

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 April 2014

Public Authority: Halton Borough Council
Address: Municipal Building
Kingsway
Widnes
Cheshire
WA8 7QF

Decision (including any steps ordered)

1. The complainant requested the names of the 20 landlords (excluding housing associations) whose tenants collectively received the largest amounts of housing benefit from Halton Borough Council (the Council) in the last financial year 2012/13. He also sought the names of the corporate landlords on the list. The Council provided him with an anonymised list of the 20 landlords but refused to provide the names of the corporate landlords on the basis of sections 40 (personal data) and 41 (information provided in confidence) of FOIA.
2. The Commissioner has concluded that the names of the corporate landlords are not exempt from disclosure on the basis of sections 40 and 41.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a version of the top 20 list of landlords he requested with the names of the 11 corporate landlords unredacted. (The landlords which the Commissioner considers to be 'corporate' in nature are identified in the email the Commissioner sent to the Council on 11 February 2014).
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

5. The complainant wrote to the Council on 3 December 2013 and submitted the following request:

'I would like to know further details of the 20 landlords (excluding housing associations) whose tenants collectively received the largest amounts of housing benefit from your council in the last financial year 2012/13.

From records of payments that you are able to link to landlords, can you please provide me with the amount in pounds of total housing benefits paid to their tenants for each of the top 20 in that year?

Can you also provide the names of the corporate landlords or other legal entities in the list?

In order to assist, I have attached the outcome of an internal review carried out by Westminster City Council after we made a similar request and they provided details of the amounts paid but not the names of the landlords. Following the internal review, Westminster City Council provided us with the names of the corporate landlords and other legal entities but not of individuals. We have decided not to pursue this further with the ICO.'

6. The Council responded on 4 December 2013 and provided an anonymised list of the top twenty non-housing association landlords in receipt of largest amounts of housing benefit.
7. The complainant contacted the Council on the same day to query why the names of companies had been redacted and asked for this point to be considered as part of a formal internal review.
8. The Council informed the complainant of the outcome of the review on 10 December 2013. The internal review explained that the names of the landlords were exempt from disclosure on the basis of section 40 of FOIA as this *'prevents disclosure of personal information. Consequently the local authority is unable to disclose the names of landlords without their consent'*.

Scope of the case

9. The complainant contacted the Commissioner on 11 December 2013 to complain about the way his request for information had been handled. He disputed the Council's refusal to provide the names of the '*corporate landlords or other legal entities*' from the list of information provided. He emphasised that a significant number of other local authorities had previously provided similar data.
10. During the course of his investigation the Commissioner was provided with the names of the 20 non-housing association landlords in receipt of the highest amounts of housing benefit. The Commissioner has identified that of these names, 11 fall within the description of '*corporate landlords*'; the remaining 9 names consist of the names individuals.
11. The Commissioner has therefore considered whether the names of these 11 corporate landlords are exempt from disclosure on the basis of section 40(2) of FOIA, the exemption the Council cited in correspondence with the complainant, and section 41(1) of FOIA, a position the Council subsequently adopted in correspondence with the Commissioner.

Reasons for decision

Section 40(2) – personal data

12. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act 1998 (DPA).

Is the withheld information personal data?

13. Clearly then for section 40(2) to be engaged the information being withheld has to constitute '*personal data*' which is defined by the DPA 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 of, 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 of the individual.'

14. The Council has argued that by searching the company names of the corporate landlords, a member of the public could identify the individuals who owned that particular company. Therefore it has argued that the names of the corporate landlords constitute personal data.

15. The Commissioner's guidance '*Determining what is personal data*' sets out a number of questions for deciding whether information is personal data as defined by the DPA.¹

16. The first question concerns identifiability and states:

'Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the data controller?'

Yes Go to next question.

No The data is not personal data for the purposes of the DPA.'

17. With regard to the Council's submissions, the Commissioner accepts that using a free internet based company search site, or a search of records at Companies House, the names of the directors of the corporate landlords in question could be identified. However, in the Commissioner's view the names of such individuals cannot be directly established from the withheld information itself. Therefore, in the Commissioner's opinion individual directors of the corporate landlords cannot be identified simply from the withheld information. As result, in the Commissioner's opinion the answer to the first question set out in the guidance is 'No'.

18. In any event, even if the answer to the first question was 'Yes', the Commissioner believes that the answer to the second question posed in his guidance is also 'No'.

19. The second question is:

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

'Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?

Yes The data is 'personal data' for the purposes of the DPA.

No The data is not 'personal data' for the purposes of the DPA.'

20. In the Commissioner's opinion the withheld information does not relate to the directors of the various corporate landlords given that the information – housing benefit received by the tenants of these corporate landlords – is not information which is actually about them. That is to say, the withheld information cannot be said to be information that is obviously about the individual directors of corporate landlords in comparison, for example, to information about their direct income or direct financial circumstances.
21. The Commissioner has therefore concluded that the withheld information is not personal data and thus cannot be exempt from disclosure under section 40(2) of FOIA.

Section 41 – information provided in confidence

22. Section 41(1) states that:

'Information is exempt information if -

- (a) it was obtained by the public authority from any other person (including another public authority), and*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'*

23. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party **and** the disclosure of that information has to constitute an actionable breach of confidence.
24. With regard to section 41(1)(b), in most cases the approach adopted by the Commissioner in assessing whether disclosure would constitute an actionable breach of confidence is to follow the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:

- Whether the information had the necessary quality of confidence;

- Whether the information was imparted in circumstances importing an obligation of confidence; and
- Whether an unauthorised use of the information would result in detriment to the confider.

25. However, further case law has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure.

Was the information obtained from a third party?

26. In its submissions to the Commissioner, the Council acknowledged that *'it is accepted that the information relating to rentals received has been generated by the Council for its own purposes the fact that such information relates to the individual organisations per se, if disclosed, may potentially result in actionable breach of confidence if disclosed'*. In light of the Council's admission that it generated the withheld information it clearly cannot be said to meet the requirements of section 41(1)(a) precisely because it was not obtained from a third party. The information is therefore not exempt from disclosure on the basis of section 41(1) of FOIA.

Right of appeal

27. 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

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

28. 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.
29. 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

Steve Wood
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