

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

### **Decision notice**

**Date:** 5 May 2015

**Public Authority:** 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 the council to disclose a list of the prices paid for properties bought back by the council for the Woodberry Down regeneration project. The council initially applied section 12 of the FOIA to this request. This was later withdrawn when the complainant requested information to be supplied within the cost limit. The council responded again and released some information to the complainant. The council advised the complainant that it had withheld the outbound part of each postcode, as it considered this information was exempt from disclosure under section 40 of the FOIA.
2. The Commissioner has reviewed the case and he is satisfied that section 40 of the FOIA applies to the remaining withheld information. As a result, the Commissioner does not require any further action to be taken.

#### **Request and response**

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3. On 15 September 2014, the complainant wrote to the council and requested information in the following terms:  

"I would like to receive a list of prices paid for the freehold and leasehold properties that were bought back by council for Woodberry Down regeneration project."
4. The council responded on 25 September 2014. It stated that the cost to comply with the request would exceed the appropriate limit prescribed

by the FOIA and so section 12 of the FOIA applied. In accordance with its obligations under section 16 of the FOIA, it asked the complainant to consider narrowing his request.

5. The complainant replied on 3 October 2014. He asked some further questions and for the council to consider providing as much information as possible within the cost limit.
6. The council sorted further clarification from the complainant and the complainant confirmed on 3 October 2014 that he wished to request an internal review.
7. The complainant first contacted the Commissioner on 11 November 2014 stating that he had not received any further correspondence from the council, despite his formal request for an internal review being made at the beginning of October.
8. The Commissioner wrote to the council on 24 November 2014 and requested that an internal review be carried out no later than 4 December 2014.
9. The complainant contacted the Commissioner again on 5 December 2014 stating that he had still not received a response from the council and asked for the Commissioner's assistance to resolve this.
10. The council responded the same day informing the complainant of the outcome of the internal review process. The council released the requested information to the complaint from 2010 onwards but withheld the second half of each postcode under section 40 of the FOIA.
11. The complainant contacted the council again on 8 December 2014 and requested that it review its decision to withhold the inbound part of the postcode for each property concerned under section 40 of the FOIA. He also stated that he asked the council to confirm which properties are freehold and which properties are leasehold and this information had not been provided.
12. The Commissioner was notified of this further correspondence with the council the same day.
13. The Commissioner wrote to the council on 8 December 2014 and requested that it review the matter again by 22 December 2014. He requested the council to review the application of section 40 of the FOIA and to provide the requested information broken down to reflect whether the properties are freehold or leasehold.
14. As the council failed to address the complainant's outstanding concerns, the Commissioner commenced a full investigation on 7 January 2015.

15. The council issued its final response on 16 January 2015. It released the requested information broken down to reflect whether each property is leasehold or freehold and informed the complainant that it remained of the opinion that section 40 of the FOIA applied to the inbound part of each postcode.

## **Scope of the case**

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16. As explained above, the complainant first contacted the Commissioner on 11 November 2014 to complain about the way his request for information had been handled. The Commissioner assisted the complainant but did not commence a full investigation until 7 January 2015.
17. The complainant does not agree that section 40 of the FOIA applies to the remaining withheld information – the inbound part of each postcode. This notice will address the council's application of section 40 of the FOIA to this information.
18. No complaint has been made to the Commissioner in relation to the council's initial application of section 12 of the FOIA. The Commissioner's investigation has therefore focussed on the application of section 40 of the FOIA to the inbound element of each postcode.

## **Reasons for decision**

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19. Section 40(2) of the Act 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.
20. Firstly, the Commissioner must consider whether the requested information is personal data. Personal data is defined in Section 1 of the DPA 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.”

21. In this case the council has disclosed the outbound part of each postcode but not the inbound element, on the basis that the full postcode of a property constitutes personal data. The council confirmed that it is of the view that living individuals can be identified from the full postcode of a property and so this information falls within the definition of personal data outlined in the DPA.
22. The Commissioner agrees with the council that a full postcode identifies a property or a specific number of properties falling under that postcode and from this information it is possible to identify the owner(s) or occupier(s) of those properties. It therefore constitutes personal data. It not only connects living individuals to the properties they live in but also confirms some information about the private lives of those individuals. For example for a home owner, it confirms that a particular living individual(s) owns a particular property; a particular asset of significant value. For tenants, it releases information about their housing status even if this is only that they rent rather than own the home in which they reside.
23. As the Commissioner is satisfied that the postcode of a property in its entirety and therefore the withheld information in this case constitutes personal data, he now needs to consider whether disclosure of this information would breach any of the data protection principles outlined in the DPA.
24. The council stated that disclosure of this information would breach the first data protection principle. The first data protection principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

  - (a) at least one of the conditions in schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”
25. In this case the Commissioner notes that the request relates to a number of properties bought by the council for the purposes of the Woodberry Down regeneration project. The Commissioner understands that these properties were required by the council so they could be demolished to make way for the regeneration of the area - new housing and public services and facilities.

26. It has already been established that living individuals can be identified from the postcode of an address. Disclosure in this case would not only lead to the identification of past owners and residents but disclose information about the private lives of those individuals. It will disclose that they previously lived in this area; an area which required widespread regeneration and that they sold their property to the council as part of this major project. It would also link the amounts paid to specific individuals. The Commissioner considers disclosure would be an unwarranted intrusion into the private lives of these individuals and could cause them considerable distress and upset. The Commissioner believes these individuals will have no expectation that their connection to this project in whatever way could be released into the public domain. Their decisions to sell back their property will have been a personal one and they would have held the expectation that this information would remain confidential and private.
27. The council has already disclosed the prices paid, whether the property is leasehold or freehold and the outbound element of the relevant postcode. The Commissioner considers this information meets any legitimate public interest there is. It confirms what public funds have been utilised, confirms the prices paid for a number of properties that were required for the regeneration to take place and the area on which these properties were located. The disclosed information therefore provides the transparency and accountability the FOIA was designed to provide.
28. The Commissioner does not consider the disclosure of the inbound postcode as well is required to meet such interests but would prejudice the rights and freedoms of those individuals concerned. He has stated above that disclosure would constitute an intrusion into the private lives of these individuals and the Commissioner does not consider there is any further legitimate public interest in this case that could outweigh the detriment that disclosure could cause and the prejudice to the rights and freedoms of the individuals concerned.
29. For the above reasons, the Commissioner is satisfied that the remaining withheld information is exempt from disclosure under section 40 of the FOIA.

## **Other matters**

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30. In accordance with the Section 45 Code of Practice, the Commissioner expects all public authorities to offer complainants an internal review. This should mirror the public authority's internal complaints procedure

and be completed within 20 working days of receipt. The Commissioner accepts that the timeframe can be extended up to a maximum of 40 working days but usually only when the request is particularly complex or voluminous. If additional time is required the public authority should notify the complainant that further time is required no later than the initial 20 working day deadline and provide some indication of when this task will be completed.

31. In this case, it is apparent that the complainant requested an internal review on 3 October 2014. However, the council did not carry out the internal review and notify the complainant of its findings until 5 December 2014. It took over 40 working days to carry out this task, which is excessive and unacceptable and failed to update the complainant at the initial 20 working day deadline that it required extra time.
32. A further internal review of the council's subsequent application of section 40 of the FOIA was requested by the complainant on 8 December 2014. The council took over 20 working days to respond but did respond in this case within the maximum 40 working day timeframe. However, the council still did not notify the complainant at the 20 working day deadline that it required extra time to consider its position.
33. The Commissioner therefore requires the council to review the way it handled this request and to refresh itself of its obligations under the Section 45 Code of Practice to ensure that it improves the internal review process for future requests. The Section 45 Code of Practice can be accessed via the following link:

<http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>

## Right of appeal

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34. 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)

35. 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.
36. 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**