

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2020

Public Authority: Huntingdonshire District Council

Address: Pathfinder House
St Mary's Street
Huntingdon
PE29 3TN

Decision (including any steps ordered)

1. The complainant has requested information held by Huntingdonshire District Council (the council) relating to the council tax of a specific property.
2. The Commissioner's decision is that the requested information is exempt from disclosure under section 40(2) of the FOIA. However, she has found that the council has breached 17(1)(b) of the FOIA as it failed to cite an exemption when issuing its refusal notice to the complainant.
3. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

4. On 28 January 2020 the complainant wrote to the council and requested information in the following terms:

On the basis that the Freedom of Information Act is "applicant-blind" would you please provide me with: -

*The dates and amounts of Council Tax collected from the private landlords and/or beneficiaries who had a "material interest," as defined under **Section 6** of the Local Government Finance Act 1992 in the residential property situated at [address redacted, and will be referred*

to as property A for the purposes of this decision notice] *from 30 August 2009 to 30 October 2014 inclusive.*

I am aware that: -

Under Section 40(2) of the Freedom of Information Act 'private landlords are considered to be sole traders and as such the information is considered to be biographically significant to the individuals concerned' That said I have obtained the full names and full addresses of the private landlords of this property from 1996 to date.

Council Tax Exemption F does not apply if the deceased left the property to a beneficiary in their Will. In this case the beneficiary becomes liable for Council Tax at the date of death as they are considered to become the owner on that date.

It is not correct to withhold this information under Regulation 31(1)(a) as the public interest in the information being disclosed outweighs that in the exemption being maintained.

Should you require clarification on any points please feel free to contact me.'

5. The council responded on 17 February 2020. It stated that it was unable to provide the complainant with information about any specific address in isolation, but would, if required, provide details about payments which were collected under a specified postcode for time period set out within the complainant's request.
6. On the same day the complainant provided a postcode (the same postcode as that which related to Property A) and asked the council to release details of the council tax payments collected from each address relating to that postcode. He stated that he would then let the council know if it was the information that he required.
7. The council responded to clarify that it could only provide the total payments relevant to a particular postcode; the information would not be broken down further by individual address.
8. The complainant then contacted the council again. He stated that the council had previously provided him with similar council tax details relating to another address and that, given this, it should also be able to provide him with the details for Property A.
9. The council's subsequent response confirmed that it had previously provided the complainant with council tax information in relation to another property because its records had indicated that he held an interest in that property. However, as its records did not indicate that

the complainant had an interest in Property A, the council advised that it was not able to provide the information which he had requested.

10. On 18 February 2020, the complainant contacted the council again. He advised of his concerns about its responses to his request and asked that the council now provide the information to him.

Scope of the case

11. The complainant contacted the Commissioner on 7 March 2020 to complain about the way his request for information had been handled.
12. In the complainant's correspondence to the council of 18 February 2020, he refers to his dissatisfaction about its general handling of various matters, including the council's failure to provide him with all the council tax information he required in relation to both Property A, and another property. However, the Commissioner only intends to consider the terms of his request of 28 January 2020, which were limited to Property A, within this decision notice.
13. The Commissioner therefore considers the scope of her request to be whether the council was correct to have withheld that information held relating to the dates and amounts of council tax collected from Property A within the time period 30 August 2009 to 30 October 2014.

Reasons for decision

Section 40-Personal data

14. 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.
15. In this case, the relevant condition is contained within section 40(3A)(a). 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 of the General Data Protections Regulation (GDPR).
16. 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 2018). If it is not personal data, then section 40 of the FOIA will not apply.

17. Secondly, 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?

18. Section 3(2) of the DPA 2018 defines personal data as:

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

19. The two main elements of personal data are that the information must relate to a living person, and that the person must be identifiable.
20. 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.
21. 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.
22. The information which has been requested relates to the council tax payments made in relation to Property A over a particular period of time. Whilst the charge itself is based on the value of a property, the payments which are, or are not, made are considered to directly relate to that individual who is registered for council tax liability for that property. Furthermore, it provides us with details about a personal financial activity; that is how and when the relevant individual has made payments towards their council tax liability.
23. With regards to whether that person is identifiable, the Commissioner has considered if it would be possible to directly identify an individual from the address itself, or from such detail when it is linked to other information which is in the public domain.
24. The Commissioner accepts that different members of the public may have different degrees of access to the *'other information'* needed for identification to take place. A test used by both the Commissioner and the First-tier Tribunal in cases such as this is to assess whether a *'motivated intruder'* would be able to recognise an individual if he or she was intent on doing so. The *'motivated intruder'* is described as a person who will take all reasonable steps to identify an individual, or individuals, but begins without any prior knowledge.

25. The ICO's Code of Practice on Anonymisation¹ notes that *The High Court in R (on the application of the Department of Health) v Information Commissioner [201] EWHC 1430 (Admin)*² stated that the risk of identification must be greater than remote and 'reasonably likely' for information to be classed as personal data under the DPA.
26. In summary, the motivated intruder test is that if the risk of identification is 'reasonably likely', the information should be regarded as personal data.
27. In the circumstances of this case, the Commissioner is satisfied that it is 'reasonably likely' that the individual liable for council tax at Property A would be identifiable from a combination of the address and other information which is likely to be in, or come into, the possession of others.
28. The Commissioner's Code of Practice referred to in paragraph 25 of this decision notice refers to an 'obvious example' of where information can be retrieved from the public version of the electoral register (which includes the names of all those individuals who are registered to vote at any one address). In addition, it goes on to refer to other data that may be easily retrievable from the internet which, when used with the address, would also assist in identifying an individual. Indeed, the requester has indicated that he has already obtained information which has allowed him to identify the individual(s) who would have been responsible for making payment for the council charged at Property A.
29. The Commissioner is therefore satisfied that it is reasonably likely that the individuals who are liable to make payments of council tax for Property A are identifiable, and that such information relates to them. Given this, she concludes that the information requested by the complainant is personal data as defined by the DPA 2018.
30. However, the fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
31. The most relevant DP principle in this case is principle (a).

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

² http://informationrights.decisions.tribunals.gov.uk/DBFiles/Appeal/i344/CO-13544-2009_HC_Judgment_20110420.pdf

Would disclosure contravene principle (a)?

32. Article 5(1)(a) of the GDPR states that:

'Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.'

33. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

34. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

35. The Commissioner considers that the lawful basis most applicable is 6(1)(f) which states:

*'processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.'*³

36. In considering the application of Article 6(1)(f) of the GPDR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:

- i) **Legitimate interest test:** whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** whether disclosure of the information is necessary to meet the legitimate interest in question;

³ Article 6(1) goes on to state that: -

'Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks'.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

'In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted'.

iii) **Balancing test:** whether the above interests override the legitimate interest (s) or fundamental rights and freedoms of the data subject.

37. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

38. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

39. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

40. The applicant appears to be concerned that there may have been some wrongdoing with regards to the transfer of ownership and sale of Property A. He also indicates that there may have been some form of maladministration by the council which has resulted in the failure to collect council tax payments for Property A in the period 2014 to 2019. It is unclear whether he regards there to be a direct link between these two concerns.

41. In any event, it is the Commissioner's view that both the complainant's interests, and the broader principles of accountability and transparency (in relation to the council's activities) appear to be relevant in this instance,

42. Given this, the Commissioner is satisfied that it can be considered that a legitimate interest is being pursued.

Is disclosure necessary?

43. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

44. The Commissioner is satisfied that in this case that there are no less intrusive means of achieving the legitimate aims identified.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

45. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
46. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
47. In the Commissioner's view, a key issue is whether the individual(s) to whom the withheld information relates has a reasonable expectation that such information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role, or to them as individuals, and the purpose for which they provided their personal data.
48. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
49. Whilst the complainant has suggested that there has been some form of wrongdoing with the way in which the council tax has been charged and collected by the council in respect of Property A, as far as the Commissioner can see, there is no evidence which has been presented which would support such claims.
50. The information which has been requested relates to the council tax liability and payments for one specified property. Should this information be disclosed, it would reveal something about the private financial activities of that individual who is liable for the council tax at that property.

51. Whilst the council has not provided details of that individual(s) expectations, the Commissioner is of the view that they would not have had any expectation that the withheld information would be released into the public domain.
52. The law provides that there must be a pressing social need for any interference with privacy rights and that the interference must be proportionate.
53. The Commissioner accepts that the complainant may have a private legitimate interest in having access to the withheld information. In addition, there is also a broader public interest in accountability and openness with regards to the council's operations and activities in relation to the collection of council tax, which has a direct impact on the public purse. However, in the circumstances of this case, the Commissioner does not regard either of these to carry sufficient weight to justify the disclosure of the requested information.
54. However, the Commissioner is satisfied that the disclosure of the information requested could constitute a disproportionate and unwarranted level of interference with the council tax payer's rights and freedoms. She has found some difficulty identifying any legitimate interest in the disclosure which would warrant such interference in this case.
55. The Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms in this instance.
56. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
57. As a result, the Commissioner considers that she does not need to go on separately to consider whether disclosure would be fair or transparent.

Section 17-Refusal Notice

58. Section 17(1) provides that where a public authority relies on an exemption to refuse a request, it is obliged to issue the requester with a notice which:
 - States that the request is being refused.
 - Specifies the exemption which has been applied to the withheld information.
 - States why that exemption applies.

59. In the council's response to the complainant dated 17 February 2020 it confirmed that it was unable to release the information requested because he did not have an interest in Property A. Therefore, whilst it confirmed it could not provide the information, and why, it did not cite the particular exemption which it believed to be engaged, that being section 40(2) (although it did subsequently confirm this to the Commissioner).
60. As the council failed to inform the complainant of the relevant exemption which it had applied to the withheld information, the Commissioner has found that the council has breached section 17(1)(b) of the FOIA.

Right of appeal

61. 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

62. 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.
63. 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
Group Manager
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Wycliffe House
Water Lane
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SK9 5AF