



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]**

Case No. EA/2013/0179

ON APPEAL FROM:

Information Commissioner's
Decision Notice No: FS50491331
Dated: 30 July 2013

Appellant: Ronald Stevens

Respondent: The Information Commissioner

On the papers

Date of Decision: 15 April 2014

Date of Promulgation: 16 April 2014

Before

Chris Ryan
(Judge)

and

Pieter de Waal
Andrew Whetnall

Subject matter: - Personal data s.40

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is allowed and the Decision Notice date 30 July 2013 is substituted by the following notice:

Public Authority: Castle Point Borough Council

Complainant: Ronald Stevens

Decision: For the reasons set out in the Reasons for Decision of the same date as this substituted decision notice, the Public Authority did not comply with its obligation of disclosure under section 1 of the Freedom of Information Act 2000 when it refused, in purported reliance on section 40(2), to provide the Complainant with information it held regarding continuity of Council Tax payment for the property identified in the Complainant's request for information dated 14 October 2010. The Public Authority is accordingly directed, within 35 days of the date of this substituted decision notice, to disclose to the Complainant information about continuity of Council Tax payment in respect of the relevant property, namely whether the property has been recorded for Council Tax purposes as in continuous occupation during the period from 1995 to the date of the information request and, if and to the extent that there has been any recorded period or periods of non-occupancy, the length of time of such period or periods.

REASONS FOR DECISION

The request for information and complaint to the Information Commissioner.

1. On 14 October 2010 the Appellant wrote to Castle Point Borough Council (“the Council”) in the following terms:

“I would be grateful for any information you would give me regarding continuity of Council Tax payment for the property known as [Property name].”

2. The request was made under section 1 of the Freedom of Information Act 2000 (“FOIA”), which imposes on public authorities to which it applies an obligation to disclose requested information unless certain conditions apply or the information falls within one of a number of exemptions set out in FOIA.
3. Disclosure was refused on the ground that the requested information was the personal data of a third party or third parties - the owner or owners from time to time of the identified property – and was therefore exempt from the disclosure obligation under FOIA section 40(2).
4. The Appellant has explained that his interest in the requested information arises out of a property dispute between a relative of his and the current owner of the identified property. It is not for us to say whether or not the information, if provided, would assist in the resolution of that dispute. For reasons which will become clear later in this decision, although any public interest in disclosure may be relevant to our decision, an individual’s private interest in the requested information is not necessarily a material public interest factor.
5. The Council maintained its refusal after an internal review, conducted at the Appellant’s request. The Appellant then complained to the Information Commissioner about the manner in which his request had been handled.

The law on which the Council relied

6. FOIA section 40(2) provides that information is exempt information if it constitutes personal data of a third party the disclosure of which would contravene any of the data protection principles.
7. Personal data is itself defined in section 1 of the Data Protection Act 1998 (“DPA”) which provides:

*“‘personal data’ means 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”

8. The data protection principles are set out in Part 1 of Schedule 1 to the DPA. The only one having application to the facts of this Appeal is the first data protection principle. It reads:

*“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 ...”*

Schedule 2 then sets out a number of conditions, but only one is relevant to the facts of this case. It is found in paragraph 6(1) and reads:

“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 or legitimate interests of the data subject.”

The term “processing” has a wide meaning (DPA section 1(1)) and includes public disclosure.

9. A broad concept of protecting individuals from unfair or unjustified disclosure (in the event that their personal data has been publicly requested) is a thread that runs through the data protection principles, including the determination of what is “necessary” for the purpose of identifying a legitimate interest. In order to qualify as being “necessary” there must be a pressing social need for it - *Corporate Officer of the House of Commons v Information Commissioner and others* [2008] EWHC 1084 (Admin).
10. In determining whether or not disclosure of personal data would be contrary to the data protection principles we have to consider:
- i. whether disclosure at the time of the information request would have been necessary for a relevant legitimate purpose and without resulting in
 - ii. an unwarranted interference with the rights and freedoms or legitimate interests of those affected by disclosure.
- In addition to these points we also have to consider whether disclosure would nevertheless have been unfair or unlawful for any other reason.
11. In respect to the question of fair and lawful processing we bear in mind guidance provided in paragraph 1(1) of Part II of Schedule 1 to the DPA, which provides:

“In determining for the purposes of the [first data protection principle] whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.”

The Information Commissioner’s Decision Notice and the Appeal to this Tribunal

12. Having investigated the complaint, the Information Commissioner issued a Decision Notice on 30 July 2013 in which he concluded that the requested information constituted personal data, that its disclosure would be unfair to the individual(s) concerned and would breach the data protection principles set out in the Data Protection Act 1998 (“the DPA”) and that, accordingly, it constituted exempt information. Accordingly, he concluded, the Council had been entitled to refuse disclosure.

13. The Appellant appealed against that decision to this Tribunal.

14. Appeals to this Tribunal are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the Decision Notice in question was based.

15. The Information Commissioner reached his decision from a starting point which he identified in these terms:

“The Commissioner considers this complaint to relate to whether the council should release the council tax records of a third party living at the specified property.”

16. In light of the apparent inconsistency between that statement and the information request itself, we issued a Case Management Note in which we drew attention to the possibility of the recorded information held by the Council being reduced in scope to a level where its disclosure might not enable any individual to be identified from it, either alone or in combination with other information, so that it fell outside the definition of personal data set out in paragraph 7 above. We invited the parties to present submissions on the issue, although we acknowledged that it might be difficult for Mr Stevens to do so as, unlike the Tribunal and the Information Commissioner, he had not had sight of the information held by the Council, which had been made available to us in a closed bundle. In the case of the Information

Commissioner we were able to supplement the Case Management Note with a closed note making specific reference to the content of the closed bundle.

17. In response to our directions, the Information Commissioner filed open and closed submissions. The Appellant also filed open submissions. It is sufficient for us to say, in this open part of our decision, that the Information Commissioner accepted that it might be possible for the Council to disclose information about continuity of Council Tax payment in respect of the relevant property without disclosing personal data. He qualified this by saying that he could not rule out the possibility of other information in the public domain which might, together with the requested information, enable the Appellant to ascertain the identity of one or more individuals, but he confirmed that he was not aware of any.
18. We are satisfied that simply informing the Appellant as to whether the Council's records showed that the property had been treated for Council Tax purposes as being either continuously occupied or unoccupied for a period (and, if the latter, the length of time of such recorded non-occupation) would not enable the identification of any individual and accordingly would not constitute processing of personal data. We considered whether it would be possible to supplement that information with other information held by the Council but concluded that this would enable one or more individual's to be identified and that it should therefore be treated as personal data.
19. We explain our more detailed reasons for reaching these conclusions in the confidential annex to this decision.
20. We conclude, therefore, that the Information Commissioner's Decision Notice was in error in that he misinterpreted the scope of the request and reached his decision on the basis of an interpretation which would have required more extensive disclosure of information than was actually requested. He therefore incorrectly categorised the requested information as personal data, which it was not, and proceeded to determine whether it should be disclosed with reference to provisions of the DPA that were not applicable. The appeal therefore succeeds, in that the Council was not entitled to rely on FOIA section 40(2) to refuse disclosure. We direct the Council, within 35 days, to disclose to the Appellant information held by the Council about continuity of Council Tax payment for the relevant property, in particular whether the property has been recorded for Council Tax purposes as being in continuous occupation during the period from 1995 to the date of the information request and, if and to the extent that there has been any recorded period or periods of non-occupancy, to disclose the length of time of such period or periods.

Other relevant information held by the Council

21. Although our conclusion on the scope of the information request is sufficient to determine the appeal we should add, in case our decision is appealed, that we concluded that the rest of the information held by the Council, and referred to by the Information Commissioner as “the council tax records”, did constitute personal data and that its disclosure would breach the data protection principles. It would therefore be exempt information for the purposes of FOIA and the Council was under no obligation to disclose it.
22. We have recorded earlier in this decision that the Appellant’s personal interest in disclosure of personal data is not necessarily a material factor that we may take into account. The Appellant argued that there was a legitimate interest in public disclosure of that data he requested because, first, there was an element of fraud in the activities of the current occupants of the property in question and, second, the DPA needed to be seen to be implemented correctly. We do not believe that either argument is correct or requires disclosure in respect of the personal data referred to in paragraph 21 above. The allegation of fraud is no more than a reiteration of the Appellant’s personal reasons for seeking disclosure. The evidence in support of such a serious allegation lacks substance and there are other, more appropriate, means of pursuing that issue than a freedom of information request. As to the implementation of the DPA, we accept the Information Commissioner’s submission that disclosure of personal information to satisfy a subjective and personal interest in one property would not further the public interest in ensuring the wider application of the DPA.
23. We are also required to consider the privacy rights of any individuals whose personal data would be disclosed. We conclude that disclosure of personal information (beyond the information described in paragraph 20 above) is not necessary for a relevant legitimate purpose and would result in an unwarranted interference with the rights, freedoms and legitimate interests of those affected. We conclude, therefore, that personal information about continuity of Council Tax payment for the relevant property (i.e. information which goes beyond the parameters set out in paragraph 20 above) is not required to be disclosed.
24. Our decision is unanimous.

Chris Ryan

Judge
15 April 2014