

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 9 December 2005

Name of Public Authority: Bridgend County Borough Council
Address of Public Authority: Civic Offices
Angel Street
Bridgend
CF31 4WB

Nature of Complaint

The Information Commissioner (“the Commissioner”) has received a complaint from an individual (“the complainant”) which states that on 27 January 2005 the following information was requested from Bridgend County Borough Council (“the Council”) under section 1 of the Freedom of Information Act 2000 (“the Act”):

“A copy of the last hygiene inspection report of the Heronston Hotel”

It is alleged that:

The Council failed to provide the complainant with that information in accordance with its obligations under section 1(1) of the Act because it applied the exemption at section 31 of the Act inappropriately.

The Commissioner’s Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

In its Refusal Notice to the complainant, the Council has cited the exemption at section 31(1)(g) of the Act. This states:

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)”

The Council has cited the purpose set out in section 31(2)(c) of the Act:

“(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.”

Reference: FS50073296

The Commissioner does not believe that the Council has demonstrated that prejudice to the exercise of its functions for the above purpose would, or would be likely to, result from disclosure of the information requested by the complainant. Accordingly, the Commissioner's decision is that the Council did not apply the Act correctly in using the exemption at section 31 of the Act to refuse the complainant's request.

A further explanation of the above decision is contained in the attached Statement of Reasons.

Action Required

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that:

The Council shall, within 30 days of the date of this Decision Notice, –

Provide the complainant with the information requested on 27 January 2005.

Failure to comply

Failure to comply with the steps described above 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.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 9th day of December 2005

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Statement of Reasons

Background

On 27 January 2005 the complainant requested:

“A copy of the last hygiene inspection report of the Heronston Hotel.”

In its Refusal Notice to the complainant, the Council cites the exemption at section 31(1)(g) of the Act. This states:

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)”

The Council has cited the purpose set out in section 31(2)(c) of the Act:

“(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.”

The Council has highlighted the Food Safety Act 1990 as an example of an enactment covered by the purpose set out in section 31(2)(c) of the Act.

The Complainant's View

The complainant believes that there is an overwhelming public interest in the disclosure of information relating to public health and safety, and has also cited the examples of other local authorities which have released information of a similar nature under the Act. Indeed, some authorities have pro-actively published inspection reports on their websites.

The Council's Response

The Council has argued that the release of inspection reports would undermine the way it carries out food hygiene inspections. It promotes an informal approach to the inspection of premises, where advice and practical assistance is given to businesses.

The Council is concerned that, if information was publicly available, businesses would no longer be willing to have open discussions with inspectors. The Council would then be forced to adopt a formal inspection regime without the ability to protect the public by what it believes to be more effective means. This, it argues, would be prejudicial to the purpose at section 31(2)(c) of the Act.

Section 31 is a qualified exemption and is therefore subject to a public interest test. The Council has acknowledged that there is a legitimate public interest in the information requested. However, it argues that the ability of the Council to protect the public in a very practical way in addition to prosecution (which by its very nature is after the event) outweighs the public interest in disclosure.

The Commissioner's Decision

The Commissioner accepts that the information withheld does relate to the purpose set out in section 31(2)(c) of the Act, as food hygiene inspections carried out by the Council may result in regulatory action under, for example, the Food Safety Act 1990. However, in order to rely on the section 31 exemption it is necessary for the Council to show that disclosure would, or would be likely to, prejudice the exercise by the public authority of its functions for the purpose described in section 31(2)(c) of the Act.

The Commissioner does not believe that the Council has demonstrated that prejudice to this purpose would, or would be likely to, result from disclosure of the information requested by the complainant.

In reaching his decision, the Commissioner has looked closely at the arguments put forward by the Council. It is possible, although by no means certain, that the disclosure of the information requested would have a detrimental effect on the relationship between the Council's inspectors and some businesses. However, the Commissioner considers that the release of this information would bring greater clarity to, and reinforce public confidence in, the inspection system. It is likely therefore that other businesses would react positively to the release of these reports.

Furthermore, the Commissioner believes that any potential detriment to the relationship between inspectors and businesses would only prejudice the informal approach taken by the Council. It would be very unlikely to prejudice the specific purpose described in section 31(2)(c) of the Act – that of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise – as the Council would still have a duty to inspect premises and, if necessary, pursue formal regulatory action.

The Commissioner therefore does not believe that there is a significant risk of prejudice to the specific purpose set out in section 31(2)(c) of the Act (that of ascertaining whether circumstances which would justify regulatory action exist).

The Commissioner has looked at the public interest arguments in this case and has noted that there is an overwhelming public interest in the disclosure of this category of information. However, as his decision is that the exemption at section 31 of the Act is not engaged, the public interest arguments are not explored further in this Statement of Reasons.