

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 June 2020

Public Authority: London Borough of Havering
Address: Town Hall
Main Road
Romford
RM1 3BB

Complainant: on behalf of LMD Ltd

Decision (including any steps ordered)

1. The complainant has requested addresses, postcodes and unit ownership information about local authority-owned blocks. The London Borough of Havering ("the London 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 London Borough has not applied section 40(2) of the FOIA correctly to all of the withheld information.
3. The Commissioner requires the London 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 London 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

5. The complainant originally contacted the London Borough on 20 June 2019 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. On 18 July 2019, the London Borough responded. It provided a list of all the streets in which it owned blocks. It listed the number of units within each block and the breakdown of those units between tenants and leaseholders for each street.

7. The complainant contacted the London Borough again on 22 July 2019 to express dissatisfaction in the following terms:

"This is the information we had in mind, however, we are just missing the postcodes and the total number of units in the buildings. I would be grateful if you could add that information in and send over in an excel spreadsheet."

8. In a further email, on 31 July 2019, the complainant added:

"I am simply seeking a numerical breakdown to ascertain the size of the blocks held by the council and the number of units retained by the council within each of those blocks. If it assists in processing this request, we are only interested in blocks of flats that contain at least six units."

9. The London Borough treated this correspondence as a request for an internal review and completed that review on 18 November 2019. It stated that it was unable to provide further information.

Scope of the case

10. The complainant contacted the Commissioner on 6 September 2019 to complain about the way her request for information had been handled.

11. 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 London Borough only had to provide details of the blocks it owned which contained six or more units.

12. The Commissioner wrote to the London Borough on 27 January 2020. She noted that the complainant was now willing to accept a more limited disclosure and asked the London 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.
13. Despite being asked, by the Commissioner, exactly how individuals could be identified from the withheld information, the London Borough response of 8 March 2020 only stated that:

"the addition of postcodes could under Section 40(2) go to identify which properties are Council or private owned which is personal data and then possibly go on to identify 3rd parties. As such I am sure you will appreciate is a concern for the Council who are not happy to release any further information relating to this."
14. Given that obtaining the above response had already taken six weeks, the Commissioner considered that it would have been unfair to the complainant to have allowed the London Borough any more time to demonstrate why the exemption applied. However, given her role as the regulator of data protection legislation, she also considered it her duty to ensure that any personal data would only be processed if it could be achieved in line with data protection principles – and not merely because the London Borough had failed to make an adequate FOIA submission.
15. On 11 March 2020, the Commissioner issued decision notice FS50877716¹ in which she considered an identical request that the complainant made to the Royal Borough of Greenwich. In that case, the withheld information was the same as is being withheld here and the Commissioner was presented with arguments as to how the withheld information could be used to reveal personal information about identifiable living individuals. The Commissioner has therefore re-considered her analysis from that decision notice and, where appropriate, applied it to the present case.
16. The Commissioner considers that the scope of her investigation is to determine whether the withheld information is personal data.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617526/fs50877716.pdf>

Reasons for decision

17. 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.

18. 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.

19. 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').

20. 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.

21. 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?

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

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

23. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

24. 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.

25. 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.
26. It could be 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.
27. If the individual postcodes were supplied, it could be 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, an individual might be able to deduce which properties have been purchased from the London Borough due to the non-standard external fittings or facias on the property.”
28. The London Borough has not provided any evidence to suggest that the blocks it owns do use standard materials but, given that a number of local authorities do this, it is reasonable to assume that the London Borough will too. Obviously, if it does not, then there is even less chance of a visual inspection being sufficient to identify home ownership.
29. 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.
30. In this particular case, the Commissioner notes that the London 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. Any standard fittings or facias used on council-owned properties would be highly likely to identify those blocks which the London Borough owned.
31. 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 the process slightly faster. The Commissioner therefore considers that the withheld information does not, in itself, reveal ownership status within larger blocks.

32. 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 London Borough. For example, prospective council tenants can use a service called ChoiceHome to search the Borough's housing register for available properties, existing tenants can use the same service to access the London Borough's mutual exchange scheme and swap their property with another tenant.
33. The Commissioner does recognise that the smaller properties that the London 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 restricted her request to exclude these smaller blocks, the Commissioner has not considered them as part of her decision.
34. However, the Commissioner considers that the remaining information is not personal data and therefore the London Borough is not entitled to rely on section 40(2) of the FOIA to withhold it.

Right of appeal

35. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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