

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 April 2016

Public Authority: London Borough of Barking and Dagenham
Address: Barking Town Hall
1 Town Square
Barking
IG11 7LU

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Barking and Dagenham ("the Council") relating to a block of flats.
2. The Commissioner's decision is that the Council does not hold any further information falling within the scope of requests 14, 15 and 17. However, the Commissioner has determined that the information sought in requests 6 and 7 is not personal data and therefore section 40 does not apply.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - provide the complainant with the information sought in requests 6 and 7.
4. The Council 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. On 14 July 2015 the complainant wrote to the Council and requested information in the following terms:

"Under the Provisions of the Freedom of Information Act I request the following information relating to Peverel House, Stour Road to be provided to me: -

- 01) The total number of flats in the block*
- 02) Their composition i.e. how many are 1, 2, 3 or other number of bedrooms*
- 03) How many are in private lease i.e not owned by the Council*
- 04) The Service Charge for each type of flat*
- 05) The current weekly rent (excluding Service Charge) charged by the Council for each type to its tenants*
- 06) The number of dwellings in the block that have the rent fully or partially paid from public funds*
- 07) The current number of dwellings that are in rent arrears*
- 08) The current supplier for the Landlord provided hot water and heating electricity supply.*
- 09) The current cost per kWh to the Council in respect of 08)*
- 10) The current standing charge to the Council in respect of 08)*
- 11) The daily times that the hot water electricity supply is available.*
- 12) The dates in the year that the heating electricity supply is available.*
- 13) The current supplier for the non-potable water supply in the block.*
- 14) The current cost to the Council per cubic metre in respect of 13)*
- 15) The current standing charge to the Council in respect of 13)*
- 16) How the Leaseholder heating and hot water elements of the Service Charge are calculated*
- 17) The chemical (if any) that is added to the non-potable water supply*
- 18) The maintenance schedule for the block for at least the next five years.*
- 19) The future plans for the life of the block".*

6. The Council responded on 3 September 2015 and provided information within the scope of requests 1), 2), 3), 4), 5), 8), 9), 10), 11), 12) and 16). The Council withheld the information sought in requests 6) and 7) on the grounds that it was personal data. It further advised that the information sought in requests 13), 14), 15), 17), 18) and 19) would be provided by 10 September 2015.
7. On 4 September 2015, the complainant responded to the Council's response. He expressed dissatisfaction and provided clarification of the information he sought in requests 4), 6), 7) and 16).
8. On 14 September 2015 the Council provided further information to the complainant regarding requests 13), 14), 15), 17), 18) and 19).
9. On 20 September 2015 the complainant wrote to the Council and provided clarification of the information he sought in requests 13) 14) 15) and 17).

10. The Council provided its internal review response on 24 November 2015. It maintained its position that the information sought in requests 6) and 7) was exempt under section 40. The Council further explained that the information sought in requests 4), 14), 15), 16) and 17) was not held.

Scope of the case

11. The complainant contacted the Commissioner on 28 November 2015 to complain about the way his request for information had been handled. The complainant was dissatisfied with the Council's handling of requests 4, 6, 7, 14, 15, 16 and 17.
12. During the Commissioner's investigation further information was provided falling within the scope of requests 4 and 16.
13. The Commissioner has therefore had to consider whether the Council handled requests 6, 7, 14, 15 and 17 in accordance with the FOIA.
14. Specifically, the Commissioner has had to consider whether the Council correctly applied section 40 to requests 6 and 7. The complainant confirmed that he was happy for the Commissioner to consider whether section 40 applied to the information held as of April 2016.
15. The Commissioner has also had to consider whether the Council holds any information falling within the scope of requests 14, 15 and 17.

Reasons for decision

Section 40 (2) - requests 6 and 7

16. 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.
17. 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 information sought in requests 6 and 7 on the basis that it is personal data.

Is the withheld information personal data?

18. 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..."

19. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
20. The information sought in the request relates to the number of dwellings in the block that have the rent fully or partially paid from public funds and the current number of dwellings that are in rent arrears.
21. The Council's arguments surrounding why this information was personal data related to the fact that individuals could be identified from it.
22. The Commissioner has reviewed the withheld information and he considers that a living individual could not be identified from the information. In coming to this view, he has taken into account the fact that the Council has not provided any examples of information that is available to the complainant that would allow him to identify the individuals.
23. On this basis, the Commissioner has determined that the information sought in requests 6 and 7 is not personal data and therefore section 40(2) does not apply.
24. The Commissioner requires the Council to take the steps outlined in paragraph 3 and 4.

Section 1 - requests 13, 14, 15 and 17

25. Section 1(1) of FOIA states that:

"Any person making a request for information to a public authority is entitled: -

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
 - (b) if that is the case, to have that information communicated to him".*
26. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

27. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
28. For request 14 and 15, the Council explained that because the block does not receive a non-potable water supply, it is impossible to provide the cost per cubic metre and the standing charge cost.
29. With regard to request 17, the Council explained that because the block does not receive a non-potable water supply, no chemicals are added.
30. After reviewing the Council's submissions, the Commissioner is satisfied on the balance of probabilities that the information sought in requests 14, 15 and 17 is not held by the Council.

Right of appeal

31. 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

32. 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.
33. 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
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