

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 March 2020

**Public Authority:** Royal Borough of Greenwich  
**Address:** The Woolwich Centre  
35 Wellington Street  
London  
SE18 6HQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested addresses, postcodes and unit ownership information about local authority-owned blocks. The Royal Borough of Greenwich ("the Royal Borough") provided some information but withheld the full addresses and postcodes which it believed were the personal data of the homeowners.
2. The Commissioner's decision is that the Royal Borough has not applied section 40(2) of the FOIA correctly to all of the withheld information.
3. The Commissioner requires the Royal Borough to take the following steps to ensure compliance with the legislation.
  - Disclose the full address and postcode of each block that it owns containing six or more units.
4. The Royal Borough must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 20 June 2019, the complainant wrote to the Royal Borough and requested information in the following terms:

*"Under the Freedom of Information Act, I would be grateful if the council could please identify which blocks in their borough are under their ownership and, within each, how many units exist. We also would like information on how many of those are still under ownership of the local authority and how many have been sold as leasehold under Right to Buy."*

6. The Royal Borough responded on 10 July 2019. It provided the name of the street each block was on, the number of units it contained and a breakdown of tenants and leaseholders.

7. The complainant responded on the same day to say:

*"This is the type of information we need, however, I would be very grateful if you could provide more information about the location of each property. I.e. a post code or house number."*

8. The Royal Borough responded again on the same day to say that it could not provide postcodes because it considered that to do so would disclose personal data.

9. The complainant queried the use of section 40(2) to withhold information on 11 July 2019. The Royal Borough treated this correspondence as a request for an internal review. It completed its internal review on 31 July 2019 and upheld its original position.

10. On 13 August 2019, the complainant chased a response saying:

*"By way of reminder the information we are seeking is the below and it would be extremely helpful if you could provide the requested information in an excel spreadsheet or similar and in the following format:*

- The address of each block*
- The number of units that the council owns within that block*
- The number of units that are owned by the leaseholders*
- The total number of units in that block"*

11. The complainant also supplied a sample spreadsheet setting out the data fields she was after. These fields included "Block name", "Post Code", "Leaseholders", "Tenants" and "No. of Units."

12. The Royal Borough wrote to the complainant on 13 August 2019. It stated that she had exhausted its internal review procedure and must therefore take a complaint to the Commissioner.

### **Scope of the case**

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13. The complainant contacted the Commissioner on 6 September 2019 to complain about the way her request for information had been handled.
14. At the outset of her investigation, the Commissioner contacted the complainant to explain the issues involved with the request. In order to minimise the risk of accidental disclosure of personal data, the complainant agreed that she was content to restrict her request so that the Royal Borough only had to provide details of the blocks it owned which contained six or more units.
15. The Commissioner wrote to the Royal Borough on 27 January 2020. She noted that the complainant was now willing to accept a more limited disclosure and asked the Royal Borough to either provide the more restricted information set or, if it did not wish to do so, explain why, despite the new restrictions, the information was still personal data.
16. The Royal Borough responded on 9 March 2020 to say that it still considered that section 40(2) would apply.
17. The Commissioner considers that the scope of her investigation is to determine whether the withheld information is personal data.

### **Reasons for decision**

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

*Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him.*

19. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

20. In this case the relevant condition is contained in section 40(3A)(a)1. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
21. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
22. 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 DP principles.

*Is the information personal data?*

23. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual".*

24. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
25. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
26. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
27. The Royal Borough argued that providing the full address and postcodes of individual blocks would, in combination with the information already disclosed or in the public domain, enable a person to deduce the ownership status of individual units within the blocks and that the ownership status would be the personal data of the occupier.
28. If the individual postcodes were supplied, the Royal Borough argued, a person could either physically visit the block or could enter the postcodes into Google Street View and perform a visual inspection of the façade of each block. From a visual inspection, the Royal Borough argued:

*"any individual would be able to deduce which properties have been purchased from the council due to the non-standard external fittings/facias."*

29. To back up its arguments, the Royal Borough produced a screengrab from Google Street View, purportedly of one of its blocks, which showed a variation in external facias.
30. The Commissioner accepts that, in principle, an individual's home ownership status (ie. whether they own their own home, rent it privately, or rent it from a social landlord) will be their personal data. The question to be addressed here is whether the withheld information would, in itself, reveal ownership status.
31. In this particular case, the Commissioner notes that the Royal Borough has already revealed the streets on which it owns blocks. She therefore considers that a motivated person could *already* deduce the ownership of particular blocks by using Google Street View or by physically visiting the street. The standard fittings or facias used on council-owned properties would be highly likely to identify those blocks which the Royal Borough owned.
32. The Commissioner therefore considers that it is not the withheld information itself that would reveal ownership status, but the ability of a person to use the visual clues already in the public domain to make educated guesses. The withheld information does not enable a process which would otherwise be impossible, it merely makes it slightly faster. The Commissioner therefore considers that the withheld information does not, in itself, reveal ownership status within larger blocks.
33. In addition, the Commissioner notes that there are various other clues, already in the public domain, which would enable a motivated person to identify blocks owned by the Royal Borough. For example, prospective council tenants can search the Borough's housing register for available properties, existing tenants can access the Royal Borough's mutual exchange scheme and swap their property with another tenant.
34. The Commissioner does recognise that the smaller properties that the Royal Borough owns – such as those containing just one or two units – would be more difficult to identify by visual inspection alone and therefore their full addresses may be personal data. As the complainant has already confirmed she has no interest in these smaller blocks, the Commissioner has not considered them as part of her decision.
35. However, the Commissioner considers that the remaining information is not personal data and therefore the Royal Borough is not entitled to rely on section 40(2) of the FOIA to withhold it.

## Right of appeal

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36. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. 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 .....**

**Phillip Angell  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**