

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 May 2020

Public Authority: Oldham Metropolitan Borough Council
Address: Civic Centre
West Street
Oldham
OL1 1UT

Decision (including any steps ordered)

1. The complainant has requested information from Oldham Council ("the council") regarding details of residential properties that it owns.
2. The Commissioner's decision is that the council was entitled to withhold part of the requested information under section 40(2) of the FOIA – third party personal data.
3. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

4. On 21 November 2019, the complainant wrote to the council and requested information in the following terms:

"Please can you provide, under the government's freedom of information act, details of all residential properties owned by your council.

Can this be provided in a spread sheet format with the following headings:

1. *House Number*
 2. *Street name*
 3. *Post code*
- Type of construction if possible."*
5. The council responded on 22 November 2019. It stated the following:

"For privacy and data protection reasons I am unable to provide you with house numbers, street names and full post codes. You will only receive the first three digits of post codes i.e. OL9 and the construction type of the properties. Do you will want me to provide you with this information?"
 6. On 26 November 2019, the complainant wrote to the council asking the following:

"Please can you advise the full reasoning and any supporting/related legislation in more detail as to why your organisation considers the full information requested to be exempt from Freedom of Information Act 2000."
 7. The council replied on 26 November 2019, advising that *"by giving full address it could aid identification of the tenant/owner."*
 8. The complainant requested an internal review on 28 November 2019.
 9. Following an internal review the council wrote to the complainant on 24 December 2019. It provided some of the requested information to the complainant. However, it applied section 40(2) of the FOIA – personal information – to the remainder of the information (house numbers, street names and full postcodes).

Scope of the case

10. The complainant contacted the Commissioner on 15 January 2020 to complain about the way their request for information had been handled.
11. The Commissioner considers the scope of this case to be to determine if the council has correctly applied section 40(2) of the FOIA to the withheld information.

Reasons for decision

Section 40 – personal information

12. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
13. In this case, the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
14. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
15. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DPA principles.

Is the information personal data?

16. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable. The Commissioner's guidance on what is personal data² states that if

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

² <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personaldata.pdf> & https://ico.org.uk/media/fororganisations/documents/1549/determining_what_is_personal_data_quick_reference_guide.pdf

information 'relates to' an 'identifiable individual' it is 'personal data' regulated by the DPA.

18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. The withheld information comprises full addresses, including house number and postcodes. In determining whether this is personal data, the Commissioner is guided by the Tribunal Decision for *Dundas v ICO & the City of Bradford* (EA/2007/0084)³ ("the Dundas case"). In that case, the request concerned the addresses of those involved in a consultation exercise on proposed changes to a parish boundary. The public authority had disclosed the addresses of some organisations but had withheld the house numbers and last two letters of the postcodes of residential properties. The Tribunal found "*that the full postcode, that is the last two letters, would be sufficient for a living individual to be identified and we consider that the postcodes, in this instance, fall within...the definition of personal data.*"
20. In this case, the council has explained that the information requested relates to those on the housing register. It added that qualification criteria for the occupation of council owned residential properties may include homelessness or significant housing needs. As such, the addresses could enable identification of individuals who are part of a distinct and potentially vulnerable group.
21. The Commissioner is aware that the complainant considers that, since he has not asked for the names of occupants, the information he seeks is not personal data. However, she has a well-established position with regard to the disclosure of full addresses and postcodes by public authorities, in light of the Dundas case as set out above. As in that case, the Commissioner considers that the requested information in this case would identify specific properties, and that this would be the personal data of the occupants because the addresses relate to, and are very likely to identify, the occupants. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
22. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under

³ <http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i128/Dundas.pdf>

the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

23. The most relevant data protection principle in this case is principle (a).

Would disclosure contravene principle (a)?

24. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

25. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

26. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

27. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"⁴.

28. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is therefore necessary to consider the following three-part test:-

⁴ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information, and if so;

ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question, and if so;

iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subjects (the occupants of the properties).

29. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

30. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

31. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

32. The Commissioner understands that the complainant is attempting to obtain details of all residential properties owned by the council. She recognises that there are legitimate interests in the council's transparency and accountability with regard to its properties.

Is disclosure necessary?

33. 'Necessary' means more than desirable, but less than indispensable or of absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

34. The Commissioner has considered whether disclosure of the full address of each council property is necessary to meet the legitimate interest in transparency that she has identified above.

35. In this case, the Commissioner considers that the council met the legitimate interest by disclosing partial addresses. Therefore, she does

not consider that disclosure of the withheld information is necessary to meet the legitimate interest, in the circumstances of this case.

36. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it would be unlawful. It therefore does not meet the requirements of principle (a) (lawful processing).
37. The Commissioner has, therefore, decided that the council correctly withheld the remainder of the information falling within the scope of the complainant's request under section 40(2) of the FOIA, by way of section 40(3A)(a).

Right of appeal

38. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.

40. 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

Andrew White
Head of FOI Casework and Appeals
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF