

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2018

Public Authority: Lincolnshire County Council

Address: foi@lincolnshire.gov.uk

Decision (including any steps ordered)

1. The complainant has requested the postcodes of children offered a place at a school. Lincolnshire County Council provided partial postcode information, but withheld full postcodes on the basis of the exemption for third party personal data at section 40(2) of the FOIA.
2. The Commissioner's decision is that Lincolnshire County Council has correctly applied the exemption. The council is not required to take any steps to ensure compliance with the legislation.

Request and response

3. On 30 May 2017, the complainant wrote to Lincolnshire County Council ('the Council') and requested information in the following terms:

"With regards to the Reception Class intake for September 2017 for [redacted] can you please advise me of the postcodes of those offered a place within the 'Nearest School' criteria category."
4. The Council responded on 22 June 2017. It determined that the disclosure of the full postcodes for each child would be likely to result in the identification of individuals. It applied the exemption for personal data under section 40(2) of the FOIA. However it considered that partial information could be offered as a substitute. The Council provided the complainant with postcode information anonymised to 4 outbound digits and 1 inbound (known as 'postal sector' information), eg AB22 9**.

5. Following an internal review the Council wrote to the complainant on 21 September 2017. It stated that *"the Council concluded that in order to ensure true anonymisation of the requested data, the most that could be disclosed is postal sector information without risking re-identification"*. As such the Council upheld the position provided in its original response.

Scope of the case

6. The complainant contacted the Commissioner on 5 October 2017 to complain about the way his request for information had been handled stating *"I disagree with this decision... Providing me with the full post code would not identify any particular individual unless a post code only related to a single property. If this was the case then a particular single property post code could be removed and not provided as part of the FOI."*
7. The Commissioner considers the scope of the case to be whether the Council was correct to rely on section 40(2) of the FOIA to withhold the information.

Reasons for decision

Section 40(2) – third party personal data

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 or section 10 of the Data Protection Act 1998 ('the DPA').
9. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data 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."

10. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

Is the withheld information personal data?

11. The Council has disclosed postcode information anonymised to 4 outbound digits and 1 inbound (the 'postal sector') on the basis that the full postcode of a property constitutes personal data. The Council is of the view that living individuals can be identified from the full postcode of a property and therefore this information falls within the definition of personal data outlined in the DPA.
12. The Council asserts that "*knowledge of postal codes would identify individual addresses of those children who have been offered a place at [redacted]. The Council submits that a motivated intruder with that knowledge would by:*

- (a) applying their local knowledge; and*
- (b) employing investigative techniques;*

make enquiries of the general public who live in the locality of those households identified and obtain the identity of the children and their families and gain an understanding of their home and family life."

13. The Council justified its release of data anonymised to postal sector, stating that provision of one further inbound digit (eg AB22 99*) would reduce the number of properties to a low number in each street. The Council explains that "*whilst this does not give the specific number [address] of the property, a motivated intruder with local knowledge employing the approach referred to above, and from observing an area, could quickly identify the specific properties."*
14. In her code of practice "*Anonymisation: managing data protection risk*"¹ the Commissioner outlines that the 'motivated intruder' test is a useful

¹ <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

test which involves "*considering whether 'an intruder' would be able to achieve re-identification if motivated to attempt this.*" The test assumes that the 'motivated intruder' is reasonably competent with access to public resources (eg the internet, libraries, public documents) and would employ investigative techniques such as making enquiries of people who may have additional knowledge of the identity of the data subject(s).

15. The Complainant's view is that identification issues could be resolved by the removal of those postcodes that relate to single properties, thus giving him a partial response. However the Commissioner considers that the disclosure of full postcodes applying to multiple properties could also allow members of the public, in particular those who live locally, to identify the addresses of children offered a place at the school. The Tribunal have also previously considered the question of whether postcodes are personal data in *Dundas v ICO & City of Bradford*² and found that the full postcode should indeed be considered personal data.
16. Furthermore the Commissioner recognises that school admissions can be an emotive issue and as such she is satisfied that any further reduced level of postcode anonymisation, beyond the provided postal sector, would risk re-identification by a 'motivated intruder'.
17. The Commissioner therefore satisfied that any further disclosure of postcode information could allow members of the public to identify the addresses of children that were admitted to the reception class in September 2017 and as such it constitutes personal data.

Would disclosure breach any of the data protection principles?

18. The Council argued that the first and second data protection principles would be breached should the data be disclosed.
19. 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."*

² <http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i128/Dundas.pdf>

20. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects and the consequences of disclosure on those data subjects. She has concluded by balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure

Nature of the information and reasonable expectations

21. It has already been established that living individuals can be identified from the postcode of an address. Disclosure in this case could lead to the identification of children residing at those addresses and details of the school they are attending. Combined with the fact that the data relates to a reception class intake for a certain date, other information such as the age of the children at a particular address could be derived.
22. The Council's view is: *"the families have a reasonable expectation that their data will be used for the purpose for which it was given, which is to determine their application for a school place. They would not expect that data to be passed to a third party, who, it is assumed, is seeking to challenge the decision of the school."* It also states that *"there is nothing to indicate that the data subject has given consent for the data to be used for any other purpose."*
23. The Commissioner agrees that individuals would not expect the Council to publically disclose information that would allow their home addresses to be identified. The Commissioner considers this a reasonable expectation given the nature of the withheld information.

Consequences of disclosure

24. The Council has stated that, although it has no information regarding the reason for the request, one possible scenario could be to challenge the school admission policy or admission of one child over another. Such an appeal could *"cause unwarranted harm to the interests of the child and family as their personal data relating to their family circumstances would form part of the requesters appeal."*
25. The Commissioner can not assess the significance of the Council's hypothesis without further evidence. However the disclosure of the withheld information would nevertheless represent a significant infringement into the privacy of the children and families. Not only would it potentially enable the identification of their home address but also the school which they attended and by implication the age of the children.

Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure

26. Notwithstanding the data subject's 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.
27. Legitimate interests in disclosure can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach. It may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
28. In the absence of a clearly stated interest in disclosure, the Commissioner has assumed a wider public interest in transparency of the schools application of its admissions policy.
29. The Commissioner has reviewed the requested information, and the proportionate response of the Council in providing postal sector information. She accepts that, although the complainant may have a strong personal interest in the withheld information, there is no wider legitimate public interest in disclosing it which would outweigh the likely distress caused to the data subjects.

Conclusion on the analysis of fairness

30. The Commissioner has decided that disclosure of any further postcode information would be unfair and therefore in breach of the first principle of the DPA. As such it is not necessary to consider whether there is a Schedule 2 condition for processing the information in question.
31. The Commissioner's decision is that section 40(2) of the FOIA is engaged in this case and has therefore been correctly applied by the Council to the requested information.

Right of appeal

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

Website: 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
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