps ordered)

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1. The complainant has requested information from a building control file for a particular address. The council refused the information relying on section 40(2) of the FOIA.
2. The Commissioner's decision is that the council was correct to withhold the requested information.
3. The Commissioner does not require the council to take any steps.

#### Request and response

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4. On 6 March 2014, the complainant requested the following information from the council:

*"Please, can you advise me. I want to make an enquiry about the cost & the full details of the Agreed Specification of Works for the adapted shower/ wet room in [address redacted] 2009.*

- *Which appears on the building control register [reference number redacted] map"*

5. The council responded on the 12 March 2014. It refused to provide the information, relying on section 40(2) of the FOIA, as it considered it would identify sensitive personal data about another individual.

6. On the same day, the complainant requested an internal review of the council's decision to withhold the information, asking whether it could provide the information redacting any sensitive personal data.
7. The council provided its internal review on the 4 April 2014. It maintained its decision to withhold the requested information. It stated that to disclose the requested information, namely the specification of works and associated costs, could potentially disclose sensitive information about a third party. The council did not consider that redacting parts of the information would provide enough anonymity to the individual.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 3 November 2014 to complain about the way his request for information had been handled.
9. During the Commissioner's investigations the council advised the Commissioner that it is of the opinion that this request should not have been accepted for investigation due to the length of time it took the complainant to bring the matter to the Commissioner following the council's internal review response.
10. The Commissioner has noted the council's concern on this, however due to the reasons given by the complainant for the delay in bringing the matter to him; the Commissioner has determined the case eligible for investigation.
11. The Commissioner considers the scope of the case is to determine whether the council is correct to rely on section 40(2) of the FOIA to refuse the request.

### **Reasons for decision**

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#### **Section 40(2) of the FOIA**

12. Section 40(2) of FOIA states that

*"Any information to which a request for information relates is also exempt 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."*

13. Section 40(3) states that:

*"The first condition is –*

*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 that under this Act would contravene –*

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

### **Is the withheld information personal data?**

14. Personal data is defined by the Data Protection Act 1998 (DPA) as any information which relates to a living individual who can be identified from that data along with any other information in the possession or is likely to come into the possession of the data controller.
15. In the Commissioner's view, an individual or individuals can often be identified from a postal address through sources such as the Land Registry and the electoral roll. He is therefore satisfied that the withheld information, the cost and details of the works carried out, relates to a living person and that individual would be identifiable from the information in question.

### **Would disclosure contravene any of the Data Protection Principles?**

16. The data protection principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

### **Reasonable expectations**

17. The withheld information is in relation to works carried out in the private home of an individual. It has been recorded on the council's building control register that work has been carried out on the property.
18. Although the work is recorded on the council's building control register under a reference number, it only lists specific items such as consumer

unit and shower; this is a very general list that does not go into any further detail.

19. The Commissioner has not been made aware of any further information available in the public domain.
20. Disclosure of the requested information would place more detailed information which relates to an individual's private life and their home into the public domain.
21. The Commissioner sees that an individual would have a reasonable expectation that information relating to changes in the interior of their home would not be disclosed into the public domain. This is because unlike planning applications, building control files are not routinely disclosed or published into the public domain. So there would be a legitimate and reasonable expectation of privacy in relation to this type of information.

### **Consequences of disclosure**

22. The council has explained that to provide the requested information could potentially reveal sensitive personal data about the individual.
23. The Commissioner considers that if the council were to provide the requested information then some distress could be caused to the individual as they would not expect that information which could reveal sensitive personal information about them would be released into the public domain.
24. The Commissioner's guidance<sup>1</sup> at paragraph 46 explains what types of information falls within sensitive personal data. The council has told the Commissioner which of the categories of sensitive personal data could be revealed if the information were released. The Commissioner is satisfied that the type of information that could be revealed, in this case, would fall within one of those categories.
25. The Commissioner has not stated, in this decision notice, which of the categories of sensitive personal data the information falls, as to do so could in-itself reveal some sensitive information about the individual.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

26. Disclosure of such information is likely to be unfair as it comprises information that individuals will regard as the most private. This means that in the majority of cases it will be in the reasonable expectation of the individual that such information will not be disclosed.
27. Also in general, the release of this type of personal information in relation to an individual's private life would cause some loss of trust in the building control process.

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

28. The Commissioner sees that there is a legitimate public interest in the building control process to determine that Building Regulations are being applied properly. At the same time, the Commissioner considers that the building control process has been introduced with the specific aim of entrusting the council to apply the Building Regulations appropriately. This in turn, in the Commissioner's view, creates a greater interest in protecting the integrity of the building consent process and that disclosure could damage the public trust in the Building Regulations process.
29. The complainant has stated to the council in his internal review request that he is requesting the information as it directly affects the party floors between his flat and the flat directly above.
30. The Commissioner has not been provided with any expansion on this, but there are bodies that the complainant could have appealed to with regards to the building process and also the Local Government Ombudsman to consider council actions. The Commissioner has not been made aware of whether any of these steps have been taken by the complainant or of any outcomes if so.
31. The Commissioner recognises that any legitimate interest in disclosure has to be weighed against any unwarranted prejudice to the rights, freedoms and legitimate expectations of the individual that the information relates to. On considering all of the above, the Commissioner's decision is that disclosure of the withheld information would be unfair to the individual to who the data relates.

## Right of appeal

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32. 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)

33. 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.
34. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**