

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2016

Public Authority: South Derbyshire District Council

Address: Civic Offices
Civic Way
Swandlincote
Derbyshire
DE11 0AH

Decision (including any steps ordered)

1. The complainant has requested to know who is registered with a property they own and any outstanding council tax payments or issues with the property.
2. The council advised it did not know of any issues and refused the remaining under section 40(2) of the FOIA as it considered it to be third party personal data. The complainant has asked the Commissioner to consider the council's application of section 40(2) of the FOIA.
3. The Commissioner's decision is that the council was correct to rely on section 40(2) of the FOIA to refuse the information it has.
4. The Commissioner does not require the council to take any steps.

Request and response

5. On 29 June 2015, the complainant made the following information request to the council:

"I am the owner of the property at [address redacted]. Further to my enquiry in March 2015 I received no reply.

I am concerned about my property being unoccupied and therefore in breach with the insurance policy, exposed to theft, vandalism, damages, etc. Considering the circumstances

highlighted previously I am unable to attend my property myself. I would be grateful if you could please assist with this matter.

[Name redacted] confirmed previously that [name redacted] is a resident at this address since January 2013 which is after I moved away in September 2012. However, it has come to my attention that she is not living there although she claims otherwise in Court to support her application for an occupation order which will be heard on 28 July 2015 by Derby Court. Please see attached process server's statement, there are further statements by estate agents, neighbours, etc.

Just to let you know [name redacted] is causing me significant issues both financial and legal. i.e. never paid for property occupation and applied to Court for occupation order to prevent me from returning back home.

I would be grateful if you could please confirm the following:

- Individuals registered with the local council at [address redacted]*
- Council Tax payments to date, i.e. any missing/ outstanding payments;*
- Any issues related to my property at the address above"*

6. The council responded on the 1 July 2015 refusing to provide any of the requested information due to data protection.
7. The complainant requested an internal review on the same day. The council provided its response to the internal review request on the 8 July 2015 responding to each of the 3 bullet points in the request.
8. For the first and second bullet point, the council refused this information under section 40(2) of the FOIA as it considered it to be third party personal data.
9. For the third bullet point, the council confirmed that it was not aware of any issues relating to the complainants property.

Scope of the case

10. The complainant contacted the Commissioner on the 8 July 2015 as he is not satisfied with the council refusing the two parts of his request it considers to fall under third party personal data.

11. The Commissioner considers the scope of the request is to determine whether the council was correct to rely on section 40(2) of the FOIA to refuse the first and second bullet points to the complainant's request.

Reasons for decision

Section 40(2) of the FOIA – Third party personal data

12. Section 40(2) of the FOIA states that:

"Any information to which a request for information relates is also exempt if-

a) It constitutes personal data which do not fall within subsection (1), and

b) Either the first or second condition below is satisfied."

Is the withheld information personal data?

13. Personal data is defined by the DPA as an information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
14. The information refused under section 40(2) of the FOIA is the names of individual's at a specific property and information relating to council tax payments to the property as to whether any are missing or outstanding.
15. The Commissioner is satisfied that this information falls within the definition of personal data as set out in the DPA because it 'relates to' identifiable living individuals.

Would disclosure contravene any of the Data Protection Principles?

16. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focussed on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

Reasonable expectations

17. When a public authority discloses information under the FOIA, it is essentially disclosing this information to the world and not just the person making the request.
18. So in considering how reasonable it would be for the council to release the names of individuals at an address and reveal information about the council tax, the council has told the Commissioner that the individual/s to which the information relates would not expect this information to be released under such circumstances.
19. The council states that information provided by council tax payers is provided on the basis that it will be solely used for the collection of council tax only and utilised in accordance with the council's Fair Processing Notice relating to fraud protection and prevention. It is of the view that there is a clear expectation that no personal council tax information would be placed into the public domain.

Consequences of disclosure

20. The council has explained to the Commissioner that it considers distress would be caused to the individual/s, to who the information relates, if council tax information, such as missed or outstanding payments, were published in the public domain.
21. In a more general consideration, the council has told the Commissioner that 28.5% of taxpayers are single occupiers, who could be identifiable by being in receipt of a single person's discount and so releasing information that could potentially reveal if an address contains a single occupant could cause public concern. The Commissioner sees that this type of information, which could be possibly disclosed by releasing council tax information, could cause those members of the public to feel vulnerable.

Balancing the legitimate rights of the data subjects with the legitimate interests in disclosure.

22. This case seems to be quite personal to the complainant and council does not consider there to be a wider public interest in this case.
23. The Commissioner sees that any wider public interest may be in knowing about the council tax liability that may fall on an owner of a property that is occupied by another person. However, the council has told the Commissioner that action in the event of non-payment would be against the occupier, even if the occupier was a squatter. Liability may change, and the owner of a property may be ultimately liable, to an empty property.

24. The complainant has provided the Commissioner with a family court statement in regards to this issue of occupancy at the property. This demonstrates to the Commissioner that there are other regimes, such as through the courts, which may be better suited to obtain the requested information without it being divulged in to the public domain under the FOIA.
25. The Commissioner sees that there is strong public interest in knowing how a public authority is handling personal data and ensuring that it is processing it in accordance with the DPA. If a public authority starts divulging personal information, that was not collected for the intention of public release, then this could cause distrust in its ability to store this type of data and in turn would more than likely cause distress to individuals who had reasonable expectations that their data would be secure and used for the reasons that it was originally obtained.
26. On review of the above, the Commissioner considers that release of the information in this case would be unfair to the individual, who the information relates, and any public interest in disclosure does not outweigh their rights to privacy.
27. Therefore the Commissioner finds that the council was correct to refuse the information it has under section 40(2) of the FOIA in this case.

Right of appeal

28. 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

29. 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.
30. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF