

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2013

Public Authority: North East Lincolnshire Council

Address: Civic Offices
Knoll Street
Cleethorpes
DN35 8LN

Decision (including any steps ordered)

1. The complainant requested information from North East Lincolnshire Council (the Council) about the lease arrangements of properties in a chalet park. The Council provided some information, withholding the remainder by virtue of section 21 (information accessible to applicant by other means) and 40(2) personal information.
2. The complainant disputed the Council's citing of section 40(2). The Commissioner's decision is that the Council correctly identified the information as personal data of a third party and correctly withheld it as such under section 40(2) of the Freedom of Information Act 2000 (FOIA). The Commissioner does not require the Council to take any remedial steps.

Request and response

3. The complainant wrote to the Council on 10 August 2012 and requested information about the Humberston Fitties Chalet Park in the following terms:

"Can you please provide me with the list of the individual plot numbers which make each of the following:

The plot number owned by NELC, the 2 plot numbers with no/unsigned leases/temporary licenses, the 6 plot numbers with 5 year leases, the 64 plot numbers with 10 year leases and the 247 plot numbers with 15 year leases.

The above summary can be found in section 1.2 of the papers for today's, Friday 10th August 2012, Policy, Performance and Resources Scrutiny Panel Meeting".

4. The Council responded on 29 August 2012. It provided some information within the scope of his request – the number of the plot owned by the Council and the information that that plot is one of the plots with no/unsigned/temporary licences. However, it refused to provide the remainder, citing section 40(2) - the personal information exemption - as its basis for doing so.
5. The complainant requested a review of that decision, arguing that plot information *"is freely available from Her Majesties Land Registry"*. Following an internal review, the Council wrote to the complainant on 6 September 2012 with the outcome of its internal review. It upheld its original position in respect of some of the information, additionally citing section 21 in respect of information accessible via other means.

Scope of the case

6. The complainant contacted the Commissioner on 12 September 2012 to complain about the way his request for information had been handled. He disputed The Council's view that the information requested is excluded under section 40(2) of FOIA, telling the Commissioner:

"I cannot see and the Council have not said how the requested information will identify a living individual".
7. Although the Commissioner understands from the complainant that the Council would appear to have disclosed information in response to another request for information about the chalet park, he does not consider that this sets an automatic precedent for disclosure under FOIA in this case. In the Commissioner's view, each case must be considered on its merits.
8. The Commissioner considers the scope of his investigation to be the Council's citing of section 40(2) in relation to the withheld information.

Reasons for decision

Section 40 personal information

9. Section 40(2) of FOIA provides that third party personal data is exempt if its disclosure would contravene any of the data protection principles set out in schedule 1 of the Data Protection Act 1998 ("the DPA").
10. The definition of personal data is set out in section 1 of the Data Protection Act 1998 (DPA). This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
11. In response to his request for information, the Council told the complainant:

"The Council have considered your request for details of the plots now owned by the Council, ie licenses and lease periods, and find that the release of this information would allow individual tenants to be identified".

12. It subsequently advised:

"We further determine that the information in regard to leases not available through the Land Registry would allow individual tenants to be identified".

Is the requested information personal data?

13. The definition of personal data is set out in section 1 of the Data Protection Act 1998 (DPA). This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
14. In this case, the requested information comprises details of plots – specifically plot numbers - not owned by the Council.
15. During the course of his investigation, the Council explained to the Commissioner how a plot number relates to the postal address of an individual property in the chalet park. It also explained why it considered that the requested information would allow individuals to be identified.

16. It has been established in a previous case heard by the Information Tribunal that an address is personal data¹. Knowing the address of a property makes it likely that the identity of the person living there could be discovered using other sources of information such as the electoral roll.
17. The issue for the Commissioner to decide in this case is whether the specific information which is the subject of this request, namely the plot numbers, can lead to the identification of an individual either by itself or in combination with other information which the public may be able to access.
18. Having considered the Council's submissions, the Commissioner is satisfied that the requested information can lead to the identification of an individual.

Would disclosure breach one of the Data Protection principles?

19. The data protection principles are set out in schedule 1 of the DPA. The first principle - and the one the Commissioner considers most relevant in this case - states that personal data must be processed fairly and lawfully. The Commissioner's considerations below have focused 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 the disclosure against the legitimate public interest in disclosing the information.

Would disclosure be fair?

20. In determining whether a disclosure is fair under the first principle of the DPA for the purposes of section 40 of the FOIA, the Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency, as well as any legitimate interests which arise in the specific circumstances of the case.

Reasonable expectations of the data subject

21. In the Commissioner's view, when considering compliance with the first data protection principle it is necessary to consider what the reasonable

¹ *England and London Borough of Bexley v Information Commissioner* (EA/2006/0060 & 0066).

expectations of a person would be in relation to how their information would be used and to whom it may be disclosed.

22. The Council argued that disclosure of the withheld information would provide third parties with details of tenant's individual lease arrangements. It told the Commissioner:

"The lease arrangements for an individual tenant are held by the Council for the sole purpose of managing their tenancy".

23. In this respect, it told the Commissioner:

"Where the lease arrangements for an individual chalet is not available in the public domain through the Land Registry, the reasonable expectation of the individuals concerned would be that their individual lease arrangements with the Council would not be disclosed by the Council or used for any other purpose".

24. The Commissioner is satisfied that there is a reasonable expectation of the plot owners that their lease information would be held in confidence and used only for the purpose intended.

Consequences of disclosure on the data subject

25. In examining the consequences of disclosure, the Commissioner will consider whether disclosure would cause any unnecessary damage or distress to the data subjects. The Council provided the Commissioner with submissions as to the possible consequences of disclosure: its view being that release of the withheld information could potentially cause unnecessary and unjustified distress.

Balancing the rights and freedoms of the data subject with legitimate interests

26. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
27. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, in the Commissioner's view it is also important to consider a proportionate approach.
28. The Council acknowledged that there is a legitimate public interest for details of the tenancy arrangements in place for Humberston Fitties to be in the public domain. However it told the Commissioner that it

considered that this interest is satisfied by the summary information it has published in relation to the lease arrangements currently in place.

Conclusion

29. The Commissioner accepts that there is no evidence that the data subjects in this case have given their consent to disclosure of the requested information. He also notes that no arguments have been put forward that the release of this information is necessary for accountability and transparency reasons.
30. Having considered all the circumstances of the case, the Commissioner does not consider that the reasonable expectation of confidentiality held by the individuals concerned is outweighed by any legitimate public interest in disclosure.
31. It follows that the Commissioner has concluded that it would be unfair to disclose the withheld information and to do so would contravene the first principle of the DPA. As disclosure would not be fair, the Commissioner has not gone on to consider whether disclosure is lawful or whether one of the Schedule 2 DPA conditions is met.
32. As section 40 is an absolute exemption there is no need to consider the public interest in disclosure separately.

Other matters

33. During the course of the Commissioner's investigation the complainant raised concerns about the accuracy of the reported leases. Although not the issue under consideration in this decision notice, the Commissioner would take the opportunity to state that, in the context of FOIA, it is irrelevant if records are faulty or inadequate as the right under FOIA is to information which is held, not information which is accurate.

Right of appeal

34. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

Jon Manners
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