

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 December 2020

Public Authority: London Borough of Barking & Dagenham

Address: Barking Town Hall
1 Town Square Barking
London
IG11 7LU

Decision (including any steps ordered)

1. The complainant has requested addresses, postcodes and property ownership information about local authority-owned blocks. The public authority disclosed some of the information in scope including an aggregated total of the number of apartments in blocks with less than 5 units broken down by ownership information. It however withheld individual apartment door numbers relying on the exemption at section 40(2) FOIA (Personal data).
2. The Commissioner's decision is that the public authority was entitled to rely on the exemption at section 40(2) FOIA.
3. The Commissioner however finds the public authority in breach of section 10(1) FOIA (Time for compliance with request).
4. No steps required.

Request and response

5. On 20 June 2019 the complainant submitted a request for information to the public authority 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 public authority responded on 28 November 2019. It confirmed that it held the requested information. It explained however that the cost of providing the information would exceed the appropriate limit and therefore denied the request on the basis of the provision in section 12(1) FOIA.
7. The complainant contacted the Commissioner on 30 January 2020 stating that she had not received a response to her request. On 5 February 2020 the Commissioner provided her with a copy of the public authority's response above which the public authority had issued to her via email and the Commissioner advised her to seek an internal review of the public authority's decision if she was dissatisfied.
8. On 10 February 2020 the complainant requested an internal review of the public authority's response of 28 November 2019.
9. The public authority wrote back to the complainant on 4 March 2020 with details of the outcome of the internal review. The review did not uphold the original decision to rely on section 12(1) FOIA. Consequently, some of the requested information was released to the complainant and the rest of the information was withheld on the basis of the exemption at section 40(2) FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 12 March 2020 to complain about the public authority's handling of her request. She submitted that the public authority had not disclosed “estate names, block names or event street numbers ”[sic].
11. During the course of the Commissioner's investigation, specifically on 17 September 2020, the public authority supplied the complainant with a spreadsheet containing the information previously disclosed and

additional information within the scope of the request. The following information has been released to the complainant: the name of a block (where it is available), the address location (ie the street and number) and postcode. For example, rain house, 15 sun street Q90 0XY. These are generally tower blocks with a large number of apartments. The total number of apartments in these blocks broken down by tenancy and leasehold properties have also been disclosed.

12. However, a number of blocks are only identifiable through a combination of their address location (ie name of the street and individual apartment door numbers) and postcode. For example, 3020A -3020B ZWTY Avenue Z90 1YX. The public authority released the following information in relation to these blocks: the street and postcode of blocks in the same postcode area, and an aggregated total of the number of apartments in that postcode area broken down by tenancy and leasehold properties. These are generally smaller blocks of apartments with 2 or 3 units. Individual apartment door numbers were withheld by the public authority on the basis of section 40(2) FOIA.
13. The Commissioner has therefore considered whether the public authority was entitled to rely on the exemption at section 40(2) FOIA to withhold individual apartment door numbers (the withheld information).

Reasons for decision

Section 40(2)

14. Section 40(2) 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 in 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 5 of the General Data Protection 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'). If it is not personal data then section 40 of FOIA cannot apply.
17. 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 withheld information personal data?

18. The complainant says: "I have not asked for any individual's address. I am simply requesting the postal address of each block of flats which, by virtue of being a building containing multiple addresses, cannot identify any individual's home address."
19. Section 3(2) of the DPA defines personal data as: 'any information relating to an identified or identifiable living individual'.
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. A combination of the name of the street on which a block of apartments is located, the postcode of the block and an individual apartment door number constitutes a property address. The Commissioner considers property addresses personal data within the meaning of section 3(2) of the DPA because they relate to an identifiable individual. The complainant has already been provided with the address and postcode of individual blocks. Combining that information with individual apartment door numbers would reveal apartment addresses.
23. The Commissioner considers that an individual can be indirectly identifiable when information held by a public authority can be combined with other information in the public domain to identify the individual. Individual apartment door numbers could be combined with the information already disclosed to the complainant to reveal a property address which could be combined with other publicly available information such as the electoral register and Land Registry records to reveal the identity of an occupier and their ownership status, whether they are a tenant or leaseholder.
24. According to the public authority, these blocks can contain 2 or 3 apartments. The Commissioner shares the view that the small size of the blocks increases the chance of identifying occupiers and also obtaining ownership related information about individual apartments.
25. A motivated person who is already in possession of the address and postcode of apartment blocks could clearly obtain the individual apartment door numbers by using Google Street View or physically visiting the street. However, this does not undermine the fact that the

withheld information constitutes personal data within the meaning of the DPA and is therefore caught by the exemption in section 40(2).

26. The complainant says she has not asked for any individual's home address. However, it is inevitable that by virtue of how some of the blocks within the scope of her request can be fully identified, complying with her request in full would necessitate the disclosure of property addresses. The postal address of each block containing a larger number of apartments has been released without revealing individual apartment door numbers.
27. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

28. 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'.
29. 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.
30. 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

31. The Commissioner considers that the lawful basis most applicable is basis 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 child¹

¹ 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".

32. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under 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.
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
33. 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

34. In considering any legitimate interest(s) in disclosing the withheld 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.
35. 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.
36. The Commissioner considers that there is a legitimate interest in knowing the number of apartments that are either under the public authority's ownership or have been sold under Right to Buy. This information has been disclosed by the public authority. There is also a legitimate interest in knowing the postal address of each block under the public authority's ownership. However, the Commissioner does not consider that there is a pressing social need to interfere with the privacy rights of individuals in order to disclose the withheld information.

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".

Is disclosure necessary?

37. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so a measure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least restrictive means of achieving the legitimate aim in question.
38. As mentioned, the Commissioner does not consider that there is pressing social need to interfere with the privacy rights of residents in order to satisfy the legitimate interest in obtaining the postal address of each block under the public authority's ownership. Disclosing the withheld information is not the least restrictive means of satisfying this legitimate interest. The public authority has struck the right balance in the circumstances of this case by revealing the total number of apartments in apartment blocks under the public authority's ownership broken down by tenancy and leasehold properties, and the addresses of tower blocks under the public authority's ownership absent individual apartment addresses.
39. In addition, through the location data provided (ie name of the street and postcode), the complainant could also identify the smaller blocks of apartments under the public authority's ownership. It would be unnecessarily intrusive however to also publish the home addresses of individuals in response to the complainant's request.
40. The Commissioner has therefore concluded that disclosing the individual apartment door numbers would not be lawful and therefore article 6(1)(f) of the GDPR is not met. Disclosure of the withheld information would therefore breach the first data protection principle and thus is exempt from disclosure on the basis of section 40(2) of FOIA.

Procedural Matters

41. A public authority is required by virtue of section 10(1) FOIA to respond to a request promptly and in any event no later than 20 working days.
42. The request was submitted on 20 June 2019 and the public authority's response was issued on 28 November 2019. The Commissioner finds the public authority in breach of section 10(1) for taking longer than 20 working days to respond to the request.

Right of appeal

43. 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: 0116 249 4253

Email: grc@justice.gov.uk

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

44. 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.
45. 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.....

Terna Waya
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF