

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 2015

Public Authority: Doncaster Metropolitan Borough Council

Address: P.O. Box 67
Copley Road
Doncaster
South Yorkshire
DN1 2PR

Decision (including any steps ordered)

1. The complainant has requested the name and address of a specified private landlord.
2. The Commissioner's decision is that Birmingham City Council is entitled to withhold the requested information in reliance on section 40(2) of the FOIA.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 30 April 2015, the complainant wrote to Doncaster Metropolitan Borough Council and requested information in the following terms:

*"Could you tell me the full name and address of the private landlord of [a given address]. His surname is [a given name].

I need to contact him about the behaviour of his tenants."*
5. On 20 May 2015 the Council sent the complainant its response to his request. The Council advised the complainant that it was refusing to disclose the requested information in reliance on Section 40(2) of the FOIA. The Council explained that 'private landlords are considered to be

sole traders and as such the information is considered to be biographically significant to the individuals concerned'. The Council informed the complainant of its belief that disclosure of the requested information would contravene the first data protection principle.

6. On 22 May 2015 the complainant wrote to the Council to appeals against its decision.
7. The Council carried out an internal review and wrote to the complainant on 2 June to advise him of its final decision. The Council informed the complainant that his appeal was not upheld and confirmed its application of Section 40(2) of the FOIA.
8. The Council's internal review stated, 'I do not believe there is a compelling legitimate interest in releasing the information in this case as this would be a breach of the Data Protection Act 1998, specifically the first principle'. The Council went on to advise the complainant that details of property owners can be requested from the Land Registry. The Council also advised the complainant that he could make a complaint to the Council about the alleged anti-social behaviour from his neighbours.

Scope of the case

9. The complainant contacted the Commissioner on 19 June 2015 to complain about the way his request for information had been handled. The complainant stated his concern was the Council's refusal to provide information about the private landlord at the address specified in his request.
10. The Commissioner has investigated whether the Council is entitled to rely on Section 40(2) of the FOIA as proper grounds for refusing to provide the withheld information. This notice sets out his decision.

Reasons for decision

Section 40(2) – the personal data of a third party

11. The Council has relied on section 40(2) of the FOIA to withhold the information which the complainant seeks. It has done so on the grounds that the requested information is the personal data of the private landlords.
12. Section 40(2) provides an exemption from the duty to disclose information which is the personal data of any third party and where

disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 ("the DPA") or section 10 of that Act.

13. In order to rely on the exemption provided by section 40, the requested information must constitute personal data as defined by the DPA. The DPA defines personal data as:

'...data which relate to a living individual who can be identified

a) From those data, or

b) From those data and other information which is in the possession or, or is, likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect to the individual.'

14. The Commissioner has considered the nature of the withheld information. In the Commissioner's opinion this information is undoubtedly personal data. He considers that the names and address of the private landlords is information which is clearly of biographical significance to them.
15. The Commissioner is required to consider whether disclosure of the name and address of the private landlords would breach any of the data protection principles contained in Schedule 1 of the DPA. He considers that the first data protection principle is the one most relevant in this case.

The first data protection principle

16. The first data protection principle has two components:

1. Personal data must be processed fairly and lawfully, and

2. Personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.

The first data protection principle

The Council's representations

17. The Council considers that disclosure of the private landlords name and address would contravene the first data protection principle. It asserts that the private landlords are not employees of the Council and that they act a private capacity.

18. The Council holds the landlords' personal information solely for the administration of Council Tax. The Council is notified of property owner information as a matter of course for potential and future Council Tax liability purposes.
19. The Council has advised the Commissioner that no benefit claims have been made for the address cited by the complainant.
20. In the Council's opinion, the private landlords would have a clear expectation that their personal data would only be processed for the purpose of Council Tax administration. This expectation is derived from the 'Sharing your Information' fair processing statement which is given to the Council's customers. This states –

'This authority is under a duty to protect the public funds it administers and to this end may use the information that you provide for the prevention and detection of fraud. It may also share your information with other bodies responsible for auditing or administering public funds for these purposes. This will involve regular data matching exercises. Data matching is where information held on one computer system is compared electronically with information from one or more other computer systems, for example, The Audit Commission will compare the information from Council Tax and The Electoral Register to identify fraud or error.

Revenues data, which includes Council Tax and Business Rates information, may also be provided to, and used for checks with other Council departments where it is needed by them to carry out their functions. For example, data can be used to help identify properties that have been empty for a while to encourage owners to bring them back into use and schools may also check Council Tax records where there are enquiries relating to pupil admissions. Customer names and contact addresses are also being held by Doncaster Council for the introduction of a single customer account. This will benefit residents in the future by reducing the number of times a customer needs to notify the Council of a change. We will tell you more about this as it develops.

Revenues data may also be shared with other organisations where the Data Protection Act 1998 allows this to happen. For example, information may be shared with the Police, or HM Revenues and Customs if it is needed to prevent or detect a criminal offence, or carry out a prosecution or to assess or collect any tax or duty.

Doncaster Council will also use Credit Reference Agencies to carry out data matching to identify potential fraud. When any such exercise is carried out no electronic footprint will be left on individual customer's

credit accounts. This means that the data matching will not affect people's credit ratings.'

21. In view of the fair processing notice above, the Council has not approached the private landlords to obtain their consent for disclosure of their personal data.
22. The address the Council holds is likely to be a private address and the Council has been unable to locate any information in the public domain, which is freely available, which relates to the individuals concerned.
23. Given that no public funds are claimed from the Council in respect of the address, the Council asserts that the private landlords would have a clear expectation that their personal data will only be used for the legitimate purpose for which it was obtained; as such, the Council considers that disclosure of their full names and addresses would be unwarranted.

The Commissioner's consideration of the first data protection principle and condition 6 of the DPA

24. In deciding whether disclosure of personal data would be unfair to the landlords, the Commissioner takes into account a range of factors. These factors include their reasonable expectations of how their personal data would be processed; how the Council obtained the requested information and for what purpose(s); their general expectation of privacy, including the effect of article 8 of the European Convention on Human Rights; the nature of the requested information and the circumstances it was obtained; and whether the individuals have consented to, or explicitly refused to consent to the disclosure of their personal data.
25. The Commissioner will also take into account the possible consequences of disclosing the information and whether the information is already in the public domain.
26. In the Commissioner's opinion the Council's fair notice statement would provide the private landlords with a reasonable expectation that their personal data would not be processed for reasons other than those stated.
27. He notes that the address is likely to be a private address and that there are no claims made in respect of that property for benefits and therefore no public funds are involved.
28. A possible consequence of disclosing the landlords' names and address would be that they receive unsolicited and potentially intrusive mail and

possibly visits from the property's neighbours and other members of the public.

29. The Commissioner has considered whether any of the conditions in Schedule 2 of the DPA could be satisfied to allow disclosure of the private landlords' address. The Commissioner has particularly considered condition 6 of Schedule 2, this condition states –

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”

30. The first question to answer is whether disclosure of the private landlords' address is necessary for any legitimate interest pursued by the public – including the complainant.
31. Here the Commissioner considers the key word is necessary.
32. The Commissioner accepts that the complainant may have a legitimate interest to pursue in respect of his neighbour's behaviour. Nevertheless, in the Commissioner's opinion it is not necessary for the complainant to know the address of the private landlords in order to contact him/her about the behaviour of his/her tenants.
33. In the Commissioner's opinion the complainant can pursue his legitimate interest by making a complaint to the Council. This is because the Council is required to investigate complaints about anti-social behaviour under section 79 of the Environmental Protection Act 1990. Under this provision the Council has a legal duty to respond to and investigate complaints of statutory nuisance such as noise, light, smoke, waste, etc.
34. The Council has advised the Commissioner that it follows a defined written procedure when it receives a complaint concerning nuisance. Under its procedure, the Council's will send a letter to the subject of the complaint and also a letter and diary to the person making the complaint for them to complete and return. This allows the complainant to indicate how he/she is being affected. Where a completed diary is returned further investigations are made to substantiate what has been written down in the diary and this is done either by the use of noise recording equipment or through officer visits.
35. The Commissioner considers that condition 6 of Schedule 2 of the DPA is not met in the circumstances of this request. This, in addition to the fair processing notice given to the private landlords in respect of how the Council will use their personal data, lead the Commissioner to determine that disclosure of the requested information would contravene the first

data protection principle and it is for this reason that the Commissioner has decided that the Council is entitled to withhold the requested information in reliance on section 40(2) of the FOIA.

Right of appeal

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@hmcts.gsi.gov.uk

Website: 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

Andrew White
Group Manager
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