

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2018

Public Authority: London Borough of Haringey
Address: 6th Floor, River Park House
225 High Road
Wood Green
London N22 8HQ

Decision (including any steps ordered)

1. The complainant has requested information regarding the floor of a particular apartment.
2. The Commissioner's decision is that the London Borough of Haringey ('the Council') has appropriately withheld the information in reliance of the exemption at section 40(5) FOIA – Personal information.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 18 January 2018, the complainant's Councillor wrote to the Council and requested information in the following terms:
"Please can you respond to the Freedom of Information request below, which I am submitting on behalf of a resident.
 1. Was permission requested and granted for laminate flooring to be installed in [an identified address]?
 2. If permission was granted, has the laminate flooring been installed to the required specifications as stated in the tenancy agreement?
 3. What year was the laminate flooring installed?"
5. The Council responded on 5 March 2018. It stated that it was unable to confirm or deny holding information in the scope of the request as to do

so would breach its obligations under the Data Protection Act 1998. It cited section 40(2) in its refusal notice rather than section 40(5).

6. Following an internal review the Council wrote to the complainant on 13 April 2018. It stated that it was upholding its initial decision.

Scope of the case

7. The complainant's Councillor contacted the Commissioner on 3 May 2018 to complain about the way the request for information had been handled. On 23 May 2018 the complainant herself contacted the Commissioner to explain that the Councillor was no longer in post and she would be the Commissioner's contact.
8. The Commissioner considers the scope of her investigation is to consider the Council's refusal to neither confirm nor deny holding the requested information.

Reasons for decision

9. Section 40(5) of the FOIA sets out the conditions under which a public authority can give a "neither confirm nor deny" response where the information requested is, or would be, personal data. It includes provisions relating to both personal data about the requester and personal data about other people.
10. If the information would constitute personal data relating to someone other than the requester, then the public authority does not have to confirm or deny whether it holds it if one of the conditions in section 40(5)(b)(i) or (ii) applies.
11. At the time of the request (and the time for compliance with the request) the Data Protection Act 1998 ("DPA98") was still in force and applicable to the processing of personal data. This has since been superseded by the implementation of the General Data Protection Regulation ("GDPR"). However, for the purpose of considering the application of section 40, the Commissioner has considered this case with regard to the requirements of DPA98.

Would the confirmation or denial of whether the requested information is held, reveal third party personal data?

12. In deciding whether section 40 is engaged the first thing to consider is whether confirming or denying whether the requested information is held would itself result in the disclosure of personal data. Personal data is defined in 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;"

13. The Commissioner is satisfied that confirming or denying whether it held information falling within the scope of the request would reveal whether or not the occupant of the apartment had corresponded with the Council about a specific matter concerning the third party's personal living circumstances. The Commissioner is therefore satisfied that such a confirmation or denial can be said to be personal data.

Would confirming or denying whether information is held contravene one of the data protection principles?

14. The next step is to consider is whether confirming or denying would contravene any of the data protection principles. If confirming or denying whether the information is held would contravene the first data protection principle, that personal data should be processed fairly and lawfully, section 40(5)(b)(i) is applicable.
15. The Commissioner notes that there may be situations in which it could be argued that giving the confirmation or denial to a requester would not necessarily contravene data protection principles because the requester already knows or suspects whether the public authority holds or does not hold the information.
16. The FOIA is motive and applicant 'blind', and the test is whether the information can be disclosed to the public at large, not just to the requester. Therefore an authority can only disclose or confirm or deny it holds information under the FOIA if it would be appropriate to disclose it, or confirm or deny it holds the information, to the world at large.
17. The Commissioner recognises that individuals have a reasonable expectation that a public authority, in its role as a responsible data controller, will respect confidentiality in this regard.
18. The Council has explained that in its view confirming or denying would contravene the first data protection principle.
19. The Commissioner accepts that the requested information relates to the resident(s) private life, who would have a reasonable expectation that the Council would respect confidentiality. The Commissioner therefore

concludes that to confirm or deny would in itself provide personal information, which would be unfair.

Balancing the individual's rights and freedoms against the legitimate interest in confirming or denying information is held.

20. Despite the consideration above, it may still be appropriate for the Council to confirm or deny whether it holds the requested information, if there is compelling public interest in doing so that would outweigh the legitimate interests of the third party (the apartment occupant).
21. Although the Commissioner recognizes that the information is of interest to the complainant, confirming or denying the information is held under the FOIA would effectively disclose the third party's personal data to the world at large.
22. In conclusion, the Commissioner is satisfied that confirming or denying that the requested information is held would be unfair and thus contravene the first data protection principle. Therefore the Commissioner finds that the Council is entitled to refuse the request on the basis of section 40(5)(i)(b) of the FOIA.

Right of appeal

23. 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

24. 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.
25. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
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