

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 October 2018

Public Authority: Homes for Haringey
Address: 48 Station Road
Wood Green
LONDON
N22 7TY

Decision (including any steps ordered)

1. The complainant submitted a request to Homes of Haringey (HfH) for a copy of a report compiled by the audit and accountancy firm Mazars into the performance of Move 51, a commercial lettings agency which was a subsidiary of HfH. HfH provided the complainant with a copy of the report but redacted certain parts of it on the basis of section 40(2) (personal data) of FOIA. The Commissioner has concluded that the majority of the redacted information is exempt from disclosure on the basis of section 40(2), although a small portion of this information is not. The Council must disclose this latter information.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a further copy of the Mazars report with the following parts of it unredacted:
 - On page 18, table 4.1 all of the figures contained in the column relating the Director of Lettings and also from the same table all of the figures in the Total column.
 - On page 19, all of the figures contained in table 4.2.
 - On page 24, the expected salary of the Director of Lettings.
3. The public authority 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

4. The complainant submitted the following request to HfH on 7 December 2017:

'I write in reference to page 16 of Homes for Haringey's Annual Report and Financial Statements for 2016/17, where it is stated that in relation to 'Move 51 o North', there was to be an internal audit:

"Our internal auditors will perform an in-depth audit of the agency in the 2016/17 audit programme".

Please could you supply a copy of the results or report of the audit carried out by the internal auditors, and if no results were presented or no report was compiled, please provide an explanation as to why not and whether the audit was in fact carried out.'

5. HfH responded on 23 January 2018 and provided him with a copy of the report and explained that personal data had been redacted from it.
6. The complainant contacted HfH on 28 January 2018 and asked it to conduct an internal review of its decision to redact information from the report. The only exception to this was the redaction of tenant names which the complainant did not seek to dispute.
7. HfH informed him of the outcome of the internal review on 11 April 2018. The response explained that the redacted information consisted of information about staff salaries and therefore was personal data. In terms of junior officers, HfH explained that Haringey Council's policy was to release details of pay scales rather than exact salaries and it confirmed that four members of staff received salaries of between £13,000 to £25,000. The remaining information contained in the report about junior salaries was considered to be exempt on the basis of section 40(2) of FOIA. HfH provided salary details for the Director of Lettings (the most senior member of staff within Move 51) albeit that details of her redundancy payment were redacted on the basis of section 40(2) of FOIA.
8. During the course of the Commissioner's investigation the HfH contacted the complainant on 22 June 2018 and explained that the Director of Lettings had consented to details of her redundancy payment being disclosed and as a consequence this was provided to the complainant.

Scope of the case

9. The complainant contacted the Commissioner on 30 April 2018 in order to complain about HfH's handling of his request. He argued that the remaining information which has been redacted from the report (with the exception of names of tenants) should be disclosed.

Reasons for decision

Section 40(2) – personal data

10. HfH redacted information from the report on the basis of section 40(2) of FOIA. This section states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act 1998 (DPA).¹

11. Personal data is defined in section (1)(a) of the DPA as:

'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual.'

12. HfH explained that the information withheld on the basis of section 40(2) of FOIA consisted of details of the salary payments made to staff members of Move 51. The Commissioner has reviewed the redacted information and she is satisfied that the vast majority of the information clearly concerns the salary payments made to staff members of Move 51 and as such constitutes their personal data. (The Commissioner notes that the majority of this information concerns the junior members of staff at Move 51 although a small portion of information relates to the Director of Lettings).
13. However, there is a very small portion of redacted information which the Commissioner does not agree constitutes personal data and therefore such information cannot be exempt from disclosure on the basis of

¹ On 25 May 2018 the General Data Protection Regulation and Data Protection Act 2018 came into force. However, in line with the provisions contained within the Data Protection Act 2018 under FOIA for any request where a public authority has responded before 25 May 2018 the DPA 1998 applies.

section 40(2) of FOIA. The Commissioner has identified this information in a confidential annex, a copy of which has been provided to HfH only.

14. HfH argued that disclosure of the information it had redacted from information would breach both the first and second data protection principles. The first data protection principle states that:

'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, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

15. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - any particular circumstances of the case, eg established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

16. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure to the public.
17. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.

HfH's position

18. HfH explained that although Move 51 was a company fully owned by the public authority, the Move 51 staff were not public authority staff. Nevertheless, it explained that it had applied the same principle for releasing personal information relating to the Move 51 staff under FOIA as it would applying to FOI requests about its own staff. HfH explained that apart from salary band details and expenses, it would not disclose personal information about junior officers. HfH accepted that senior officers should expect a greater level of public scrutiny and therefore some personal information about them may be disclosed. Any member of the Council's Senior Leadership Team, Directors and Assistant Directors would be regarded as a senior officer. HfH explained that the Council published specific information on the pay and reward of Council's senior staff earning more than £50,000 on its website in line with the Code of Recommended Practice. It also noted that the Council published actual salaries for staff earning £100,000 or more. With other officers, HfH explained that a case by case approach will be taken that takes into account the nature of their role and the level of public profile involved. Consequently, HfH explained that the main factor it considered in publishing salary details of personnel is seniority and moreover there is a reasonable expectation that the same level of detail as to senior staff salaries would not be released for junior staff.
19. HfH explained that the Move 51 junior staff members have not given consent for it to process their personal data by making an unrestricted disclosure of their personal financial data to the general public. Nor did HfH consider it appropriate to ask their consent at this stage given that their contracts have ended and Move 51 has ceased trading.
20. HfH acknowledged that there is a legitimate public interest in knowing how public money is spent across the public sector; including salaries at lower levels. However, salary information relates to individual's personal financial circumstances and disclosure of the exact salary of an

individual is more intrusive than giving a salary band or the pay scale for a post.

21. Furthermore, HfH argued that disclosing this level information about the individuals' actual salaries and bonuses may prejudice their interests in future negotiations of a performance related pay in a competitive public sector job market.

The complainant's position

22. The complainant noted that in a year of operating, Move 51 only let three properties. Therefore, he argued that there was a compelling public interest in the disclosure of the redacted information because the redacted information would show that Move 51 was paying employees, including guaranteed bonuses, for doing nothing, or very few hours of work.

The Commissioner's position

23. With regard to the redacted information about the four junior members of staff at Move 51, the Commissioner considers HfH's approach of applying the same principles it and Haringey Council have about salary information to be sound and logical. In light of this the Commissioner accepts that HfH's argument that the junior staff employed by Move 51 would have a strong expectation that details of the specific salaries would not be disclosed, and moreover, that such an expectation is a reasonable one. The Commissioner also accepts that disclosure of this information would clearly result in a significant infringement into their privacy given that it would reveal their gross salaries, bonuses, car allowance, compensation payments and the specific amount of time they were employed by Move 51 along with a number of comments by Mazars about the nature of their employment.
24. In terms of the legitimate interests in the disclosure of this information, the Commissioner recognises that there was considerable criticism of Move 51. The Board of Move 51's concerns about the losses being made and its poor financial performance led to Mazars being instructed to investigate the losses and to establish whether there was any evidence of fraudulent activity. More broadly, as the complainant notes, although it traded for a year Move 51 only attracted three landlords in that time leading to criticism in the media.²

² <https://www.standard.co.uk/news/london/councilfunded-letting-agency-slammed-for-only-filling-two-properties-in-10-months-a3319071.html>

25. However, the Commissioner also recognises that HfH has disclosed the Mazars report into its investigation of Move 51, albeit with the redactions which are the subject of this notice. Nevertheless, in disclosing the report the vast majority of information contained within it about the Director of Lettings, including details of the exact payments she received from the company were disclosed. HfH also indicated to the complainant the ranges of the salaries the junior staff within the company were on. In light of this the Commissioner does not consider it proportionate or necessary to disclose the redacted information about junior staff given the significant infringement into their personal lives that would be caused by such a disclosure and their considerable – and reasonable – expectations that this information would not be disclosed. To do so would be a breach of the first data protection principle and therefore such information is exempt from disclosure on the basis of section 40(2) of FOIA.
26. As noted above in the Commissioner's view there is very small portion of information redacted from the report which in her view constitutes the personal data of the Director of Lettings. This information consists of the figure of the total expected salary for the Director which has been redacted from page 24 of the report. This is simply the sum of the component parts of her expected salary. Given that the competent parts have already been disclosed to the complainant it is difficult to see how disclosure of her total expected salary would be unfair. The Commissioner notes that table 4.1 records not only the Director's expected salary but also her actual salary and (if relevant) any difference between the two. Given that the Council has disclosed a breakdown of the Director's expected salary she is satisfied that disclosure of this additional information contained within table 4.1 of her actual salary would not breach the first principle of the DPA.
27. The Commissioner notes that the Council also argued that disclosure of the withheld information would breach the second data protection principle. This states that:

'Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.'

28. The Commissioner's guidance on section 40(2) is clear that a FOIA disclosure that complies with the DPA in other respects will not breach the second principle. As her guidance explains:

'The "specified and lawful purposes" are the public authority's business purposes, ie the purposes for which it obtains and processes data. Disclosure under FOIA is not a business purpose. A public authority does not have to specify, either when it obtains personal data or in its notification to the Information Commissioner as a data controller under

the DPA, that the personal data may be disclosed under FOIA. Furthermore, the aim of FOIA is to promote transparency and confidence in public authorities. So, if disclosure would be fair and lawful under the first principle, and the information is not exempt under another FOIA exemption, then that disclosure cannot be incompatible with the public authority's business purposes.³

29. The Commissioner is therefore satisfied that the information described in paragraph 26 can be disclosed without breaching the second principle of the DPA and therefore is not exempt from disclosure on the basis of section 40(2) of FOIA.

³ <https://ico.org.uk/media/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf> - paragraph 36.

Right of appeal

30. 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

31. 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.
32. 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

Jonathan Slee
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