

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 June 2020

**Public Authority:** London Borough of Croydon  
**Address:** Bernard Weatherill House  
Mint Walk  
Croydon  
CR0 1EA

**Complainant:** on behalf of LMD UK Ltd

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about council-owned blocks. The London Borough of Croydon ("the London Borough") provided a significant quantity of information but withheld some low numbers which, it stated, could not be disclosed without revealing personal data.
2. The Commissioner's decision is that the London Borough of Croydon has not applied section 40(2) of the FOIA correctly to some of the withheld information. She also finds that the London Borough failed to issue a refusal notice, or to provide the requested information within 20 working days. Therefore the London Borough breached sections 10 and 17 of the FOIA in responding to this request.
3. The Commissioner requires the London Borough to take the following steps to ensure compliance with the legislation.
  - Disclose, to the complainant, the data it has withheld in respect of blocks with six or more units in total.
4. The London Borough 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. The complainant originally contacted the London Borough on 20 June 2019 and requested information in the following terms:

*"Under the Freedom of Information Act, I would be grateful if the council could please identify which blocks in their borough are under their ownership and, within each, how many units exist. We also would like information on how many of those are still under ownership of the local authority and how many have been sold as leasehold under Right to Buy."*

6. On 29 August 2019, the London Borough responded. It provided the total number of council-tenanted properties and the total number of Right-to-Buy units within Council-owned blocks. It did not identify all the blocks which it owned as it said that, to do so would risk disclosing personal data.
7. The complainant contacted the London Borough again on 30 August 2019 to seek an internal review. The London Borough completed that review on 28 October 2019. It refused to provide any further information and relied on section 40(2) of the FOIA to do so.

## Scope of the case

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8. The complainant first contacted the Commissioner on 6 September 2019 to complain about the way her request for information had been handled. At that point, the London Borough had yet to complete its internal review. Once the London Borough had completed its review, the complainant complained to the Commissioner once again about the London Borough's use of section 40(2) to withhold information.
9. At the outset of her investigation, the Commissioner explained, to the complainant, the issues that appeared to be discouraging the London Borough from providing the requested information.
10. The Commissioner advised the complainant that seeking data for only those blocks which contained six or more units and allowing the London Borough to use "5 or fewer" to protect the lowest numbers, might alleviate the concerns and allow the complaint to be resolved informally. The complainant agreed to this approach in correspondence dated 23 January 2020.
11. The London Borough was happy with this approach and disclosed the number of tenants and the number of leaseholders in each block on 8

March 2020. In line with the Commissioner's suggestion, the London Borough did not include data on blocks of six or fewer units. Where the number of either leaseholders or tenants in a particular block was five or fewer, the London Borough suppressed this information.

12. Despite the London Borough having complied with the previously-agreed approach taken by the Commissioner, the complainant contacted the Commissioner on 11 March 2020 to state that she was unhappy with the data that had been supplied. The complainant was unhappy that the London Borough had failed to provide a figure for the total number of units in each block.
13. The Commissioner pointed out that, as the raw data had been provided in .xls format, this information could be calculated using basic functionality within Microsoft Excel. However, the complainant was unhappy that she would not be able to calculate a total where one of the other two numbers had been suppressed. When the Commissioner further pointed out that providing an accurate total would defeat the purpose of suppressing the numbers in the first place, the complainant then stated that she was no longer content to accept the London Borough using "5 or fewer" to protect low numbers.
14. Whilst the Commissioner notes that the London Borough complied with her approach – an approach which had already been explicitly endorsed by the complainant – the additional parameters that she introduced did not form part of the complainant's initial request. As the complainant has rejected the attempts at an informal resolution and insisted on a decision notice, she must consider the request as it was originally submitted.
15. The Commissioner asked the London Borough whether it was content to release the "5 or fewer" figures or whether it wished to rely on section 40(2) to withhold the information and, if it wished to withhold that information, to provide its arguments as to why personal data would be disclosed.
16. The Commissioner considers that the scope of this decision notice is to determine whether the London Borough was entitled to rely on section 40(2) of the FOIA to withhold numbers of five or fewer.

## Reasons for decision

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17. Section 1(1) of the FOIA states that:

*Any person making a request for information to a public authority is entitled –*

- (a) *to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) *if that is the case, to have that information communicated to him.*

18. 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 one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
19. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
20. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
21. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

*Is the information personal data?*

22. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual."*

23. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
24. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
25. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
26. On 11 March 2020, the Commissioner issued decision notice FS50877716 to the Royal Borough of Greenwich, which dealt with an

identical request to that made to the London Borough.<sup>1</sup> In that decision notice, the Commissioner considered whether individuals would be identifiable from the withheld information. In the Greenwich case, the council had provided the numbers but not the individual block addresses, whereas in this case the London Borough has provided the addresses but not all the numbers – however the Commissioner considers that the issues involved are nevertheless the same.

27. In her earlier decision notice, the Commissioner found that:

*"27. The Royal Borough argued that providing the full address and postcodes of individual blocks would, in combination with the information already disclosed or in the public domain, enable a person to deduce the ownership status of individual units within the blocks and that the ownership status would be the personal data of the occupier.*

*28. If the individual postcodes were supplied, the Royal Borough argued, a person could either physically visit the block or could enter the postcodes into Google Street View and perform a visual inspection of the façade of each block. From a visual inspection, the Royal Borough argued:*

*"any individual would be able to deduce which properties have been purchased from the council due to the non-standard external fittings/facias."*

*29 To back up its arguments, the Royal Borough produced a screengrab from Google Street View, purportedly of one of its blocks, which showed a variation in external facias.*

*30. The Commissioner accepts that, in principle, an individual's home ownership status (ie. whether they own their own home, rent it privately, or rent it from a social landlord) will be their personal data. The question to be addressed here is whether the withheld information would, in itself, reveal ownership status.*

*31. In this particular case, the Commissioner notes that the Royal Borough has already revealed the streets on which it owns blocks. She therefore considers that a motivated person could*

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617526/fs50877716.pdf>

*already deduce the ownership of particular blocks by using Google Street View or by physically visiting the street. The standard fittings or facias used on council-owned properties would be highly likely to identify those blocks which the Royal Borough owned.*

32. *The Commissioner therefore considers that it is not the withheld information itself that would reveal ownership status, but the ability of a person to use the visual clues already in the public domain to make educated guesses. The withheld information does not enable a process which would otherwise be impossible, it merely makes it slightly faster. The Commissioner therefore considers that the withheld information does not, in itself, reveal ownership status within larger blocks.*
33. *In addition, the Commissioner notes that there are various other clues, already in the public domain, which would enable a motivated person to identify blocks owned by the Royal Borough. For example, prospective council tenants can search the Borough's housing register for available properties, existing tenants can access the Royal Borough's mutual exchange scheme and swap their property with another tenant."*
28. The Commissioner drew the London Borough's attention to this decision notice and also to the availability of information from other sources, such as HM Land Registry. She asked the London Borough to explain why, if it wished to continue relying on section 40(2), it considered the situation to be different.
29. The London Borough appeared to be under the impression that it was also being asked to release information about blocks which contained fewer than six units and therefore its arguments were directed towards defending its decision not to release this information – rather than towards the small numbers in larger blocks. The Commissioner will return to the issue of smaller blocks below.
30. The Commissioner is not persuaded that the London Borough has been able to put forward any arguments which would undermine taking the same approach as she took in the Greenwich case. Furthermore, as part of a further, similar, complaint, she is aware that data on the ownership of particular blocks is, in any case, available from HM Land Registry.
31. The Commissioner does recognise that the smaller properties that the London Borough owns would be more difficult to identify by visual inspection alone and therefore their full addresses may be personal

data. As the complainant has already confirmed she has no interest in these smaller blocks, the Commissioner has not considered them as part of her decision.

32. However, the Commissioner considers that the remaining information is not personal data and therefore the Royal Borough is not entitled to rely on section 40(2) of the FOIA to withhold it.

#### Procedural Matters

33. Section 10 of the FOIA states that a public authority must comply with its duty under section 1(1) of the FOIA "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

34. Section 17(1) of the FOIA states that when a public authority wishes to withhold information or to neither confirm nor deny holding information it must:

*within the time for complying with section 1(1), give the applicant a notice which—*

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.*

35. From the evidence presented to the Commissioner in this case, it is clear that, in failing to disclose information and issue a refusal notice within 20 working days, the London Borough has breached sections 10 and 17 of the FOIA.

## Right of appeal

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36. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

37. 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.
38. 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 .....**

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