

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 November 2023

Public Authority: The Crown Estate
Address: 1 St James Market
London
SW1Y 4AH

Decision (including any steps ordered)

1. The complainant submitted a request for the addresses of the properties falling under section 5(5) of the Crown Estate Act 1961. The Crown Estate confirmed that it held such information but withheld it on the basis of sections 38(1)(a) and (b) (health and safety) and section 40(2) (personal data) of FOIA.
2. The Commissioner's decision is that the Crown Estate were correct to rely on section 40(2) to withhold the requested information.
3. The Commissioner does not require any further steps.

Request and response

4. The complainant originally submitted a request to the Crown Estate on 28 February 2023 seeking answers to the following questions:

'Can you please tell me how many properties owned by the Crown Estate have been made available for occupancy by (a) members of the royal family; and (b) others at the request of, or who have connections with the royal family, such as employees or former employees.

Can you also please tell me in how many cases a market rent is, or is not paid for such properties.

Lastly can you tell me whether the Crown Estate is obliged to meet a request from the royal household for accommodation to be provided for a particular individual or whether it can refuse such a request, and if it has ever done so.'

5. The Crown Estate responded on 29 March 2023 and in respect of the first question explained that:

'As we understand your question, we believe that you are referring to properties falling within section 5(5) of the [Crown Estate Act 1961](#). Section 5(5) sets out the way in which arrangements for Crown Estate properties which are at the disposal of the Sovereign are made. Currently 52 properties are at the disposal of His Majesty and while that remains the case, The Crown Estate has no management role in relation to them. Decisions concerning the occupancy of those properties and the basis on which they are occupied rest with the Royal Household.'

6. The complainant submitted a further request to the Crown Estate on 29 March 2023 seeking a list of the 52 properties referred to in the previous response.
7. The Crown Estate contacted the complainant on 2 May 2023 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of section 38 (health and safety) of FOIA and explained that it needed additional time to consider the balance of the public interest test.
8. The Crown Estate provided him with a substantive response to his request on 1 June 2023. It explained that there were in fact only 50 properties falling within the scope of his request. However, it had concluded that the locations of these properties were exempt from disclosure on the basis of section 38(1) of FOIA and that in all the circumstances of the request the public interest favoured maintaining the exemption.
9. The complainant contacted the Crown Estate on the same day and asked it to conduct an internal review of this response.
10. The Crown Estate informed him of the outcome of the review on 29 June 2023. The review concluded that the withheld information was exempt from disclosure on the basis of section 38(1) of FOIA. It also concluded that the information was exempt from disclosure on the basis of section 40(2) (personal data) of FOIA. However, the Crown Estate explained that there was one address, namely Adelaide Cottage, Windsor Home Park, that it could disclose as that it was occupied by working members

of the Royal Family and the address is deducible from information already in the public domain.

Scope of the case

11. The complainant contacted the Commissioner on 1 August 2023 to complain about the Crown Estate's decision to withhold the requested information. The complainant's grounds of complaint to support his case are set out in the analysis section below.

Reasons for decision

Section 40 – personal information

12. Section 40(2) of 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.
13. In this case the relevant condition is contained in section 40(3A)(a)¹. 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 UK General Data Protection Regulation ('UK GDPR').
14. 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 FOIA cannot apply.
15. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

16. Section 3(2) of the DPA defines personal data as:
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¹ As amended by Schedule 19 Paragraph 58(3) DPA.

“any information relating to an identified or identifiable living individual”.

17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. 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.
19. 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.
20. The Crown Estate argued that the addresses of the properties are personal data because living individuals, namely the property occupants, are indirectly identifiable from them. In support of this point the Crown Estate argued that while it would not be possible to identify individuals from the addresses in isolation, they could be identifiable in conjunction with other data. In terms of the methods by which identification could take place, the Crown Estate suggested that one possible way was for a motivated intruder, such as an investigative journalist, to use the electoral register to identify the occupant. Alternatively an individual could simply turn up on a resident's doorstep and identify them in person.
21. With regard to the likelihood of identification taking place the Crown Estate explained that it had considered the wider context of media interest in such matters, particularly during this time where an already strong focus has been intensified by the recent coronation.
22. The Crown Estate emphasised that its position that the withheld information constituted personal data was in line with the Commissioner's guidance on the 'motivated intruder' test set in the ICO's Anonymisation Code of Practice (ie as outlined above whereby information is personal data where it can identify an individual in combination with publicly available information).² The Crown Estate noted that the Code provides the example of 'using the electoral register and local library resources to try to link anonymised data to someone's identity'. The Crown Estate also argued that the logic of its position

² <https://ico.org.uk/media/1061/anonymisation-code.pdf>

regarding the identification of individuals also fitted with the Commissioner's guidance on what is known as the 'mosaic' or 'jigsaw' effect, i.e. the concept that the disclosure of the requested information on its own may not be harmful, but if disclosed with other information already known then, this increases the risk of harm occurring.³ The Crown Estate also noted that UK GDPR specifically references location data as an example of personal data.

23. The complainant argued that it was highly unlikely that someone would use the electoral roll to identify the occupants, and then harass or attack the occupants of the properties.
24. The Commissioner is satisfied that there is a realistic possibility that the withheld information could be used in either of the ways described by the Crown Estate to identify at least some of the occupants of the properties in question. The Commissioner also agrees with the Crown Estate that given the broader context regarding the Royal family and related matters, the likelihood of such identification taking place is not a remote one. The Commissioner also notes in previous decision notices he has accepted that full postcodes (which are less specific than the actual addresses sought by this request) are personal data.⁴ The Commissioner is therefore satisfied that the withheld information in this case falls within the definition of 'personal data' in section 3(2) of the DPA.
25. As noted above, the fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
26. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

27. Article 5(1)(a) of the UK GDPR states that:

³ Information in the public domain, <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/information-in-the-public-domain/#:~:text=This%20is%20referred%20to%20as%2cincreasing%20the%20likelihood%20of%20prejudice.>

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024398/ic-198806-p6k5.pdf>

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

28. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
29. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
30. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”⁵.

31. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
 - i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

⁵ Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

32. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

33. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
34. The complainant argued that the Crown Estate is a public body and responsible for use of public money. He argued that there was a need for public bodies to be transparent and accountable and in this case this extended to the Crown Estate disclosing the list of requested properties.
35. The Commissioner acknowledges that there is a legitimate interest public interest in the disclosure of the information to further aid transparency around the Crown Estate's role in respect of the properties covered by section 5(5) of the Crown Estate Act.

Is disclosure necessary?

36. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
37. The Commissioner is prepared to accept that further transparency in respect of the properties in question can arguably only be achieved by disclosure of the list of properties themselves.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

38. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the

information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

39. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
40. As noted above, the complainant considered there to be a legitimate interest in the disclosure of the information. As part of his submissions to the Commissioner he noted that the addresses of public figures, from leading politicians to sports stars, are generally known or at least easy to source, so it is far from clear why this anonymous group with Crown Estate properties should have unique protection.
41. The Crown Estate argued that disclosure of the withheld information would result in an invasion of privacy of the occupants of the properties in question. This could arise as a result of individuals visiting the specific properties in an attempt to find out who lives there. This would cause an invasion of their privacy and furthermore the Crown Estate argued, amounts to a risk of endangerment to the health and safety of the individuals in question in terms of stress and the potential physical effects of harassment. The Crown Estate noted that some of the individuals in question are vulnerable. The Crown Estate noted that the complainant had argued that there was a low probability of any individuals being identified, and thus their privacy being impacted. The Crown Estate took the view that even if the risk of identification were low (a position it did not accept), then the potential consequences of any disclosure would still be severe.
42. With regard to the legitimate interest in the disclosure of the information the Crown Estate noted that it had already disclosed the number of properties that are managed under section 5(5) of the Crown Estate Act, which provides transparency around the extent of its application. It argued that whilst the precise location of these properties is likely to be interesting to the complainant and the wider public, in its view it is arguably of limited public interest and it is unclear what public good this further disclosure would serve. The Crown Estate noted that the complainant had stated that he did not agree with its view that there is minimal value in knowing the locations of the properties requested, but that he had not set out the value he ascribes to the information.

43. Finally, in respect of the complainant's comparison to the addresses of high profile public figures, the Crown Estate noted that public figures usually benefit from security services which offer them an additional layer of protection from the lack of privacy and intrusion that often comes with public life. The Crown Estate also argued that this argument did not take into account the fact that there is still likely to be media interest in this 'anonymous group' because of where they live.
44. The Commissioner agrees with the Crown Estate's reasoning and rationale as to why the information could result in the privacy of the individuals being impacted. As noted above, in accepting that disclosure could lead to their identification, the Commissioner does not consider it to be a remote or hypothetical possibility that the occupants of some these Crown Estate properties may be approached by individuals. In the Commissioner's view this would constitute an invasion of the occupants' privacy which could be both harmful and/or distressing. The Commissioner also considers that the occupants would have a reasonable expectation that the fact that they live in a property managed under section 5(5) of the Crown Estate Act would not be disclosed under FOIA.
45. The Commissioner also agrees that there appears to be a limited public interest in the disclosure of the identities of the properties themselves, beyond the confirmation by the Crown Estate has already provided of the number of properties in question. It is not clear to the Commissioner how identification of these properties would necessarily hold the Crown Estate as a public authority to account for its use of public funds given that the properties in question are managed by the Royal household; decisions concerning the occupancy of the properties and the basis upon which they are occupied rest with the Royal household. Furthermore, the Commissioner is not persuaded by the argument that because the addresses of high profile individuals can be in the public domain this provides a basis to disclose this information. The Commissioner would note that sources of such addresses are not always official disclosures of information, and simply because some high profile individuals have had their privacy breached, this does not provide legitimate grounds to breach the privacy of others.
46. In view of the above the Commissioner has therefore concluded that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful. The withheld information is therefore exempt from disclosure on the basis of section 40(2) of FOIA.

47. In light of this decision the Commissioner has not considered the Crown Estate's reliance on sections 38(1)(a) and (b) of FOIA.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Jonathan Slee
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