

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 January 2012

**Public Authority:** Reading Borough Council  
**Address:** Civic Offices  
Reading  
RG1 7AE

#### Decision (including any steps ordered)

---

1. The complainant requested information relating to a particular property where he had been a tenant, the condition of which had been investigated by the Reading Borough Council ("the council"). The council applied an exemption under the Freedom of Information Act 2000 ("the FOIA") relating to investigations.
2. The Commissioner did not find it necessary to consider the application of the exemption concerning investigations because he was satisfied that the information was exempt because it represents the personal data of the owner of the property.
3. The Commissioner does not require any steps to be taken.

#### Request and response

---

4. On 3 May 2011, the complainant requested information from the council in the following terms:

*"I am the former resident of the house whose address is given below:*

*[address redacted]*

*During my tenancy period, we kindly invited [council officer's name] to visit the house, under the Housing Act, due to poor conditions such as high humidity, broken fire alarms, improper electricity wiring and improper electricity fuses, etc...*

*[Council officer's name] visited the property twice (between August 2010 and October 2010), taking notes regarding the situation of the house and taking photographs of broken walls and bad wiring of the electricity*

*panel.*

*Now, under Freedom of Information Act 2000, I request the copies of reports or notes/photographs on what [council officer's name] found during the inspection of the mentioned house".*

5. The council replied on 19 May 2011. It said that the information was exempt under section 31(1)(g) of the FOIA. It said that it did not believe disclosure of the information would be in the public interest because it may dissuade landlords from engaging with the council in future.
6. The complainant requested an internal review on 14 June 2011.
7. The council completed its internal review on 10 August 2011. The council said that it wished to maintain its position, although it acknowledged that it could have explained why the exemption was engaged in more detail.

### **Scope of the case**

---

8. The complainant contacted the Commissioner to complain about the council's response. He asked the Commissioner to consider whether the council had correctly refused to provide the information requested.

### **Background**

9. The council explained to the Commissioner that the complainant used to be a tenant at the property concerned. During this tenancy, a number of issues were raised by the complainant and the other tenant of the property relating to disrepair, dampness and heating. These issues were reported to the council. The council engaged its duties to investigate such matters and carried out an inspection under the Housing Act 2004 and the Housing Health and Safety Rating System (England) Regulations 2005.
10. The regulations are designed as a means for landlords to avoid or minimise potential hazards. The regulations set out a system of assessing hazards in rental dwellings. These determine whether the council must take enforcement action or may take enforcement action. In the council's experience, most landlords engage with the council effectively to carry out any remedial action which is what happened in this case.

## Reasons for decision

---

### Section 40(2) – Third party personal data

11. For clarity, the council did not rely on the exemption under section 40(2). However, the Commissioner considers that it is appropriate to consider this exemption in the circumstances. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (“the DPA”).

### Is the withheld information personal data?

12. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
13. It has been established in a previous case heard by the Information Tribunal <sup>1</sup>that an address is personal data. Knowing the address of a property makes it likely that the identity of the person who owns it will be discovered using other sources of information. In view of this, the Commissioner was satisfied that the landlady of the property could be identified from the information. He was also satisfied that the information is her personal data because it concerns a property that she owns and the condition of the property while it was being rented out. The council has explained that the information gathered formed part of an investigation into the state of the property which could have resulted in formal enforcement action being taken against the landlady.

### Would disclosure breach the Data Protection Principles?

14. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner’s considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

---

<sup>1</sup> England and London Borough of Bexley v Information Commissioner (EA/2006/0060 & 0066).

## **Reasonable expectations**

15. The council explained to the Commissioner that the landlady objected to the disclosure of the information. While this in itself does not mean that disclosure would have been beyond her *reasonable* expectations, it does at least give some indication of what her expectations were. The Commissioner considered the specific circumstances as well as this objection and he decided that disclosure of the information would not have been within her reasonable expectations. The council has explained to the Commissioner that the information was collected at an early stage in the process, which allows for the opportunity for informal resolution of the issues concerned. The council said that the initial assessment is carried out on the understanding that the assessments will not be disclosed. The Commissioner understands that the issues relating to this property were resolved within an appropriate timescale without the need for any enforcement action. The council said that the appropriate point for public knowledge of the issues would be if it becomes necessary to pursue enforcement action.

## **Consequences of disclosure**

16. The Commissioner appreciates that the disclosure of the information carries a reputational risk to the landlady. As the Commissioner accepts that disclosure would not have been within her reasonable expectations, the Commissioner considers that the disclosure could be distressing.

## **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

17. The Commissioner considers that there is always some public interest in public authorities disclosing information. This promotes transparency and accountability for decisions and actions taken. However, on this occasion, the Commissioner was not persuaded that the public interest in disclosure outweighed the public interest in protecting the landlady's legitimate expectation of privacy. Disclosing the level of detail requested by the complainant to the public would, in the Commissioner's view, represent an unwarranted invasion of the landlady's privacy as appropriate steps were taken to remedy the problems that were raised. The Commissioner was therefore satisfied that public disclosure of the information would be unfair in the circumstances.

## Right of appeal

---

18. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

19. 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.
20. 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 – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**