

KIRKLEES COUNCIL

REFUSAL NOTICE

SECTION 17 FREEDOM OF INFORMATION ACT 2000

REQUEST FOR INFORMATION CONCERNING COUNCIL HOUSE ADDRESSES

1. Request

The request was received on 31 August 2018 and is for:

Please supply a list (spreadsheet or similar is fine) of all council housing under your remit.

Please also supply a list of ex-council housing (ie properties bought out under right-to-buy etc).

I request this on the basis that another council Welyn Hatfield Borough Council has already completed similar FOI request.

https://www.whatdotheyknow.com/request/list_of_council_housing_addresses

The Council does hold information falling within the scope requested, but considers that, for the reasons set out in this notice, the information is exempt from disclosure for the purposes of the Freedom of Information Act because one of the exemptions with the Act applies.

In coming to its decision, the Council has had regard to the following guidance from the Information Commissioner's Office:

- The Guide to Freedom of Information (August 2017)
- Personal information (section 40 and regulation 13) Freedom of Information Act
- Environmental information Regulations (December 2014)
- ICO guidance relating to the General Data Protection Regulation (GDPR)

2. Reasons

Section 1 of the Freedom of Information Act 2000 (FOI Act) places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1)(a) is to confirm or deny whether the information specified in the request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held.

For information, applications made under the Fol Act are totally independent from any other process operated by a public authority and any disclosure of recorded information under this Act is deemed as a disclosure to the world and cannot be a disclosure of information to any single individual. This means that once information has been released under the Act it becomes a matter of public record and we have to make that information available to any member of the public who may wish to view it. This means that the Council must consider the consequences of disclosure to the world at large, and not just the impact of providing the material to the applicant and as such must consider whether the information requested is suitable for disclosure to anyone and everyone.

Section 40 of the Fol Act relates to personal information.

The full wording of Section 40 is set out at Appendix 1 of this refusal notice.

The Council notes that from 25 May 2018 the data protection legislation in the UK has changed and the current legislation is the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA2018), and as such the references to the Data Protection Act 1998 do not apply.

However, substantially similar provisions are made for the protection of personal data in the GDPR and the DPA2018.

Appendix 2 sets out the wording of Section 40 as amended by the Data Protection Act 2018.

Personal data of a third party is exempt from disclosure under Section 40(2) of the Freedom of Information Act 2000 if its disclosure to a member of the public would contravene any of the Data Protection Principles.

The information which the Council considers exempt in this case is details of current council housing and also properties bought under Right to Buy.

The Council considers that disclosure would breach the first Data Protection Principle which requires personal data to be "*processed lawfully, fairly and in a transparent manner*".

Article 5(1) of the GDPR says:

1. *Personal data shall be:*
 - (a) *processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness, transparency')*

The Data Protection Act 2018 states, in relation to the first data protection principle:

86 The first data protection principle

- (1) *The first data protection principle is that the processing of personal data must be—*
 - (a) *lawful, and*
 - (b) *fair and transparent.*
- (2) *The processing of personal data is lawful only if and to the extent that—*
 - (a) *at least one of the conditions in Schedule 9 is met, and*

- (b) in the case of sensitive processing, at least one of the conditions in Schedule 10 is also met.*
- (3) The Secretary of State may by regulations amend Schedule 10—*
- (a) by adding conditions;*
 - (b) by omitting conditions added by regulations under paragraph (a).*
- (4) Regulations under subsection (3) are subject to the affirmative resolution procedure.*
- (5) In determining whether the processing of personal data is fair and transparent, regard is to be had to the method by which it is obtained.*
- (6) For the purposes of subsection (5), data is to be treated as obtained fairly and transparently if it consists of information obtained from a person who—*
- (a) is authorised by an enactment to supply it, or*
 - (b) is required to supply it by an enactment or by an international obligation of the United Kingdom.*
- (7) In this section, “sensitive processing” means—*
- (a) the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership;*
 - (b) the processing of genetic data for the purpose of uniquely identifying an individual;*
 - (c) the processing of biometric data for the purpose of uniquely identifying an individual;*
 - (d) the processing of data concerning health;*
 - (e) the processing of data concerning an individual’s sex life or sexual orientation;*
 - (f) the processing of personal data as to—*
 - (i) the commission or alleged commission of an offence by an individual, or*
 - (ii) proceedings for an offence committed or alleged to have been committed by an individual, the disposal of such proceedings or the sentence of a court in such proceedings.*

The Schedule 9 conditions relevant to the first data protection principle are set out in Appendix 3 of this refusal notice.

The ICO’s guidance on Article 5(1) of the GDPR states:

Processing of personal data must always be fair as well as lawful. If any aspect of your processing is unfair you will be in breach of this principle – even if you can show that you have a lawful basis for the processing.

In general, fairness means that you should only handle personal data in ways that people would reasonably expect and not use it in ways that have unjustified adverse effects on them. You need to stop and think not just about how you can use personal data, but also about whether you should.

Assessing whether you are processing information fairly depends partly on how you obtain it. In particular, if anyone is deceived or misled when the personal data is obtained, then this is unlikely to be fair.

In order to assess whether or not you are processing personal data fairly, you must consider more generally how it affects the interests of the people concerned – as a group and individually. If you have obtained and used the information fairly in relation to most of the people it relates to but unfairly in relation to one individual, there will still be a breach of this principle.

Personal data is information which relates to a living individual who can be identified from the requested information or from a combination of that information and other information known to the data controller.

As stated above, in this case, the personal data which the Council considers exempt is any detailed information about current council housing and also properties bought under Right to Buy.

The Council considers that current and previous council tenants would reasonably expect the Council to maintain personal information about them confidentially and they would have no expectation that their personal information would be disclosed into the public domain.

The Council believes that disclosure of the details requested, would give rise to actionable breach of the first data protection principle, which states that personal information must be processed lawfully, fairly and in a transparent manner.

In coming to this decision, the Council is not implying anything whatsoever about the applicant's own reasons for making this request and it is hoped the applicant will understand that if we disclosed a first time, we would have no grounds for refusing any other applicant.

The conditions for processing personal information are largely based on the "necessity" to process personal information and the Council does not consider the disclosure of the requested information to be necessary. Neither does the Council have the consent of the individuals concerned to release their personal data into the public domain.

The request for disclosure of the personal data this notice relates to is therefore refused.

3. Review

If you are not content with the handling of your request, you have the right to ask for an internal review. Requests for internal reviews should be submitted within 2 months of the date of receipt of the response to your original request and should be addressed to the Monitoring Officer, 1st floor, Civic Centre 3, Market Street, Huddersfield HD1 2EY. Alternatively, you can send an email to: monitoring.officer@kirklees.gov.uk.

It would assist if any such request for a review were clearly marked as such and specifically referred to this refusal notice.

If you are not content with the outcome of any review you have the right under section 50 of the 2000 Act to apply to the Information Commissioner for a decision as to whether your request for information has been dealt with in accordance with the requirements of the Act. The Information Commissioner's website is at www.ico.org.uk and gives more information about the role and duties of the Commissioner. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Signed:

A handwritten signature in black ink, appearing to read "L. Foody", enclosed within a faint, irregular oval border.

Lindsay Foody
Information Access & Security Officer

11 September 2018

Appendix 1

Freedom of Information Act 2000 - Section 40 (Personal Information)

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject’s right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;*
- “data subject” has the same meaning as in section 1(1) of that Act;*
- “personal data” has the same meaning as in section 1(1) of that Act.*

Appendix 2

Freedom of Information Act 2000 – Section 40 exemption for personal data, and amendments made by the Data Protection Act 2018

40 Personal information

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is a data subject.
- (2) Any information to which a request for information relates is also exempt information if-
 - (a) It constitutes personal data which does not fall within subsection (1), and
 - (b) The first, second or third condition below is satisfied.
- (3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act-
 - (a) Would contravene any of the data protection principles, or
 - (b) Would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.
- (3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).
- (4A) The third condition is that-
 - (a) On a request under Article 15(1) of the GDPR (General processing: right of access by the data subject) for access to the personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
 - (b) On a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.
- (5A) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).
- (5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies-
 - (a) Giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)-
 - (i) Would (apart from this Act) contravene any of the data protection principles, or
 - (ii) Would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;
 - (b) Giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene Article 21 of the GDPR (general processing: right to object to processing);
 - (c) On a request under Article 15(1) of the GDPR (General processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in subsection (4A)(a);
 - (d) On a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.
- (7) in this section-

“the data protection principles” means the principles set out in-

(a) Article 5(1) of the GDPR, and

(b) Section 34(1) of the Data Protection Act 2018;

“data subject” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“the GDPR”, “Personal data”, “processing” and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(2), (4), (10), (11) and (14) of that Act).

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

Appendix 3

The Schedule 9 conditions relevant to the first data protection principle

SCHEDULE 9 Section 86 CONDITIONS FOR PROCESSING UNDER PART 4

- 1 The data subject has given consent to the processing.*
- 2 The processing is necessary—*
 - (a) for the performance of a contract to which the data subject is a party, or*
 - (b) in order to take steps at the request of the data subject prior to entering into a contract.*
- 3 The processing is necessary for compliance with a legal obligation to which the controller is subject, other than an obligation imposed by contract.*
- 4 The processing is necessary in order to protect the vital interests of the data subject or of another individual.*
- 5 The processing is necessary—*
 - (a) for the administration of justice,*
 - (b) for the exercise of any functions of either House of Parliament,*
 - (c) for the exercise of any functions conferred on a person by an enactment or rule of law,*
 - (d) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or*
 - (e) for the exercise of any other functions of a public nature exercised in the public interest by a person.*
- 6 (1) The processing is necessary for the purposes of legitimate interests pursued by—*
 - (a) the controller, or*
 - (b) the third party or parties to whom the data is disclosed.*
 - (2) Sub-paragraph (1) does not apply where the processing is unwarranted in any particular case because of prejudice to the rights and freedoms or legitimate interests of the data subject.*
 - (3) In this paragraph, “third party”, in relation to personal data, means a person other than the data subject, the controller or a processor or other person authorised to process personal data for the controller or processor.*