

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 August 2007

Public Authority: Preston City Council
Address: Town Hall
Lancaster Road
Preston
PR1 2RL

Summary

The complainant requested information from Preston City Council (the Council) relating to the registered occupancy of a property. The request was for whether the property was registered as single occupancy for council tax purposes. The Council withheld the information on the grounds that the exemption under section 40 (personal data) of the Act applied. The Commissioner has decided that the Council was correct to apply the exemption under section 40 of the Act to the requested information, and therefore the Council is not required to take any further steps in respect of this complaint.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 13 November 2006 the complainant sent an email to the Council requesting the details of whether a property at a given address had multiple or single occupancy. The complainant believed that the property in question was registered as having single occupancy, and that a relevant council tax discount was claimed by its resident, while apparently there was more than one person living there.
3. On 17 November 2006 the Council refused to release the requested information on the grounds that the exemption under section 40 of the Act applied stating, "We cannot disclose the information to you because it would be a breach of the Data Protection Act" and "[W]e believe that it is not in the public interest to

disclose the information to you". The Council also informed the complainant of his right of appeal.

4. In his email of 20 November 2006 the complainant repeated the request to the Council whether the property in question was registered as having single or multiply occupancy in terms of council tax.
5. Subsequently, the Council carried out an internal review of its decision not to disclose the requested information, and upheld its original position to apply the exemption under section 40 of the Act on the grounds that, although the requested information might not appear to be personal data, its disclosure could provide a route to reveal personal data, including financial information, and that taxpayers provided such information to the Council in the expectation that it would be treated as confidential. The Council also stated that the public interest in withholding the information was greater than the public interest in disclosing it.
6. The Council communicated the outcome of the internal review to the complainant in its letter of 29 November 2006.

The Investigation

Scope of the case

7. On 8 December 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider whether the Council had correctly withheld the requested information, and put forward his arguments as to why the information should be disclosed.
8. The Commissioner's investigation focussed on determining:
 - whether the requested information constituted personal data; and
 - whether its disclosure would constitute a breach of the Data Protection Act 1998 (the DPA).

Chronology

9. The Commissioner reviewed copies of correspondence that had passed between the Council and the complainant, and considered the nature of the requested information.
10. On 11 July 2007, the Commissioner communicated to the complainant his preliminary view on the Council's application of the exemption under section 40 of the Act and invited the complainant to withdraw.

11. On 3 August 2007, the Commissioner telephoned the complainant to discuss the issue. The complainant maintained his position and asked for a Decision Notice to be issued.

Analysis

Procedural matters

Section 17 – Refusal of request

12. In its letter of 17 November 2006 refusing to release the information requested the Council failed to explain why that information was personal information and why its disclosure would breach the DPA, although it did elaborate further in its letter of 29 November 2006. However, the Council still did not consider any of the data protection principles, and therefore failed to demonstrate why the disclosure of the requested information would breach the DPA.

Exemption

Section 40 – Personal information

13. The Commissioner has considered whether the Council correctly applied the exemption under section 40 of the Act in refusing to disclose the requested information.
14. Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if –

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

The first condition is satisfied where disclosure of the personal information would contravene either one or more of the data protection principles as set out in Schedule 1 of the DPA, or section 10 of the DPA (the right to prevent processing likely to cause damage or distress).

The second condition is satisfied where the personal information would be exempt from disclosure to the data subject (the person to whom the data relates) under the DPA.

15. In its letters to the complainant of 17 and 29 November 2006, the Council stated that the requested information was exempt from disclosure under section 40 of the Act. It stated that to release the information requested would breach the DPA. The Council did not specify which principle(s) of the DPA it believed would be

breached, however the Commissioner has considered the first data protection principle was engaged. The principle states:

“personal data shall be processed fairly and lawfully...”

16. Personal data is defined in section 1(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 intentions of the data controller or any other person in respect of the individual”.

17. If information about a house is linked to its owner or resident, the data about the house will be personal data about that individual. Obtaining information about whether a property is registered as having single or multiple occupancy for council tax purposes, means obtaining information about a living individual residing there. Such information, combined with the information already available (e.g. name, postal address, council tax band), not only would serve to identify the person, but could also be used to reveal further personal data, thereby building up a comprehensive picture of an individual.
18. The Council stated that it considered the DPA would be breached if the requested information was disclosed because the requested information was provided to the Council by the taxpayers in the expectation that it would be regarded as confidential.
19. Disclosure under the Act is equivalent to disclosure to the public at large. The Commissioner considers disclosure in these circumstances would be unfair. It would enable a third party to know whether the property is registered as having single or multiple occupancy for council tax purposes, and, therefore, whether the person living there is likely to be paying the correct amount of council tax, which could cause this person unnecessary or unjustified distress. In addition, Council taxpayers do not have a reasonable expectation that this information might be disclosed to others. Should this kind of information be of considerable importance to the public at large, it is likely that it would be made available through other legitimate means, such as an official register.

The Decision

20. The Commissioner’s decision is that the public authority dealt with the request for information in accordance with the Act by correctly applying the exemption under section 40 of the Act to the requested information.

21. However, the Commissioner has also decided that the public authority did not deal with the request for information in accordance with the procedural requirements of the Act, specifically in that it failed to comply with section 17(1)(c), for the reasons outlined in paragraph 12.

Steps Required

22. The Commissioner requires no steps to be taken.

Right of Appeal

23. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 30th day of August 2007

Signed

**Jane Durkin
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire,
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides 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.”

Section 1(2) provides that –

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Refusal of request

Section 17(1) provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies”.

Personal information

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

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

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either-

(i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

Data Protection Act 1998 – Schedule 1

Principle 1 provides that –

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”