Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 April 2014

Public Authority: Cornwall Council
Address: County Hall
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant has requested a list of non-licensable houses in multiple occupancy (HMOs) held by Cornwall Council. The Council withheld the list of addresses on the basis of the following sections of FOIA: 40(2) (personal data), 30(2)(a)(iii) (investigations) and 41(1) (information provided in confidence). The Commissioner has concluded that none of the addresses are exempt from disclosure on the basis of sections 40(2) and 41(1) and although some of the information is exempt from disclosure on the basis of section 30(2)(a)(iii) the public interest favours disclosure of this information.

2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

   - Provide the complainant with a copy of the information he requested (ie 'the idox report' previously disclosed to the Commissioner).

3. The public authority 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

4. The complainant submitted the following request to the Council on 17 May 2013:

'Please supply me with a list of addresses for all the non licencable [sic] HMO's (Houses in multiple occupancy) in Cornwall on you register.

I calculate the list to be about 1700 addresses. I do not require details of the HMO's subject to compulsory licencing already published on your web site.'

5. The Council responded on 17 June 2013 and explained that it did not hold the majority of the information requested. However, it explained that it considered the details of non-licensed HMOs that it did hold to be exempt from disclosure on the basis of sections 40(2) and 41(1) of FOIA.

6. The complainant contacted the Council on 26 June 2013 and asked it to conduct an internal review as he disputed the Council's position that it only held a minority of the requested addresses and he also disputed the application of the two exemptions cited in the refusal notice.

7. The Council informed him of the outcome of the internal review on 23 July 2013. The review explained that the Council held the majority of the information requested but maintained its position that this information was exempt from disclosure on the basis of sections 40(2) and 41(1).

8. During the course of the Commissioner's investigation of this complaint the Council contacted the complainant again on 10 January 2014. At this stage the Council explained that the internal review had incorrectly stated that *'the Council can confirm that it does hold the majority of the information'*. Rather the internal review should have stated that *'we do **not** hold the majority of the information'*. The Council confirmed that the internal review response should have been consistent with the initial response. Furthermore, the Council explained that it now considered the information to also be exempt from disclosure by virtue of the exemption provided at section 30(2)(a)(iii) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner 23 September 2013 to complain about the Council's reliance on the various exemptions to withhold the information he had requested.

Reasons for decision

Section 40 – personal data

10. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act 1998 (DPA).

Is the withheld information personal data?

11. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by 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 intention of the data controller or any other person in respect of the individual.'*

12. The Council has argued that the withheld information is the personal data of the owners of the HMOs, the tenants, and if different, those complaining about the condition and safety of the property.

13. The Commissioner is satisfied that the address of a property will be the personal data of the owner of that property. This is because the fact that they own a property reveals something about their private life, ie that that they have a significant asset such as the particular property, and this is something that is biographically significant. Importantly, using the address of a property alone, the Commissioner is satisfied that a motivated member of the public could establish the name of the owner of that property, eg using land register records.

14. Furthermore, the Commissioner is also satisfied that the address of a property is the personal data of a tenant of that property given that, again using publically available records, eg the electoral roll, a motivated member of the public could identify who lived at a particular property. In the circumstances of this case, disclosure of the withheld information would not only allow the public to establish the address of

particular individuals but would also provide them with further biographical details, ie that the individual lived in a HMO.

15. However, the Commissioner does not accept that the withheld information can also be said to be the personal data of the tenants because disclosure of it would allow the public to establish if a particular tenant had reported their property (and thus their landlord) to the Council in respect of their residence being a unlicensed HMO. This is because the list of unlicensed HMOs held by the Council has been compiled from a range of different sources, namely HMO owners, tenants, neighbours who may have made complaints about a particular property, council tax records and housing benefit records. Therefore, if the list of unlicensed HMOs was disclosed in the format as it was provided to the Commissioner – ie simply as a list of addresses – there is no way a member of the public could establish the source of a particular address.

16. That is to say, the public would not know whether a particular tenant had reported their property to the Council – and thus this is why it was on the list – or whether the property was on the list because it had been put on it for a different reason (eg using council tax records the Council's housing department had identified the property as a potential unlicensed HMO). In other words, although the Commissioner accepts that if a tenant had reported their property to the Council as being an unlicensed HMO this is clearly information which constitutes the personal data of that tenant, there is no way, simply from the list of addresses falling within the scope of the request to identify such tenants. Moreover – and this is a key point in relation to the application of the other exemptions cited by the Council – not even the Council is able to identify why a particular address was placed on the list of unlicensed HMOs, ie it does not record the source of a particular address once it has been placed on the list.

17. It follows from this that the Commissioner does not accept that the withheld information constitutes the personal data of other individuals (eg neighbours) who may have reported a particular property. This is because once again the addresses have been sourced from different locations and there is no way of knowing from the addresses alone whether a neighbour had reported a particular property.

The first data protection principle

18. The Council argued that disclosure of the withheld information would be unfair and thus breach the first data protection principle which states 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.'

19. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
  - what the public authority may have told them about what would happen to their personal data;
  - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
  - the nature or content of the information itself;
  - the circumstances in which the personal data was obtained;
  - particular circumstances of the case, eg established custom or practice within the public authority; and
  - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.

- The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
  - whether information of the nature requested is already in the public domain;
  - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

20. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by 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 disclosure.

21. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, 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, it is also important to consider a proportionate approach, ie it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

The Council's position

22. The Council argued that individuals who had provided the withheld information – ie tenants or other individuals lodging a complaint – had done so in confidence with the expectation that this information would not be disclosed. The Council also noted that they had not given consent for this information to be released.

23. The Council also argued that disclosure of the withheld information could lead to the owner of a HMO having details of their property placed into the public domain without consent. This could be intrusive for the owner of a HMO as they may be operating the property entirely legally because there are a number of exemptions by which owners of HMOs do not need to register their property as a HMO. Furthermore, the Council indicated that the following businesses may benefit from this information and therefore it was not inconceivable that the information may have financial value: property management companies; fire alarm companies; cleaning companies; property companies interested in acquiring HMOs to add to their portfolio; and pay day 'loan sharks'.

The complainant's position

24. The complainant explained that he was attempting to reach a situation where the Valuation Office Agency (VOA) treat all HMO properties in the same way for council tax purposes. He explained that the licensed HMOs he ran were assessed for council tax purposes at approximately £1000 per annum per room while the majority of similar/identical HMO properties are being assessed as one property, with the result that such HMOs were placed in band A or B for council tax whilst his HMO properties were liable to band A council tax charge for each individual room. This meant that his tenants were being charged more than tenants in HMOs where only one council tax charge was raised against the entire property. The complainant argued that not only was this unjust it was also illegal.

25. He explained that the VOA had indicated to him that it would re-assess a HMO to ensure it was being charged council tax at the correct rate, but it needed to be informed of the addresses of such properties. He

suggested that although the Council Tax Act placed a duty on local councils to advise the VOA of anything pertinent to their role, the legislation stated that information must only be shared with the VOA if, in the opinion of the local authority, it was relevant. The complainant argued there could be no doubt that the incorrect categorization of properties must be relevant, the Council had apparently not shared such information with the VOA on the basis that in its opinion it was not relevant. The complainant argued that it was clearly in the public interest that the law is applied evenly and disclosure of this information would help achieve this aim.

26. The complainant also noted that the Council published, under a statutory duty, the names and home addresses of registered HMOs landlords, in addition to the addresses of their HMO properties.

The Commissioner's position

27. With regard to the addresses being the personal data of the tenants, for the reasons discussed above, the Commissioner is of the view that disclosure of the addresses will only be the personal data of such individuals because it would allow the public to establish their address. The Commissioner does not accept that disclosure of the withheld information would reveal whether a particular tenant had referred their property/landlord to the Council. Consequently, the Commissioner does not believe that the Council's line of argument that disclosure would be unfair because it would reveal the names of individual tenants who had provided information to the Council in confidence is relevant to his assessment as to whether disclosure of the withheld information would be unfair.

28. Consequently, in terms of the tenants the only question the Commissioner must consider is whether disclosure of the withheld information is unfair because it would reveal a) their addresses and b) that they live in an unlicensed HMO. Although disclosure of this information would reveal some information about them of biographical significance, in the Commissioner's view such information would not result in such a notable intrusion into their privacy as to render disclosure unfair. In reaching this conclusion, the Commissioner has taken into account the fact that such information – ie an individual's name and address - is likely to be available on the electoral roll. Furthermore, although disclosure would also reveal that an individual lived in unlicensed HMO, in the Commissioner's view there is nothing inherently unfair in disclosing such information.

29. Firstly, this is because, as noted above there a number of exceptions as to why a HMO need not be licensed; thus inclusion on this list of withheld information does not necessarily dictate that the property is

illegally unlicensed. Secondly, the publically available list of licensed HMOs already allows a motivated member of the public to establish, if they wish, the names of individuals who live in such HMOs. In light of this, in the Commissioner's view it is difficult to argue that the disclosure of the withheld information would be unfair to the tenants who live in the properties in question. In reaching this conclusion the Commissioner recognises that the consequences of disclosing the withheld information may differ according to the circumstances of particular individuals. However, given that, as noted a list of all licensed HMOs is already available the Commissioner believes it is appropriate to take a similar class based approach to the disclosure of the non-licensed HMOs rather than attempt to take into account the potential individual circumstances of certain tenants.

30. Turning to the conditions in Schedule 2 of the DPA, the Commissioner believes that the most appropriate one in this case is the sixth condition which states that:

> *'The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms of legitimate interests of the data subject'*.

31. In the circumstances of this case the Commissioner is persuaded that the complainant's motivation for seeking the withheld information should not be dismissed lightly; if the disclosure of such information can genuinely assist in achieving a more equitable application of council tax in the borough in respect of HMO the Commissioner accepts that this is broadly in the public interest. In making this point, the Commissioner is not seeking to criticise the actions of the Council to date; simply that it appears to him difficult to argue against the suggestion that it is the public interest for council tax to be applied equitably. In any event, the Commissioner believes that there is a general public interest in disclosure of this information in order to ensure greater accountability and transparency in relation to how the Council monitors HMOs in line with its duties. Therefore, and taking into account the minimal intrusion into the privacy of the tenants, the Commissioner believes that the legitimate interests in disclosing the information outweigh any prejudice to the rights and freedoms of the tenants.

32. With regard to whether disclosure of the withheld information would be unfair because it constitutes the personal data of the landlords of the HMOs, again the Commissioner is not persuaded that such a disclosure would be unfair. As noted, it may well be the case that a HMO is correctly unlicensed because it attracts a particular exemption from the requirement to be licensed and thus is being operated, as the Council

suggests, perfectly legitimately. Given that the list does not indicate which HMOs may fall within this category, and which may genuinely be operating illegally, the Commissioner does not believe that disclosure would be unfair because it would not actually be possible, based on the list in question, to establish with certainty whether a HMO was actually being operated illegally.

33. Furthermore the Commissioner is in no way persuaded by the Council's suggestion that disclosure would be unfair because it would potentially result in owners of the HMOs being contacted by the types of companies identified by the Council. Firstly, this is because in the Commissioner's view such an intrusion – such as it is – relates to how an individual operates their business rather than their private life. Secondly, the same argument could be made of the names of the landlords published on the register of licensable HMOs. One presumes that their details are published without any such unwarranted or harmful intrusion.

34. The Commissioner is also satisfied that the disclosure of withheld information, in so far as it constitutes the personal data of the landlords of the HMOs, also meets the requirements of the sixth condition of schedule 2, essentially for the same reasons that the disclosure of withheld information, in so far as it constitutes the personal data of the tenants, does.

The second data protection principle

35. In its submissions the Council indicated that disclosure of the withheld information would breach the second data protection principle, albeit that it did not provide any clear arguments to support this position.

36. The second data protection principle states that:

> *'Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.'*

37. In any event, in the Commissioner's opinion a disclosure under FOIA that complies with the DPA in other respects will not breach the second principle. The 'specified and lawful purposes' referred to in the second principle are the public authority's business purposes, ie the purposes for which it obtains and processes data. Disclosure under FOIA is not a business purpose. A public authority does not have to specify, either when it obtains personal data or in its notification as a data controller to the Commissioner under the DPA, that the personal data may be disclosed under FOIA. Furthermore, the aim of FOIA is to promote transparency and confidence in public authorities. So, if disclosure would be fair and lawful under the first principle, and the information is not

exempt under another FOIA exemption, then that disclosure cannot be incompatible with the public authority's business purposes.

38. Therefore, in light of his findings in relation sections 30 and 41 which are outlined below, the Commissioner is satisfied that the disclosure of the withheld information would not breach the second data protection principle.

39. Consequently, the Commissioner has concluded that the withheld information is not exempt from disclosure on the basis of section 40(2) of FOIA.

Section 30 - investigations

40. The Council has argued that the withheld information is exempt from disclosure on the basis of section 30(2)(a)(iii) of FOIA.

41. The relevant parts of this exemption state that:

> *'30(2) Information held by a public authority is exempt information if –*
>
> > *(a) it was obtained or recorded by the authority for the purposes of its functions relating to…*
> >
> > > *(iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or*
> > >
> > > *(iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations,* ***and*** *[emphasis added]*
> >
> > *(b) it relates to the obtaining of information from confidential sources'.*

42. Consequently, for information to be exempt from disclosure under section 30(2), it must both relate to the public authority's investigations or proceedings **and** relate to confidential sources.

43. Confidential sources contribute information which is often vital to the investigations, proceedings and the law enforcement activities of public authorities. A confidential source is a person who provides information on the basis that they will not be identified as the source of that information.

44. As a rule, confidential sources will be third parties. The authority's own officers are unlikely to be considered confidential sources, the exception being police officers and others working for law enforcement bodies working undercover.

45. It is also important to remember that section 30(2) is a class based exemption; if information meets both of these criteria, ie it relates to a public authority's investigations or proceedings and relates to confidential sources it is exempt from disclosure. There is no need to demonstrate a certain level of prejudice to a particular investigation or proceeding in order for the exemption to be engaged. (Albeit that the exemption is subject to the public interest test and the likelihood of any harm occurring as a consequence of disclosure is directly relevant to that test).

46. In the particular circumstances of this case the relevant purposes in section 31(2) - thus the relevant investigations or proceedings – identified by the Council were those contained at section 31(2)(a) which states that:

'the purpose of ascertaining whether any person has failed to comply with the law'

47. And section 31(2)(c) which states that:

'the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise'.

48. By way of clarification, the Council explained that the Private Sector Housing (PSH) team within the Council had a statutory duty to remove category 1 hazards from HMOs and to license HMOs defined as licensable by the Housing Act 2004 part II. It argued that releasing the information could compromise the team's undertaking of this statutory duty. This is because the PSH team use the list to help decide which properties to visit. Should the landlord not be adhering to the regulation, the team are able to serve enforcement notices, impose sanctions such as fines or revoke licenses. By disclosing the withheld information, the landlords of these properties who were operating illegally could result in them realising that their property could be subject to a visit which could result in the landlord evicting tenants in order to avoid such action.

49. In the circumstances of this case, the Commissioner is satisfied that the withheld information clearly relates to investigations and proceedings which the Council has the statutory to undertake which fall within the scope of section 30(2)(a)(iii), ie the licensing and related enforcement

activities concerning HMOs under the Housing Act 2004. The first criterion necessary to engage the exemption is therefore met.

50. However, the Commissioner does not accept that all of the withheld information can be said to have come from a confidential source, and thus not all of the withheld information can said to meet the second criterion required for engaging the exemption. This is because although some of the addresses have come from a confidential source – ie tenants or other third parties – the remainder of the addresses have been provided to the PSH team from other departments in the Council, ie council tax or housing benefit. The Commissioner does not accept that the addresses which originate from other Council departments can said to have come from a confidential source.

51. It is important to also remember that the Council cannot establish the source of each address on the list of withheld information. That is to say, it cannot establish the addresses which the Commissioner would accept have come from confidential sources and which have simply been provided by Council colleagues.

52. The Council's inability to establish the source of each address presents a practical problem for the Commissioner. Should he accept that all of withheld information is exempt from disclosure on the basis of section 30(2)(a)(iii) albeit that he knows that not all of it has actually come from a confidential source? Or should he conclude that none of the withheld information is exempt from disclosure on the basis of section 30(2)(a)(iii) despite the fact that some of the addresses have indeed been provided by third parties?

53. In the specific circumstances of this case (and primarily because of his findings in relation to balance of the public interest test) the Commissioner accepts that *to the extent* that an address was provided by a tenant or other third party then that address is exempt from disclosure on the basis of section 30(2)(a)(iii). If an address originated from within the Council then such addresses are not exempt from disclosure on the basis of section 30(2)(a)(iii). The Commissioner recognises that this is a finding which cannot actually be applied to the withheld information itself given that the Council cannot separate the list of addresses in this way. However, in the particular circumstances of this case the Commissioner is comfortable reaching this conclusion. This is because, as discussed below, the Commissioner ultimately finds the public interest favours disclosure of any information exempted under section 30(2)(a)(iii) and that none of the withheld information is exempt from disclosure on the basis of section 41(1).

Public interest test

54. The Commissioner has therefore considered the balance of the public interest test in relation to the information which he accepts is exempt from disclosure on the basis of section 30(2)(a)(iii).

Public interest arguments for maintaining the exemption

55. As the Council has indicated, it is in the public interest to ensure that it can effectively and efficiently undertake its responsibilities concerning HMOs under the Housing Act 2004. It would not, the Council has argued, be in the public interest if landlords were able to evade detection by the Council for their illegal activities by evicting tenants.

56. The Commissioner also recognises that there is a significant public interest in protecting the supply of information from confidential sources. Informants will not provide information where they fear being identified as the source and suffering retribution as a consequence.

Public interest arguments for disclosing the requested information

57. The reasons why the complainant believes that disclosure of the withheld information is in the public interest are referred to in the section 40(2) analysis above.

Balance of the public interest arguments

58. In the particular circumstances of this case the Commissioner is not persuaded that disclosure of the withheld information presents a real risk of identifying confidential sources. This is because, as discussed above, the addresses which comprise the withheld information originate from a number of sources and not even the Council can marry up a particular address to a particular source. Therefore, if the withheld information was disclosed the public would not know whether an address was included on the list because it had been provided by a confidential source or whether it had been sourced from within the Council.

59. Furthermore, in the Commissioner's view the Council's suggestion that the disclosure of the list could result in landlords evicting tenants in order to avoid sanctions taken by the Council would appear to be a somewhat hypothetical suggestion which is not supported by any particular evidence or further submissions. Nor has the Council identified any other particular way in which disclosure of the withheld information could undermine the Council's investigatory functions in relation to HMOs.

60. As result of these findings, the Commissioner believes that there is very little public interest in maintaining the section 30 exemption. As noted in relation to the analysis of section 40, the Commissioner believes that there is some public interest in the disclosure of this information in order not only to meet the general needs of accountability and transparency but also to potentially address the more specific concerns raised by the complainant. Consequently, the Commissioner has concluded that the public interest in maintaining the exemption does not outweigh the public interest in disclosing the information.

Section 41 – information provided in confidence

61. Section 41(1) states that:

> 'Information is exempt information if -
>
> (a) it was obtained by the public authority from any other person (including another public authority), and
>
> (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'

62. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party **and** the disclosure of that information has to constitute an actionable breach of confidence.

63. With regard to section 41(1)(b), in most cases the approach adopted by the Commissioner in assessing whether disclosure would constitute an actionable breach of confidence is to follow the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:

- Whether the information had the necessary quality of confidence;
- Whether the information was imparted in circumstances importing an obligation of confidence; and
- Whether an unauthorised use of the information would result in detriment to the confider.

64. However, further case law has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure.

Was the information obtained from a third party?

65. As will be clear from the preceding analysis in the decision notice, the Commissioner is not persuaded that all of the withheld information can be said to have come from a third party. That is to say, the addresses which appear on the list which came from within the Council do not meet the requirements of section 41(1)(a), albeit that the addresses provided by tenants or other third parties do. Although such information cannot be separated, the Commissioner has gone on to consider whether the latter category of information meets the remaining limbs of test of confidence.

Does the information have the necessary quality of confidence?

66. The Commissioner considers that information will have the necessary quality of confidence if it is not otherwise accessible and if it is more than trivial; information which is of importance to the confider should not be considered trivial.

67. The Council explained that the information was not available elsewhere.

68. In light of this the Commissioner accepts that the parts of the information that was provided to the Council by third parties is not trivial and is clearly of importance to the confider.

Was the information obtained in circumstances importing an obligation of confidence?

69. The Council explained that the information was collected with the impression it would not be used for any other purpose.

70. In light of this, and given the nature of the information itself, the Commissioner accepts that the information was obtained by the Council with the expectation that it would not be disclosed.

Would disclosure be detrimental to the confider?

71. As discussed above, in the Commissioner's opinion if the withheld information was disclosed in its entirety then it would not be possible for the public to establish which addresses had been provided to the Council by third parties. Therefore, in the Commissioner's view it is unsustainable for the Council to argue that disclosure would be detrimental to the confider of the information given that such disclosure would not lead to them being identified and thus their confidentiality would not be breached.

72. In its submissions to the Commissioner the Council also argued that disclosure of the withheld information would be detrimental to the

owners of non-licensed HMOs for the same reasons identified in respect of section 40, ie it would lead to an intrusion into the operation of their business. The Commissioner does not consider such alleged detriment to be relevant; this is because the public authority must demonstrate some level of detriment to the *confider* of information not another third party. In any event, for the reasons discussed above in relation to the application of section 40, the Commissioner is not persuaded that disclosure of the withheld information would be in any significant way detrimental to the landlords in question in the manner suggested by the Council.

73. Therefore, even for the information which the Commissioner accepts meets section 41(1)(a), he does not accept that disclosure of this information would be a breach of confidence. The withheld information is therefore not exempt from disclosure on the basis of section 41(1) of FOIA.

Right of appeal

74. 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: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

75. 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.

76. 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 .....

Gerrard Tracey
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