

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 May 2014

**Public Authority:** Bournemouth Borough Council  
**Address:** Town Hall  
Bourne Avenue  
Bournemouth  
Dorset  
BH2 6DY

#### Decision (including any steps ordered)

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1. The complainant has requested a list of leaseholders of former local authority properties within its boundaries held by Bournemouth Borough Council.
2. The Commissioner's decision is that Bournemouth Borough Council correctly relied on section 40(2) to withhold the requested information as regards non-corporate leaseholders.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with the names of corporate leaseholders of former local authority properties within its boundaries held by Bournemouth Borough Council.
4. The public authority 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 28 June 2013, the complainant requested from Bournemouth Borough Council ("the Council") information of the following description:

- A list of leaseholders of former local authority properties within its boundaries.
6. On 18 July 2013 the Council responded. It refused to provide the requested information and cited the following exemptions as its basis for doing so:
- Section 21 – Information Reasonably Accessible to the Requester
  - Section 40(2) – Third Party Personal Data
7. Following an internal review the Council wrote to the complainant on 15 October 2013. It stated that it continued to rely on section 40(2) to withhold the information but no longer section 21.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 14 November 2013 to complain about the way his request for information had been handled.
9. On 16 April 2014, the Council acknowledged to the Commissioner that the names of corporate leaseholders were not personal data and that it would disclose these names. The Commissioner has therefore not considered these names in his analysis below.

### **Reasons for decision**

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10. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
- the duty to inform the applicant whether or not requested information is held and, if so,
  - the duty to communicate that information to the applicant.
11. Section 40(2) of FOIA states that information is exempt from the duty of disclosure if it constitutes the personal data of a party other than the requester and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).
12. Personal data is defined in section 1(1) 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".

13. Thus, in determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance and considered the information in question. He has looked at whether the information relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.
14. The Commissioner considers that the names of the leaseholders of former local authority properties (where they are not the names of corporate entities), plainly are personal data as defined by the DPA.
15. The Commissioner next considers whether disclosure of the personal data would be unfair.
16. In considering whether disclosure of personal data would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner considers the following factors:
  - The data subject's reasonable expectations of what would happen to their personal data.
  - The consequences of disclosure.
  - The balance between the rights and freedoms of the data subject and the legitimate interests of the public.
17. The Council explained that it does not believe that the individuals have any reasonable expectations that information about their leaseholder status will be disclosed under the FOIA, which is to effectively place such information in the public domain. This has not been stated in any privacy notices associated with leaseholders and the Council only collects the requested information for the purpose of the administration of the properties. The Commissioner considers the Council's position with regards to reasonable expectations to be acceptable.
18. Where the data subject has not expressed consent to the disclosure of their personal data the Commissioner adopts the following approach when considering fairness:

- Non-expression of consent is not solely determinative as to whether the data subject's personal data will be disclosed.
  - It also remains important to still consider whether it would be reasonable for the data subject to object to the disclosure.
19. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the data subjects concerned. Although they may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life. If an authority wishes to claim that disclosure would be unfair because of the adverse consequences on the data subjects concerned, it must be able to put forward some justification for this claim.
  20. On the facts of this matter the Commissioner is satisfied that the personal data sought appears not to relate to any public role that the individuals may have. Accordingly this is an extremely strong factor that militates against the public dissemination of their personal data as requested by the complainant.
  21. Regarding the consequences of disclosures the Council asserted that the complainant and associate others were likely to use the withheld information to contact individual leaseholders. It believes that disclosure may cause distress to leaseholders, who could be subject to unwanted and intrusive contact by third parties. The Council believes that this would represent unwarranted processing by reason of prejudice to the rights and freedoms of the leaseholders.
  22. Whilst the Commissioner does not necessarily endorse in its entirety the above view of the Council he accepts its general tenor. That is, releasing the withheld information may well lead to some or all of them being contacted by third parties and that some of these contacted leaseholders are likely to be distressed by such an approach.
  23. Acknowledging the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling and legitimate interest in disclosure and that disclosure is necessary to serve that interest. This is something that the Commissioner has not been able to do in this case. Accordingly he is satisfied that the Council correctly relied on section 40 (2) not to provide the complainant with the requested information which it maintains is exempt under this provision.

## Right of appeal

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24. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

25. 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.
26. 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** .....

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