

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 June 2025

**Public Authority:** London Borough of Haringey  
**Address:** Alexandra House  
10 Station Road  
Wood Green  
N22 7TR

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a tenancy agreement. London Borough of Haringey ("the Council") relied on section 40(2) of FOIA (third party personal information) to withhold the information.
2. The Commissioner's decision is that the public authority has correctly relied on section 40(2) of FOIA to withhold the information.
3. The Commissioner does not require further steps to be taken.

#### **Request and response**

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4. On 3 July 2024, the complainant wrote to the public authority and requested information in the following terms:  
  
    "...I would greatly appreciate it if you could provide me with the latest fraudulent tenancy agreement that [named person] has submitted to Haringey, which you have on file. ..."
5. The Council responded on 26 July 2024. It refused to provide the information, citing section 40(2) of FOIA – personal information.
6. Following an internal review the public authority wrote to the complainant on 11 October 2024. It stated that it upheld its original position.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 27 October 2024, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to establish whether the public authority is entitled to withhold the requested information under section 40(2) of FOIA

## **Reasons for decision**

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### **Section 40 - personal information**

9. Section 40(2) of 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.
10. 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 UK General Data Protection Regulation ('UK GDPR').
11. 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.
12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### **Is the information personal data?**

13. Section 3(2) of the DPA defines personal data as:  
"any information relating to an identified or identifiable living individual".
14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. 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.

16. 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.
17. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information does relate to the data subject(s). This is because the information is their name/s, along with other identifiable information, such as the address of the property. The information will also relate to the landlords, as it will identify their names. The names and address of the data subjects quite obviously is information that both relates to and identifies those concerned.
18. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
19. 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.
20. The most relevant DP principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

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

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

22. 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.
23. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

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

24. 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 child"<sup>1</sup>.

25. In considering the application of Article 6(1)(f) of the UK 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.
26. 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**

27. In considering any legitimate interest(s) in the disclosure of the requested information under 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.
28. 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.
29. The complainant has explained that they are concerned about the possibility of fraud. This is something that is both personal to them, but also carries a wider legitimate interest.

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<sup>1</sup> 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 UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK 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?**

30. '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 FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
31. In this case, disclosure is not necessary. This is because there are other processes in place to allow individuals to report suspicions of fraudulent activity. In some cases that can include the right to obtain a court order requiring the restricted disclosure of information.
32. As such, there are alternative means of achieving the legitimate interest that are less intrusive than making the information available to the whole world.
33. As the Commissioner is satisfied that disclosure is not necessary, there is no lawful basis for disclosure and therefore the Council was entitled to rely on section 40(2) of FOIA to withhold the information.

### **Other matters**

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34. The Commissioner recognises that the Council may have been pragmatic when confirming that it held a tenancy agreement, given previous correspondence it had exchanged with the complainant. However, because of the way the request was worded, it should have been more explicit in its response about what exactly it was confirming that it held for the purposes of FOIA.
35. An identifiable individual was mentioned within the request. The request also made an assertion that that individual had submitted an agreement that was fraudulent. The Council should have explicitly avoided confirming that the agreement it held was (or was not) fraudulent. The Council should have either have made clear that it was interpreting the request as though the word "fraudulent" was not included, or it should have refused to confirm or deny whether it held a fraudulent agreement from the individual named.
36. Even where a request forms part of a large or wider chain of private correspondence with a requester, the Council must be mindful that responses it provides under FOIA are considered to have been made to the world at large.

## Right of appeal

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37. 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)  
General Regulatory Chamber  
PO Box 11230  
Leicester  
LE1 8FQ

Tel: 0203 936 8963  
Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**