

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 January 2018

**Public Authority:** Pembrokeshire County Council

**Address:** County Hall  
Haverfordwest  
Pembrokeshire  
SA61 1TP

### Decision (including any steps ordered)

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1. The complainant has requested various information in respect of the tenancy record of an individual living at a specified property within Pembrokeshire County Council's boundaries. Pembrokeshire County Council refused to provide the requested information citing section 40(2) of the FOIA. The Commissioner's decision is that Pembrokeshire County Council has correctly relied on section 40(2) to refuse the information. The Commissioner does not require the public authority to take any steps.

### Request and response

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2. On 12 July 2017, the complainant wrote to Pembrokeshire County Council ('the Council') and requested the following information:

*"You will be aware of the wide-ranging coverage given by the local and national media to the disturbance yesterday at Mongton Pembrokeshire where the Police removed {for their own protection} two persons from a property on an estate due to information circulating in social media that convicted criminals had been housed in the local community without consultation with representatives from the local community. I would be grateful if you confirm whether the persons removed were tenants of either Pembrokeshire County Council or Pembrokeshire Housing Association {or subsidiary}."*

3. The complainant contacted the Council further on 17 July 2017 stating that he has now examined the statement published on the Council's website, and requested the following information:

*"I note that your former tenant is no longer housed within Pembrokeshire and that the tenancy has been surrendered. To inform the on-going investigation I would be pleased to receive the following information.*

- 1. Date the tenancy agreement was originally executed.*
  - 2. Date the tenancy agreement was surrendered.*
  - 3. Reason the tenancy agreement was surrendered.*
  - 4. The Local Authority Area {within Wales or England} your former tenant has been re-located to..."*
4. The Council responded on 24 July 2017. It refused to provide the requested information citing section 40(2) of the FOIA on the basis that the information constituted third party personal information.
  5. Following an internal review the Council wrote to the complainant on 4 August 2017. It provided information in respect of item two (date the tenancy was surrendered) on the basis that it was already in the public domain, but refused to provide the information in respect of all other items in reliance on section 40(2) of the FOIA on the grounds that it constituted third party personal data.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 5 August 2017 to complain about the way his request for information had been handled. He informed the Commissioner that he considered the Council to be breach of the FOIA in continuing to withhold the requested information.
7. The Commissioner considers that the scope of her investigation is to consider whether the Council was correct to rely on section 40(2) of the FOIA to refuse to provide the requested information.

### **Reasons for decision**

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#### **Section 40 – personal information**

8. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles.

9. In order to reach a view regarding the application of this exemption, the Commissioner has firstly considered whether or not the requested information does in fact constitute personal data as defined by section 1(1) of the Data Protection Act 1998 ('the DPA').

**Is the requested information personal data?**

10. Personal data is defined at section 1(1) of the DPA as:

*"personal data means data which relate to a living individual who can be identified-*

*(a) from those data,*

*(b) from those data and other information which is in the possession of, or 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."*

11. When considering whether the information is personal data, the Commissioner has taken into consideration his published guidance: *"Determining what is personal data"*.<sup>1</sup>

12. On the basis of this guidance, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:

*(i) "Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?"*

*(ii) "Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?"*

13. The Commissioner notes that the information withheld under this exemption relates to a tenancy record with the Council. She also notes that although the name of tenant has not been requested, the Council considers that if the requested information were disclosed and used in conjunction with other information in the public domain, (for example,

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[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/what\\_is\\_data\\_for\\_the\\_purposes\\_of\\_the\\_dpa.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf)

electoral registration information, these separate pieces of information could be used to identify the individual concerned.

14. The Commissioner also notes that the request emanates from local and national media coverage of a disturbance, and that it is likely that local people would know the identity of the former tenant. She is therefore satisfied that an individual could be identified from this and other information in the public domain, and has concluded that the information does constitute personal information as defined by section 1 of the DPA.
15. The Council has informed the Commissioner that it considers disclosure of the requested information would not be fair and lawful. It therefore considers that disclosure of the disputed information would breach the first data protection principle.

**Would disclosure contravene the first data protection principle?**

16. The first data protection principle requires that the processing of personal data be fair and lawful and,
  - 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 met.
17. In the case of personal data, both requirements (fair and lawful processing, and a schedule 2 condition) must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

*Would disclosure be fair?*

18. In her consideration of whether disclosure of the withheld information would be fair, the Commissioner has taken the following factors into account:
  - a. The reasonable expectations of the data subject.
  - b. Consequences of disclosure.
  - c. The legitimate interests of the public

*The reasonable expectations of the data subject*

19. The Commissioner's guidance regarding section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life.<sup>2</sup> Although the guidance acknowledges that there are no hard and fast rules it states that:

*"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."*

20. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). However, it should also be noted that not all information relating to an individuals' professional or public role is automatically suitable for disclosure.
21. In this particular case, the Commissioner notes that the requested information relates to individual's personal life. The Council has informed her that the date the tenancy was executed would form part of the tenant's tenancy record which they might reasonably expect to remain confidential.
22. Similarly, the reason a tenancy was surrendered would be the personal decision of the tenant, and as the tenant is not obliged to provide a reason, may not even be recorded on the tenant's file. Where the reason has been provided, it is safe to assume that the tenant would reasonably expect this information to remain confidential.
23. In respect of item four, the Council felt that the tenant was likely to provide a forwarding address, but as with items one and three, that the tenant would reasonably expect this information to remain confidential.

*Consequences of disclosure*

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<sup>2</sup>[http://www.ico.gov.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specalist\\_guides/PERSONAL\\_INFORMATION.ashx](http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specalist_guides/PERSONAL_INFORMATION.ashx)

24. The Council has argued that releasing the tenancy information requested could cause distress to the tenant and considers that as the tenant had to be removed from their own property by the Police for the own safety, there is a real risk that their safety could be threatened if this information were disclosed.

*The legitimate public interest in disclosure*

25. Notwithstanding the data subjects' reasonable expectations, or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
26. The Commissioner notes that the complainant has a personal interest in obtaining this information as he was conducting his own investigation in an attempt to establish whether the correct protocol was followed with regard to the management of offenders and homeless within the community.
27. The Council has informed the Commissioner that it can see no public interest in this information being disclosed and considers the only purpose would be to identify and track down the individual.
28. In weighing up the balance between the reasonable expectations of the data subject and the consequences of disclosure of the disputed information, against the legitimate public interest in disclosure, whilst the Commissioner acknowledges that there is a measure of public interest in the disclosure of this information, she has concluded that the balance is weighted in favour of non-disclosure, and is therefore satisfied that the Council correctly relied on section 40(2) of the FOIA to refuse to provide the requested information.

## Right of appeal

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29. 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)

30. 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.

31. 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 .....**

**Catherine Dickenson  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**