

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2016

Public Authority: London Borough of Islington

Address: Town Hall
Upper Street
London
N1 2UD

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Islington ("the Council").
2. The Commissioner's decision is that the Council has provided the complainant with all relevant information that is disclosable under the FOIA and that falls within the scope of her request. He has further determined that the Council has correctly applied section 40(2) to some of the requested information.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 12 September 2015 the complainant made the following request for information:

"I write further to the request by [redacted name] for information as to how many leases the Authority ended by serving the s.146 notices in the five year period ending in 2012.

You stated that no leases were forfeited but you have not stated whether any cases were progressed to court and whether the leaseholders had to apply for relief from forfeiture.

1) Please state whether any possession claims were subsequently issued and whether the leaseholders had to attend Court and seek relief from forfeiture from the Court.

2) Would the Authority please set out the decision making policy the Authority relied upon before it terminated a long lease by serving a s.146 notice of the Law of Property Act 1925 between the dates specified by [redacted name].

3) Please state the number of s.146 notices served from 2012 to September 2015.

4) Would the Authority please state whether or not the Council had permission from the Leasehold Valuation Tribunal to end any of the leases by serving the s.146 notices and if not please state why the Authority believed it did not need the permission to serve the s.146 (Commonhold & Leasehold Reform Act 2002).

5) Would you state whether the solicitors who ended the leases by serving the notices were aware of the decision making process of the Council and please state if they followed due process.

6) Please state whether the solicitors who sent out the notices were self employed or "in house" on a salary.

7) Please confirm that [redacted name], was one of the solicitors involved in the process of terminating the (7) leases per year by serving the s.146 notices. [redacted name] left Homes for Islington (LinkedIn) and then worked at [redacted information] and part of the legal team that terminated approximately 450 leases per year - 2014 - Two thousand and seventy four leases were terminated in 5 year period. Please state whether [redacted name] left Homes for Islington (2009-2012) of his own accord".

5. The Council responded on 16 October 2015. The Council provided the complainant with information falling within the scope of requests 1-6. With regard to request 7, the Council applied section 40(2) on the grounds that the information requested was third party personal data.
6. The complainant asked for an internal review to be carried out later the same day. The Council sent the outcome of its internal review on 10 November 2015. It maintained its position that it was correct to apply section 40 to request 7.

Scope of the case

7. The complainant contacted the Commissioner on 17 January 2016 to complain about the way her request for information had been handled.
8. The complainant limited her complaint to requests 2, 5 and 7. In relation to requests 2 and 5, the complainant believed that the Council would hold

further information falling within the scope of the requests. For request 7, the complainant argued that section 40 did not apply.

9. The Commissioner has had to consider whether the Council holds any further information within the scope of requests 2 and 5. He has also had to consider whether the Council was correct to apply section 40 to request 7.

Reasons for decision

Section 1 – requests 2 and 5

10. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled:-

To be informed in writing by the public authority whether it holds information of the description specified in the request, and

If that is the case, to have that information communicated to him"

11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. For request 2 the Council explained that a decision making policy does not exist because a section 146 notice under the Law of Property Act 1925 does not terminate a lease. The Council explained that a section 146 is the start of a process in which one of the possible outcomes is that a Court can formally terminate the lease. The Council further explained that in this instance, the Council is the landlord and it must follow the same legal path as all landlords.
14. For request 5, the Council had advised the complainant that *"no leases were forfeited in this period"*. During his investigation, the Commissioner asked the Council to confirm what searches it had carried out to determine that no leases were forfeited during the period in question.

15. The Council explained that no searches were carried out because the process of serving a notice does not end the lease and therefore no records can exist. In addition to this, it explained that the forfeiture of a property generates records of which none of this type are held for the period in question.

16. As part of the review, the Council explained that the figure of 0 leases forfeited during the period was confirmed as accurate. It explained that the forfeiture of any property is extremely rare and it would generate specific sets of documents which are not held by the Council.

17. The Council also confirmed:

"No solicitor can end a lease by the issuing of the Section 146 notice as this is not the purpose of issuing a Section 146 notice. Solicitors also act on behalf of the Service who are the ones that identify the need to issue a notice. The Council's solicitors follow the legally required route.

18. Based on the submissions provided by the Council, the Commissioner is satisfied on the balance of probabilities that the Council has provided the complainant with all the recorded information it holds that falls within the scope of requests 2 and 5.

Section 40 – request 7

19. Section 40 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.

20. 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 Council was correct to withhold the details of whether an individual left the Council off his own accord.

Is the withheld information personal data?

21. Personal data is defined by section 1 of 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..."

22. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
23. The information sought in request 7 relates to whether an individual left the Council on his own accord. This information specifically relates to a living individual and therefore the individual can be identified from this information. The Commissioner is therefore satisfied that the information falls under section 1 of the DPA.

Would disclosure breach the data protection principles?

24. 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.
25. 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

26. The Council explained that any information relating to an employee's reasons for leaving a role will be recorded on their employment record. It further explained that it is reasonable to assume that individuals have an expectation that information recorded on their HR file would be treated as confidential and would not be disclosed into the public domain. The Council stated that it does not feel like it is necessary to release details of the individual's reasoning for leaving as it would give rise to an unfair and unwarranted intrusion to the individual's privacy.
27. The Council further considered that the individual concerned was not at senior level for disclosure under the FOIA to be fair.

The consequences of disclosure

28. When considering the consequences of disclosure, the Council explained that disclosure of the requested information would be a breach of a third party's personal data. It further argued that there was a risk that releasing the information may cause distress to the data subject.
29. The Council argued that disclosure of the information sought in request 7 would be an unfair and unwarranted intrusion into the individual's privacy.

30. The Commissioner further considers that disclosure of this information may cause distress to the individual as they would expect information relating to their employment at the Council to be confidential.

The legitimate public interest

31. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms or 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.
32. The Commissioner does not consider that there is a legitimate public interest in the withheld information that outweighs the damage and distress that would be caused by disclosure and the unwarranted intrusion into the private life of the individuals.
33. The Commissioner is satisfied that the Council correctly withheld the information sought in request 7 under section 40.

Right of appeal

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

Website: 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