

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 January 2018

Public Authority: East Lindsey District Council

Address: Tedder Hall
Manby Park
Louth
Lincolnshire
LN11 8UP

Decision (including any steps ordered)

1. The complainant has requested information collected by East Lindsey District Council from caravan owners for the purpose of allowing the Council to develop a caravan licensing regime. The Council provided the complainant with a spreadsheet containing some of the information he had asked for. The Council withheld certain classes of information in reliance on section 40(2) of the FOIA because it considered the withheld information to be personal data and its disclosure would breach the Data Protection Act 1998.
2. The Commissioner's decision is that East Lindsey District Council has correctly applied section 40(2) of the FOIA to the information has withheld from the complainant.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 20 June 2017, the complainant wrote to East Lindsey District Council and requested information in the following terms:

"In relation to the Kingfisher Caravan Park, Ingoldmells:

1. The methodology being applied to calculate the proposed new tenure periods for each caravan on site

2. For the 726 vans on site, a table detailing:

- Pitch number
- The year of manufacture
- The year placed on site
- The date of last transfer (sale)
- The proposed date that the new agreement will terminate on

I would like the above information to be provided to me in both paper and electronic copy."

5. The Council responded to the complainant's request on 18 July 2017 and confirmed to him that it holds the information he seeks. The Council provided the following information:

"1. This is a piece of work that is currently being developed but as a minimum we are working on the basis that a caravan owner will be granted a fixed term licence that ensures that the caravan will have been owned (by the current owner) and sited on Kingfisher for at least 10 years at the date the fixed term licence expires and in many cases for longer but the detail of this work is still to be finalised.

2. Please see attached working spreadsheet."

6. The Council pointed advised the complainant that it had redacted the plot numbers on the grounds that "...this is personal information and therefore exempt from disclosure in accordance with Section 40(2) Freedom of Information Act 2000". In the Council's opinion, "...the individuals concerned would have no expectation of their personal data being released into the public domain and any legitimate interest in disclosure is outweighed by the prejudice to their rights and freedoms because disclosure would breach the First Data Protection Principle in Schedule 1 to the Data Protection Act 1998".

7. On 20 July, the complainant wrote to the Council about the information it had sent him in response to his request. He noted that the spreadsheet had been redacted of certain classes of information – plot number, make and caravan type, and he challenged the Council's reasons for doing this.

8. On 24 July, the Council wrote back to the complainant and provided further explanation for its redaction of what it considered is personal data.

9. On 17 July, the complainant asked the Council to review its decision to withhold the information it had redacted from the spreadsheet it had previously disclosed.
10. Having completed its internal review, the Council wrote to the complainant on 29 July to advise him of its final decision. The Council's reviewer determined that the redactions made to the disclosed spreadsheet are correct.

Scope of the case

11. The complainant contacted the Commissioner 2 August 2017 to complain about the way his request for information had been handled.
12. The complainant stated that he had requested a spreadsheet showing plot numbers and proposed agreement end dates. He noted that the information disclosed by the Council did not include plot numbers. The complainant informed the Commissioner that he had explained to the Council that, in line with ICO guidance, a plot number, just like a house number, is by itself not personal data.
13. The Commissioner has investigated whether the Council is entitled to withhold information, including the plot numbers, in reliance on section 40(2) of the FOIA. This notice sets out the Commissioner's decision.

Reasons for decision

14. 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 the disclosure of that personal data would be in breach of any of the data protection principles.
15. The first step for the Commissioner to determine is whether the withheld information constitutes personal data.
16. Personal Data is defined by section 1 of the Data Protection Act 1998 ("the DPA"). If the information is not personal data then the Council will not be able to rely on section 40.
17. Section 1 of the DPA defines personal data 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.”

18. The Council has provided the Commissioner with a copy of the spreadsheet sent to the disclosed to the complainant. The copy sent to the Commissioner is unredacted and shows the information which the Council has withheld.
19. The Council advised the Commissioner that the information regarding the make and model, year of manufacture, year placed on site and date of transfer was collected by the Council from the caravan owners when they were given a plot.
20. The information provided by the caravan owners was used within the Council to develop a licensing regime and offer licences based on the age of the caravan in order to ensure that 'old' caravans were renewed and not kept on site for long periods. This is to ensure the caravan park remains attractive to new plot owners and does not look dilapidated and run down.
21. The work involving the information collected from the caravan owners has now been abandoned and no new licensing regime is being offered at the site at this time.
22. The Council has advised the Commissioner that the matter of a new licensing regime has been contentious between the Council and park residents. There are various groups which hold differing views on how the licensing should proceed in the future. At present the Council has decided to continue to issue one year licenses as it has done in previous years.
23. The Council has confirmed to the Commissioner that it maintains its application of section 40(2) in respect of the details provided by the caravan owners.
24. The Council asserts that the withheld information is the personal data of the individuals who own those particular caravans. In coming to this conclusion, the Council has considered the Commissioner's guidance on 'Determining what is personal data'. The Council argues that the withheld information relates to identifiable individuals who may be identified directly or indirectly from it.
25. The Council has explained that some of the makes and models are unique and therefore it would be possible to easily link the caravan with an individual. This information, together with the age of the caravan

would likely reveal if, and for how long, the Council would be willing to extend their licence: It is therefore information, which, if it is disclosed, would indicate the likelihood of whether the individuals will continue as locating their caravans on the Park in the future.

26. Additionally, the length of the licence would be the caravan owner's personal data and therefore the withheld information is linked to an identifiable individual.
27. The Council argues that disclosing the caravan owner's personal data would contravene the first data protection principle on the grounds that it would be unfair to the individuals concerned, who would not expect this information to be put into the public domain.
28. Disclosure would be unfair to the caravan owners because they provided the information to the Council when the caravans were purchased/sited at the park and this information has been used solely for internal council purposes with regard to the licensing regime.
29. The Council asserts that the withheld information might be used, together with information already known about the caravan owners to identify individuals and learn something about them. In the Council's opinion, this would have adverse consequences on those individuals as it could be used to discover their future intentions i.e. whether they are likely to remain on the park, purchase a new model caravan or leave the park. They would not expect this information to be made public as this information relates to their private life.
30. The Council has provided the Commissioner with further clarification as to the position of the withheld information. It has advised her that the information relates to the caravan owner's private life, and in particular their family and social life relating to their caravan ownership.
31. In the Council's opinion, it would be reasonable to expect that the individuals concerned would not expect their personal information relating to the age and type of their caravan being released into the public domain, as this may directly affect their future licence and their ability to remain on the park.
32. This Council did not consult any of the caravan owners about the potential disclosure of their personal data. The Council's reasons for not consulting the owners relates to the fact that there are 726 caravan plots and some of the caravan owners have multiple licensees.
33. In addition to its consideration of the first data protection principle, the Council has also considered the conditions in Schedule 2 of the Data Protection Act for which are needed to be met before processing of personal data is permitted. Specifically, the Council has considered the

sixth condition which it believes is most relevant to the circumstances of this request.

34. Condition 6 of Schedule 2 of the Data Protection Act allows disclosure of personal data if 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.
35. The Council has advised the Commissioner that it does not accept that the sixth condition is met. This is because the withheld information could be used to inform or influence actions or decisions which would affect the caravan owners, particularly in trying to determine their intentions to remain on or leave the Park or whether they are likely to purchase a new model caravan in the near future, depending on the current age, make and model of their caravan.
36. The Council's final position is that it is correct to withhold the personal data contained in the spreadsheet. It argues that this information is directly linked to identifiable individuals and it could be used to learn something about them, such as when they will need to buy a new caravan in order to comply with their licence conditions and whether or not they are likely to apply for a new licence in the following years.
37. The Council has made clear to the Commissioner that the age of a caravan determines how long it is permitted to stay on the Park. The issue of granting new licences to caravan owners has been contentious and it is the Council's opinion that if the information is not withheld then it may be used to try and influence individuals to make a decision based on the make, model and age of their caravan.
38. The Council has drawn the Commissioner's attention to page 13 of her guidance on 'Determining what is personal data'¹ and it has argued that the plot numbers are similar to a postal address and provide information about the individuals that own the caravans on those plots.
39. The Commissioner considers that the withheld plot numbers are analogous to the addresses of properties. She believes it is correct for the Council to consider whether, by releasing the plot numbers, they would be releasing personal data.

¹ <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

40. The Data Protection Act refers to data which relate to a living individual who can be identified from that data or from that data and other information of the data controller. However, the Directive² provides that "personal data shall mean any information relating to an identified or identifiable natural person ...; an identifiable person is one who can be identified, directly or indirectly..." This definition suggests that the Council would be disclosing personal data where it releases information which can be linked to particular individuals, i.e. caravan owners.
41. Taking into account the purpose of the Directive this seems a sensible view and it is one taken by the Information Tribunal when deciding whether a local authority should release the addresses of empty properties. The Tribunal held that releasing such addresses would involve releasing personal data where the properties were owned by individuals.
42. The Council has also considered the ICO guidance at page 20 concerning 'information about objects or things'. It considers that the details of the object – the make model and age of the caravan – are linked to an individual caravan owner and can be used to learn something about them.
43. Additionally the Council has relied on the Directive which provides that "personal data shall mean any information relating to an identified or identifiable natural person.....; an identifiable person is one who can be identified, directly or indirectly....." and states that the withheld information relates to a person who can be identified directly from it due to the plot numbers, ages and some makes and models being unique to individual caravan owners.

The Commissioner's decision

44. The Commissioner has considered the Council's representations in this matter. She accepts that the withheld information is personal data on the grounds that it satisfies the definition provided by section 1 of the Data Protection Act 1998.
45. The primary concern of the Commissioner is whether disclosure of the withheld personal data would be fair and she has decided that disclosure would not be fair to caravan owners: The Commissioner accepts that the

² The Data Protection Directive [Directive 95/46/EC] on the protection of individuals with regard to the processing of personal data is a European Union directive adopted 1995 which regulates the processing of personal data within the EU.

caravan owners would not have any expectation that their personal data would be disclosed to the public. She accepts the Council's assurance that the personal data was provided to the Council for a particular and limited purpose.

46. The Commissioner considers that the first data protection principle would be contravened by the disclosure of the withheld personal data and consequently it is not necessary for her to go on to consider whether condition 6 of Schedule 2 of the Data Protection Act can be met.
47. The Commissioner's decision is that East Lindsey District Council has correctly applied section 40(2) of the Freedom of Information Act to the information it has withheld from the complainant.

Right of appeal

48. 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

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

49. 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.
50. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF