

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 2018

Public Authority: London Borough of Hillingdon
Address: Civic Centre
High Street
Uxbridge
Middlesex
UB8 1UW

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Hillingdon (the Council) for the name of the individual liable for council tax and business rates at a particular address. The Council refused to disclose the information on the basis of section 40(2) (personal data) and 41(1) (information provided in confidence) of FOIA. The Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of section 40(2) of FOIA.

Request and response

2. The complainant submitted the following request to the Council on 29 March 2018:

'Under the freedom of information act could you please provide the details of the council tax payer for non domestic and domestic rates [for] the above property [the complainant provided the name and address of a particular public house] for 2018 2017 2016 2015'
3. The Council responded on the same day and explained that it could not disclose the requested information as this constituted personal data and therefore was not disclosable in response to a freedom of information request.

4. The complainant responded, again on the same day, and noted that the information she was seeking concerned a business premises and therefore was not covered by data protection legislation.
5. In response the Council confirmed that the information it held concerned an individual rather than a business.
6. Following a further email from the complainant challenging this position, the Council conducted an internal review. The internal review, issued on 8 May 2018, concluded that the liable person at the address for both domestic and non-domestic rates is a private individual. The Council therefore upheld its position that disclosure of the name of the individual would breach the Data Protection Act 1998 (DPA) and therefore this information was exempt from disclosure on the basis of 'section 44' of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 31 May 2018 in order to complain about the Council's decision to withhold the information falling within the scope of her request.
8. During the course of the Commissioner's investigation the Council explained that the reference in its internal review to section 44 of FOIA was a typographical error; it should have stated that it was referring to section 40(2) of FOIA. The Council also explained to the Commissioner that it considered the withheld information to be exempt from disclosure on the basis of section 41(1) (information provided in confidence) of FOIA.

Reasons for decision

Section 40(2) – personal data

9. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act 1998 (DPA).¹

¹ On 25 May 2018 the General Data Protection Regulation and Data Protection Act 2018 came into force. However, in line with the provisions contained within the Data Protection

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

'.....data which relate to a living individual who can be identified from those data or 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 person in respect of the individual.'

11. The Council withheld the name of the individual liable for both council tax and non-domestic rates (ie business rates).
12. The complainant argued that the information which she was seeking related to a licensed public house, ie a business premises, and therefore the information concerning who was liable for the non-domestic rates was not personal information.
13. The Commissioner notes that the request sought the name of the individual responsible for both the council tax and business rates at the address in question. As the Council's responses to the complainant confirmed the same individual was liable for both taxes. With regard to the council tax, the Commissioner is satisfied that the name of an individual liable for council tax at a particular address clearly constitutes their personal data as such information identifies the individual in question and tells you something of biographical significance about them. With regard to the name of an individual liable for business rates at a particular address, the Commissioner acknowledges that such information obviously relates to a commercial activity and a public house is clearly a business premises. However, in the Commissioner's view the name of an individual liable for business rates at a particular address still constitutes their personal data. The Commissioner's rationale for this position is the same as it is with regard to the individual liable for council tax; that is to say such information identifies the individual in question and tells you something of biographical significance about them, ie that they are liable for the business rates at the address in question. The Commissioner is therefore satisfied that the withheld information constitutes personal data.
14. The Council argued that disclosure of this information would breach the first data protection principle. This 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.'

15. The relevant condition in this case is the sixth condition in schedule 2 which states that:

'The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject'.

16. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - any particular circumstances of the case, eg established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;

- if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
17. Furthermore, 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 legitimate interest in disclosure to the public.
18. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, 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.

The Council's position

19. The Council explained that whenever a person becomes liable to pay either council tax or non-domestic rates, that person must notify the Council of that fact. Failure to do so can result in a financial penalty being imposed pursuant to Schedule 2 to the Local Government Finance Act 1992/ Local Government Finance Act 1988 or potentially a criminal prosecution.
20. The Council argued that residents have a reasonable and legitimate expectation that the Council will only use their data in connection with their local taxation responsibility and not disclose their data to a third party without their consent. The Council explained that the individual in question had not consented to their name being disclosed and thus disclosure of their name in response to this request would have been against their legitimate expectations.
21. The Council acknowledged that the motives behind an FOI request were irrelevant and in any event it was not clear why the complainant had submitted her request. However, the Council assumed that upon receipt of the information the complainant would have contacted the complainant in order to inform them of the services offered by her company. The Council suggested that this may well cause nuisance or annoyance to the tax payer in question. Further, and in any event, the Council noted that disclosure of information under FOI is deemed to be disclosure to the whole world. It argued that the tax payer would have undoubtedly been distressed if this had happened; not least because publication of the fact that the individual in question is liable to pay local taxation could be exploited by others.

The complainant's position

22. As noted above, the complainant considered the withheld information to relate to the use of the premises in question as a public house and consequently there was not a personal dimension to this information. The complainant also noted that the Council's licensing department published the name of an individual who held a licence to sell alcohol at the premises. The complainant also explained that she had submitted similar requests to other local authorities who had provided the information to her.

The Commissioner's position

23. In the Commissioner's opinion individuals (as opposed to companies) who are liable for business rates at a particular address would have a reasonable and legitimate expectation that the Council would not disclose their names. The Commissioner bases this finding on the established custom and practice of the Council of not disclosing such information and also on the following information contained on the Council's website about the proactive disclosure of information regarding business rates:

'Hillingdon Council receives a number of requests of a similar nature for information which relates to business rate accounts (non-domestic properties).

To address these requests we are now publishing specific information on:

- *full list of non-domestic properties within Hillingdon and their rateable value*
- *occupied properties including details of any relief*
- *empty properties*
- *new accounts created*

We will publish this information on a quarterly basis, therefore, we will not provide individual responses to requests during the year for similar information but will redirect requests to our published list of reports held on this webpage.

Limitations on data

- *Ratepayer's names and correspondence addresses are only provided for Limited Companies and Government Bodies and not for individuals (sole traders, partnerships, etc). Data Protection prevents the publication of individual names.* (emphasis added)

24. Furthermore, and for the avoidance of doubt, the Commissioner is also of the view that individuals who are liable for council tax at a particular premises would have the reasonable and legitimate expectation that such information would not be disclosed given that such information is not generally disclosed by local authorities under FOIA.
25. With regard to the consequences of disclosure, the Commissioner accepts that as the individual in question was presumably involved with the operation of a public house – by its definition a very public commercial activity – the level of infringement into their privacy if their name was disclosed in relation to the business rates liability may be considered to be relatively limited. Nevertheless, the Commissioner accepts that the Council makes a strong argument that disclosure of the withheld information could result in the individual in question receiving unsolicited enquires which may cause them some level of annoyance or disruption. In relation to this point, the Commissioner has considered the information contained on the premises licence summary record for the public house in question. However, having done so the Commissioner has concluded that the availability of such information does not alter her view on the consequences of disclosing the withheld information under FOIA on the council tax and business rates payer. Furthermore, the Commissioner is not persuaded that there is a particularly compelling legitimate interest in disclosure of the withheld information, beyond the complainant's own personal/private motivations for wishing to be provided with the name in question. Taking all of the above into account, the Commissioner is satisfied that disclosure of the information would be unfair and that the legitimate interests in disclosure of the information do not outweigh the legitimate interests of the individual who is liable for the taxes in question.
26. The Commissioner acknowledges that the complainant has indicated that she has been provided with similar information from other local authorities in response to FOI requests. The Commissioner is not aware of any further details of such requests. However, she would emphasise that each request needs to be considered on its own merits and in the circumstances of this case, and for the reasons set out above, she is satisfied that disclosure of the withheld information would breach the DPA and is therefore exempt from disclosure on the basis of section 40(2) of FOIA.
27. In light of this finding the Commissioner has not considered whether the withheld information is also exempt from disclosure on the basis of section 41(1) of FOIA.

Right of appeal

28. 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

29. 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.
30. 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
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