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NP20 4UR

DATE 16.08.2021

Dear Adam Watkins,

Internal Review REQ09247

I have undertaken an internal review of your original request. As you submitted this under freedom of information, your request has been treated in accordance with the Freedom of Information Act 2000.

Your initial request and our original response: REQ09163

Please could you provide me with the following for each licensed “House in Multiple Occupation” (HMO), from HMO registers that you have prepared or associated information:

- Name of license holder - **Personal information cannot be provided due to data protection**
If the license holder is a company, partnership or trust, their registration number - **We do not hold this information**
- Whether the license holder is an owner of the property - **it would take longer than 18 hours to go through each application to find and supply the information, because we do not have a system to do this for us**
- Names of any other owners of the property - **We are unable to disclose this information due to advice received from the ICO as it contains personal data**
- Rent Smart Wales registration number of the landlord of the property, if known - **RSW should be consulted by the applicant**
- Rent Smart Wales licence number of the manager/managing agent/letting agent of the property, if known - **RSW should be consulted by the applicant**

You can obtain Rent Smart Wales information directly from them via <https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.rentsmart.gov.wales%2Fen%2Fcontact%2F&data=04%7C01%7CCorporateAdmin.Supervisor%40newport.gov.uk%7Ce8f3fb570a244159668908d948615806%7C2c4d0079c52c4bb3b3cad8eaf1b6b7d5%7C0%7C0%7C637620405184602849%7CUnknown%7CTWFpbGZsb3d8eyJWlJoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C1000&sdata=uvRV1X2DsRLPE%2ByA0cP%2BelaqRvpTKVMC%2FlwFX95NUYY%3D&reserved=0> as this is run by Cardiff City Council.

And the following, if held:

- Age of the building/when it was originally built (e.g."1946 - 1964") - we do not hold this information

Request for a review REQ09247

Thank you very much for your response. You've clearly attempted to provide something useful in response to my request.

Nevertheless, I feel I must request an internal review of some of your decisions; please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Newport Council's response to my request for information (ref REQ09163).

The response I have received does not answer all the questions I asked, and I do not agree with the application of an exemption withholding all or part of the information I requested.

I note that the response doesn't clearly set out the specific sections of the Act/exemptions being deployed, but I appreciate that the council have tried to set out the reasoning. I have interpreted refusals relating to "personal information" and "personal data" as citing a section 40 exemption. There are several pieces of evidence that suggest that a section 40 exemption is not applicable to the information requested.

First, that versions of the relevant information to which the section 40 exemption is being applied has previously been disclosed on the internet by local authorities in response to other individual requests (e.g. Cardiff Council FOI010182, 30th May 2017) and is routinely being disclosed by others (e.g. Barnet Council, Gravesham Council). This indicates that there is no violation of personal data rights by disclosure of this information.

Second, that the local authority would make the relevant information concerned available by other means - by inspection of the register at council headquarters - indicates that any violation of personal data rights is not a consequence of disclosure, per se. (However, I also note that a section *21* exemption would not be applicable in this case for other reasons, particularly under the current circumstances. One of these is the ongoing COVID-19 pandemic and the implications for "reasonable" accessibility involving travel, as we enter the "third wave" and relaxations of coronavirus rules are delayed. Another would be that my request includes information that is both likely held by the council and is uncontentious - e.g. with respect to the claimed section 40 exemption - but not inspectable on the physical public register - e.g. Easting and Northing of the property, number of storeys, some of which I appreciate that the council has supplied to date. ICO suggests referring to EA/2006/0030 when considering requests for more detailed information relating to something in the public domain, and reasoning from this case supports responding to the request with disclosure.)

Third, information similar in nature to the information concerned is now routinely disclosed elsewhere, including electronically. This would include Rent Smart Wales's searchable registers of immediate landlords and licenses of managing agents, and HM Land Registry's downloadable "UK companies that own property in England and Wales" data set. These are not, of course, identical to the information requested on HMO licenses, but are very similar in so far as they concern the names of property owners and managing agents, and their links to specific properties. More broadly, these examples also clearly establish current expectations of fair processing of this sort of information, and demonstrate how these may have evolved in recent years. (ICO advice that has not been given extremely recently is unlikely to reflect these expectations.)

For the sake of completeness, I note that the evidence set out above would also suggest that various other possible exemptions are also inapplicable - because previous and similar disclosures demonstrate that disclosure of this information is lawful and justified, that the public interest in disclosure is clearly sufficiently large where this test is relevant, and that local authorities' legitimate interests in disclosure (e.g. transparency in the conduct of HMO licensing) outweigh the interests of licensees where this test is relevant.

There are some requested data items missing from the response (e.g. "Total number of toilets", "Age of the building/when it was originally built") that I believe are actually held by the council, because they appear on the council's HMO application form. I appreciate the council might not actually store this information in a way that you can provide it within the appropriate limit of responding to a request; if this is the case, I'd be grateful if the council clarified this.

My findings

Thank you for your comments regarding the response we initially sent. Following on from your request we are now undertaking a full review of what and how we provide information held on the HMO register. Until that full review is complete, no data will be published in relation to HMO licenses.

Firstly, we will address your comment in relation to the information being previously available online and still available on some Local Authority websites. In the past Newport City Council has published the full HMO register online, however, it was identified that we did not have enough resource to keep the published document update to date. The HMO licensing team get new licenses and updates in relation to existing licenses multiple times a day and it is not feasible to remove, update and restore the online publication after each update. This meant there was a risk of some of the data being inaccurate which could potentially lead to a breach of data and would also be a breach of GDPR (Accuracy – reasonable steps should be taken to ensure that data remains accurate and is kept up to date). We are unable to comment on the procedures that other Local Authorities follow.

In regard to the information relating to the property itself we fully acknowledge that more information could have been provided in the initial response. Due to the channel you have submitted your request we feel it would be inappropriate to provide the full register while we are undertaking the review as this will ultimately be published on that website. Whilst the completion of the review is pending I have attached the HMO register with the additional property details where recorded, omitting the licensee details.

If you would like to provide us with a direct email address via information.management@newport.gov.uk we will be able to update you, once we have finalised the review, on how requests for the HMO register are to be processed.

Please note due to staff being deployed elsewhere during the pandemic the list does not contain new HMO licenses. The team are currently working to clear this backlog.

Your initial request and follow up request has now been actioned and we are satisfied that you have now received all of the information that you require.

If you are not content with the outcome of the internal review, you have a right under section 50 of the Freedom of Information Act 2000 to apply directly to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the Councils complaints procedure.

The Information Commissioner can be contacted at:

The Information Commissioners Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire
SK9 5AF.

Regards
Sarah
Information Management