

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 May 2016

**Public Authority:** London Borough of Southwark

**Address:** PO Box 64529

London

SE1P 5LX

### Decision (including any steps ordered)

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1. The complainant has requested information from the London Borough of Southwark ("the Council") for a copy of leaseholder application forms for loan/charging orders in respect of debts for major works/service charge used between 2010 - 2015.
2. During the Commissioner's investigation, the complainant refined her request to "*a copy of the leaseholder application forms for loans in respect of debts for major works/service charge used between 2013 - 2015*".
3. The Commissioner requires the Council to disclose a copy of leaseholder application forms for loans in respect of debts for major works/service charge used between 2013 – 2015 with the following information redacted under section 40(2) of the FOIA:
  - Name of leaseholder
  - Property Reference Number
  - Property address
  - Correspondence address
  - Date of birth
  - Phone numbers
  - Email address
  - Signatures
  - Roll/Account number of mortgage
  - Current service charge loan account number of applicant
  - Processing Collections Officer Name
  - Names of individuals that live with the applicant and whom rely on them financially

4. The Council 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**

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5. On 28 September 2015 the complainant wrote to the Council and requested information in the following terms:

*"Please provide me with a copy of all your leaseholder application forms for loan/charging orders in respect of debts for major works/service charge used between 2010-2015".*

6. The Council responded on 13 October 2015 and withheld the information under section 40 of the FOIA.
7. Following an internal review the Council wrote to the complainant on 10 November 2015. It maintained its previous decision.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 10 November 2015 to complain about the way her request for information had been handled.
9. During the initial part of the Commissioner's investigation, the Council maintained its position that section 40 applied to the request and it provided the Commissioner with arguments to support this position. The Council further advised the Commissioner that there was no application form for a charging order and therefore this information was not held.
10. The Commissioner subsequently contacted the Council and advised it that in his view, the application forms could be redacted and anonymised to remove any personal data and then disclosed to the complainant.
11. The Council agreed that the application forms could be anonymised. However, it argued that to locate, extract and retrieve the requested information, would exceed the appropriate cost limit of compliance. It therefore cited section 12. The Council confirmed during a telephone call that if the complainant was to refine the time frame of her request to 2013-2015, it would be able to provide her with the information with personal data redacted under section 40.

12. After advising the complainant of this, she revised her request. Her new revised request was for "*a copy of the leaseholder application forms for loans in respect of debts for major works/service charge used between 2013-2015*".
13. The complainant also asked the Commissioner to prepare a decision notice on whether the Council is correct to redact the application forms on the basis that they contain third party personal data and therefore some of the information is exempt under section 40.
14. In light of this, the Commissioner has therefore had to consider whether the Council is correct to withhold some of the requested information on the grounds that it is exempt under section 40.

## Reasons for decision

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### Section 40 – third party personal data

15. Section 40 of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
16. Taking into account his dual role as regulator of both the FOIA and the Data Protection Act 1998 (the "DPA") the Commissioner has considered whether some of the information contained within the application forms can be withheld on the basis that it is third party personal data.

### Is the withheld information personal data?

17. Personal data is defined by section 1 of 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 data controller or any person in respect of the individual..."*

18. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
19. The information sought in the refined request relates specifically to application forms for loans in respect of debts for major works/service charges. The application forms include information about an individual

applying for a loan such as that detailed in paragraph 3 of this decision notice.

20. The Commissioner is satisfied that the information detailed in paragraph 3 relates to a living individual, as it is highly likely that the individual can be identified from that information, either directly or indirectly (i.e. it could be used with other information in order to identify the individual) .
21. Along with the information detailed in paragraph 3, the Council also applied section 40 to withhold invoice numbers, descriptions of the service charge and the date of when the application form was signed. The Commissioner considers that individuals cannot be identified from this information and therefore section 40 does not apply.

### **Would disclosure breach the data protection principles?**

22. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
23. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations of the data subject**

24. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
25. The Council explained that when completing the application forms, leaseholders would not expect those forms to be shared with anyone outside of the relevant teams within the Council.
26. In relation to the processing collection officers names the Commissioner considers that it is unlikely that these are going to be senior staff at the Council, and as such would not expect their names to be disclosed to the public at large by way of a disclosure under the FOIA.

### **The consequences of disclosure**

27. When considering the consequences of disclosure, the Council explained that disclosure of the requested information would be a breach of a third party's personal data. It further argued that there was a risk that releasing the information may cause distress to the data subject.
28. The Council advised the Commissioner that the completed application forms contain the personal information about the leaseholder applying for a loan, including their name, date of birth, address, phone number and financial information about relevant invoices, mortgages and other loans.
29. The Council argued that if all the information on the application forms was released, it would potentially open applicants up to the risk of unsolicited offers of further loans and allow others to assess their financial situation. The Commissioner is satisfied that this would amount to an invasion of privacy, and would be likely to cause damage and distress.

### **The legitimate public interest**

30. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms or legitimate interests of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
31. The Commissioner acknowledges that the complainant has an interest in the requested information. However the Commissioner must consider the legitimate public interest in the requested information rather than the interests of the requester.
32. The Commissioner accepts that the data subjects would not have a reasonable expectation that their personal data such as their name, address, data of birth and telephone numbers would be disclosed to the wider public in response to an information request. The Commissioner acknowledges that disclosure of this information would cause distress to the individuals concerned. The Commissioner further considers that there is little legitimate public interest in the personal information of individual private citizens being put into the public domain, by way of a disclosure under the FOIA. He also considers that there is little public interest in the disclosure of the names of the processing collection officers.
33. The Commissioner is therefore satisfied that the Council correctly applied section 40(2) to withhold some of the requested information.

34. The Commissioner requires the Council to disclose a copy of the leaseholder application forms for loans in respect of debts for major works/service charge used between 2013-2015 with the information described at paragraph 3 redacted. The Council must take these steps within the time limit set out in paragraph 4.

## Right of appeal

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35. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. 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** .....

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**