



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**Appeal No: EA/2013/0055**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FER0462894**

**Dated: 26 February 2013**

**Appellant: James Henderson**

**Respondent: The Information Commissioner**

**Heard at Fleetbank House**

**Date of Hearing: 3 September 2013**

**Before**

**HH Judge Shanks**

**Judge**

**and**

**Pieter de Waal and Mike Jones**

**Tribunal Members**

**Date of Decision: 16 September 2013**

**Attendances:**

For the Appellant: In person  
For the Respondent: Unrepresented

**Subject matter:**

Freedom of Information Act 2000

s.40	Absolute exemption: <i>Personal data</i>
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Data Protection Act 1998

Sched.1	Data Protection Principles: <i>Principles</i>
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**Case:**

*South Lanarkshire Council v Scottish Information Commissioner* [2013] UKSC 55

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 26 February 2013.

**SUBSTITUTED DECISION NOTICE**

**Dated:** 16 September 2013

**Public authority:** Brentwood Borough Council

**Name of Complainant:** James Henderson

**The Substituted Decision**

For the reasons set out below, the Public Authority did not deal with the Complainant's request for information in accordance with Part I of the Freedom of Information Act 2000 in that they ought to have supplied him with such information as they held about the work carried out at 53 Milton Rd, Brentwood between October 2011 and March 2012.

**Action Required**

The Public Authority is to supply such information to the Complainant by 21 October 2013.

Dated 16 September 2013

HH Judge Shanks

## **REASONS FOR DECISION**

### Introduction

1. The Appellant, Mr Henderson, is the owner of a terraced house in Brentwood, Essex. In December 2011 he learnt that his neighbour was carrying out work which was affecting the party wall and he requested the local council, Brentwood Borough Council, to supply him with “details of the work [being carried] out”. The Council accepted that the neighbour had made a Building Regulations application for some proposed work but they refused to supply him with any information about the works being carried out because of an “established policy” of not supplying information about such applications on the grounds that it is the personal data of the owner of the property.
2. That position was confirmed by letter dated 1 March 2012 following continuing requests for information and a formal complaint by Mr Henderson and in due course he applied to the Information Commissioner under section 50 of the Freedom of Information Act. The Commissioner upheld the Council’s decision and Mr Henderson appealed to this Tribunal against his decision. No application was made to join the Council or the neighbour as a party to the appeal and, unfortunately, the Commissioner chose not to attend the hearing of the appeal but we are nevertheless satisfied that no substantial injustice will result to anyone if we proceed to determine the appeal.

### Factual background

3. Based on the documents before us and information supplied by Mr Henderson at the hearing, we make the following relevant findings.

4. In December 2011, Mr Henderson's house was rented to a family with a young baby. He was informed by his tenant that works had started in the neighbouring house, that there was a lot of noise being made and that cracks had appeared in the party wall and in particular that a steel beam had emerged through it from the neighbouring house. No Party Wall Act notice had been served and this was the first he had heard of any proposed work.
5. He was able to establish by visiting the neighbouring house that major works were being carried out (which included removing floors) and that not only had a beam been pushed through the party wall but a chimney breast which supported the party wall on the neighbour's side had been demolished. His understanding was that the house was being refurbished with a view to being rented out.
6. When he contacted the Council he was told that there had been a Building Regulations application (it was in fact made on 26 October 2011) but that it did not relate to the party wall and the removal of the chimney breast was not included in the application but that the situation would be regularised. The Council would not, however, tell him the name of the neighbour or supply any details of the work or the application.
7. After his complaint the Council's inspector visited and dealt with the builder and in due course the works were completed though it is not clear if a formal notice of completion was given by the Council. It seems that by March 2012 the cracking caused by the emerging beam had been made good by the builder and there were no other live issues, save that Mr Henderson told us the removal of the chimney breast causes more noise to come through the wall, which has led to one tenant leaving.
8. Mr Henderson had been able to establish the neighbouring owner's identity and address from the Land Registry. He told us that he had written to the owner a number of times but never had any kind of response, although he had managed to speak to him on the phone having been supplied with the number by the builder. He had also

taken advice from a solicitor who had told him to go to his insurers: they had advised that there was nothing they could do about the matter. He had not felt inclined to bring legal proceedings notwithstanding the apparent breach of the Party Wall etc Act 1996.

9. In an email of 26 February 2012 he confirmed to the Council that he was seeking full disclosure of the Building Regulation application and amendments thereto arising from the removal of the chimney breast. In their full response dated 1 March 2013 the Council confirmed that they would not supply further information on the grounds that it was the owner's personal data and the Council was entitled to rely on section 40(2) of the Freedom of Information Act.
  
10. Although the works were by then complete and there were no outstanding problems (apart from the noise issue), Mr Henderson still wanted (and, indeed, still wants) the information held by the Council about the works so that he can keep it on file for future reference in case problems emerge later. We accept that that is his motive for seeking the information and that, as he told us, he has no intention of putting it to any other use.

Is Mr Henderson entitled to the information?

11. Although the Council refer in their letter of 1 March 2012 to an "established policy" based on a previous decision of the Commissioner in a case concerning Bolton Council, we are clear that they were obliged to consider Mr Henderson's request for information under the Freedom of Information Act 2000 on its own merits and were not entitled simply to apply a "blanket" policy. It is therefore necessary to consider whether the section 40(2) exemption applied in this particular case as at the date the request was dealt with (ie between December 2011 and March 2012).
  
12. We agree with the Commissioner that information about the work done by the neighbour on his property which was held by the Council was the neighbour's

“personal data”. Section 40(2)(a) was therefore satisfied and the issue was whether disclosure of the information would contravene the first data protection principle set out in Schedule 1 to the Data Protection Act 1998. This provides so far as relevant:

**Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless ... at least one of the conditions in Schedule 2 is met ...**

The relevant condition in Schedule 2 was that in paragraph 6, namely:

**The processing is necessary for the purposes of legitimate interests pursued ... by the third party ... 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 or legitimate interests of the data subject**

13. The Commissioner found that the information in question was of no great sensitivity and that there would be no significant negative consequences of disclosure for the data subject in this case. We agree. He also found that the data subject would have held a reasonable expectation of privacy in relation to the information because it related to the inside of his property. Given that (a) before starting any work he was obliged to make a formal application to the local authority which meant that the property and the work would be subject to inspections by their officers; (b) the property was to be rented out rather than lived in by him; and (c) the work he in fact carried out following the application had a direct effect on his neighbour's property, we do not agree with the Commissioner in that conclusion.
  
14. The Commissioner accepted that Mr Henderson had a legitimate interest in obtaining the information he was requesting (a conclusion with which we agree) but he was apparently of the view that, because that interest was of a purely private nature, it was not relevant for the purposes of paragraph 6 of Schedule 2. We disagree with that view: there is nothing in paragraph 6 to suggest that the “legitimate interest” of the person to whom the data is to be disclosed has to be of a public nature; and,

significantly, it is clear that the Supreme Court in the *South Lanarkshire Council v Scottish Information Commissioner* [2013] UKSC 55 case proceeded on this basis: see in particular paras [18], [24] and [27].

15. Taking account of all the circumstances we have described and our conclusions in paragraphs 13 and 14, we are satisfied that disclosure of the information requested would not have been unfair to the data subject and that the condition at paragraph 6 of Schedule 2 would have been met. In case we are wrong in our conclusion that the neighbouring owner had no reasonable expectation of privacy we have also considered separately whether disclosure by the Council would have involved a breach of Art 8 of the ECHR. We are satisfied that, applying the familiar tests as set out in the *South Lanarkshire Council* case at paragraphs [19] and [27], any interference with the neighbouring owner's private life (which must on any view have been extremely small) was "necessary" (in the relevant sense) for protection of the rights of Mr Henderson in relation to his property.

#### Conclusion and remedy

16. We are therefore of the view that the Council was not entitled to rely on section 40(2) to resist Mr Henderson's request for information and that the Commissioner was wrong to uphold their decision and we accordingly allow the appeal.
17. We wish to emphasise that this decision is not intended to lay down any precedent. In particular, it does not mean that a local authority is obliged to disclose (still less publicise) details of every application under the Building Regulations or the work done pursuant thereto every time it is asked to. But equally local authorities cannot apply a blanket policy of not disclosing such information. Unfortunately for them they must consider each request for information on its merits and carry out the balancing exercises required of them by the Freedom of Information and Data Protection Acts.



18. Our decision is unanimous.

HH Judge Shanks  
16 September 2013