

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 April 2016

**Public Authority:** London Borough of Southwark  
**Address:** Room 312  
Town Hall  
Peckham Road  
London  
SE5 8UB

### Decision (including any steps ordered)

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1. The complainant has requested information from the London Borough of Southwark (the Council) relating to the final bill for electrical works and the final annual service charges bill for a specific property for the account year ending March 2014.
2. The Commissioner's decision is that the Council has correctly applied section 40 to withhold the requested information.
3. The Commissioner requires the Council to take no steps.

### Request and response

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4. On 4 October 2015 the complainant requested information of the following description:  
  
*"I am writing to request a copy of the following document under the FOI Act:*  
  
*A copy of the final bill for electrical works for [redacted information] for the account year ending March 2014.*  
  
*A copy of the final annual service charges bill for [redacted information] for the account year ending March 2014."*
5. On 5 November 2015 the complainant received a response from the Council. The Council provided the complainant with the final amount

charged but withheld the copies of the final bills as they contained the personal data of another individual.

6. Later the same day the complainant requested the Council to review its response to her information request, as she believed the Council could redact any personal information on the bills. The complainant also asked the Council to recheck the amounts stated in its response as she believed they were inaccurate.
7. On 13 January 2016 the Council provided its internal review findings. It had found that final figures provided to the complainant on 5 November 2015 were in fact incorrect. However the Council went on to state that the correct information was exempt under section 40. It also maintained its position that it was correct to withhold the bills under section 40.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 18 January 2016 to complain about the way her request for information had been handled.
9. The complainant disputed the Council's application of section 40 to the requested information. She argued that she paid part of the final amount and so had the right to see the final figure, and that the Council could provide her with redacted copies of the bills.
10. The Commissioner has had to consider whether the Council has correctly applied section 40 to the information falling within the request.

### **Reasons for decision**

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#### **Section 40 – Personal Data**

11. Section 40 of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
12. Taking into account his dual role as regulator of both the FOIA and the Data Protection Act 1998 (the DPA) the Commissioner has considered whether the Council was correct to withhold the final amounts payable and copies of the final bills.

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

13. Personal data is defined by section 1 of 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 data controller or any person in respect of the individual..."*

14. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
15. The information sought in the request relates to the final amount payable by the leaseholders of the property in question for the account year ending in March 2014. A part of the final amount was payable by the complainant, but the remainder of the amount was payable by the subsequent leaseholder. The identity of these new leaseholders was known to the complainant, and the Council took the view that providing the final payable amount would allow the complainant to calculate the final amount paid by the new leaseholders. The complainant would therefore be aware of the amount paid by the new leaseholders to the Council. The Council considered this to be the personal data of the new leaseholders and therefore believed it to be exempt under section 40 of the FOIA.
16. 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 breach the data protection principles?**

17. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
18. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations of the data subject**

19. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their

expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.

20. The Council explained that the data subject would have a reasonable expectation that it would process their personal data securely, confidentially and in line with the DPA.

### **The consequences of disclosure**

21. When considering the consequences of disclosure, the Council explained that disclosure of the requested information would be a breach of a third party's personal data. It further argued that there was a risk that releasing the information may not be appropriate due to the legal position between the complainant and the new leaseholder.
22. The Council advised the Commissioner that despite numerous attempts no agreement to release the information was received from the new leaseholders.

### **The legitimate public interest**

23. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms or legitimate interests of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
24. The Commissioner considers that there is always an interest in openness and transparency. However in this situation the information requested is the personal data of a private citizen, and there is a reasonable expectation that the requested information would be kept private. The Commissioner has also determined that there is little legitimate public interest in the requested information, and the complainant has not indicated how disclosure of this information would be in the legitimate public interest.
25. Therefore the Commissioner accepts that disclosure of the information would reveal a data subject's personal data and disclosure of this information would be a breach of privacy and therefore unfair.
26. On this basis, the Commissioner has determined that the Council was correct to apply section 40(2) to the request.

## Right of appeal

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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: 0870 739 5836

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)

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 .....**

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