



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 7 June 2006

Public Authority: Salisbury District Council

Address: The Council House
Bourne Hill
Salisbury
Wiltshire
SP1 3UZ

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority ("the Council") has dealt with the complainant's request in accordance with Part I of the Act. Therefore, he does not require any remedial action to be taken by the Council in relation to the complainant's request.

1. **Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner**
 - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the Council has been dealt with in accordance with the requirements of Part I of the Act.
 - 1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The complainant has advised that on 5 January 2005 the following information was requested from the Council in accordance with section 1 of the Act:

The minutes of the Council's Southern Area Committee meeting of 1 August 2002

- 2.2.1 The complainant wrote to the Council on 5 January 2005 requesting the above information. On 28 January 2005 the Council provided the complainant with a copy of the minutes, but explained that it was already in the public domain. The Council believed that the complainant in fact required disclosure of a joint report of the Head of Development Services and the Head of Legal and Property Services which was referred to in the minutes. That being the case, the Council had considered whether that report should be disclosed and had decided that it should not. The Council applied three exemptions under the Act to the information: sections 30, 31 and 42.
- 2.2.2 The complainant wrote to the Council on 4 March 2005 complaining about the decision to withhold details of the report. On 30 March 2005 the Council responded upholding its original decision.

3. Relevant Statutory Obligations under the Act

- 3.1 **Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.”

3.2 **Section 30(1)** provides that -

“(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of –

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –

- (i) whether a person should be charged with an offence, or
- (ii) whether a person charged with an offence is guilty of it

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or

(c) any criminal proceedings which the authority has power to conduct.”

3.3 **Section 31** provides –

“(1) Information which is not exempt 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) ...

(2) The purposes referred to in subsection (1)(g) to (i) are ...

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

3.4 **Section 42** provides that:

“(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”

4. Review of the case

- 4.1.1 The complainant asked the Commissioner to review the Council's refusal of his request for information. The Commissioner requested a copy of the information in question which relates to a report compiled by the Council's Head of Development Services and legal advisers on behalf of the Head of Legal and Property Services. This was referred to at a Committee meeting at which alleged breaches of planning laws by the complainant were discussed. The report summarises the position and makes recommendations for possible courses of action. The Commissioner examined the report in order to ascertain the appropriateness of the application of the exemptions under sections 30, 31 and 42 of the Act.
- 4.2 The Commissioner recognises that the request for information about a planning matter could have been regarded as environmental information and could therefore have been considered under the Environmental Information Regulations 2004. However, the Commissioner considers that the outcome of this particular complaint would have been the same whether it was dealt with under the Freedom of Information Act or the Environmental Information Regulations. In the light of this the Commissioner does not see any merit in pursuing the matter and has determined the complaint by reference to the Freedom of Information Act.

5. The Commissioner's Decision

- 5.1 The Commissioner has considered first whether the requested information is exempt by virtue of sections 30 and 31 and then whether section 42 is engaged.

Section 30 (investigations and proceedings) and Section 31 (Law enforcement)

- 5.2 Section 30 and 31 are mutually exclusive. However, in this particular case, it is clear that the investigation conducted by the Council may have two types of outcome. This may either be a decision as to whether or not to charge a person with a criminal offence, in which case section 30 is relevant, **or** to pursue regulatory action, in which case s. 31 is applicable.
- 5.3 In any event, the Commissioner is satisfied that the information requested by the complainant either falls within the scope of the exemption provided by section 30(1) or that provided by 31. It clearly relates directly to an ongoing investigation by the Council carried out within their powers under the Town and Country Planning Act 1990, with a view to possible

- prosecution or enforcement action. However, these exemptions are subject to the public interest test.
- 5.4 The Council has asserted that the public interest is not sufficient to justify the release of the information by reason of the nature of the content and currency of the information. It has said that the complainant remains in breach of several conditions imposed previously on the development of a site owned by him and, although he currently has planning permission which would, when fully implemented, supersede those breaches, the conditions have not yet been satisfied. Therefore, until that is the case, the Council remains in the position of considering enforcement action. In the light of this the Council considers the situation to be ongoing and has taken the view that the public interest in maintaining the exemption outweighs the potential prejudice to the Council's enforcement role that could result from disclosure.
- 5.5 The complainant does not believe that there are any matters outstanding in relation to the information that he has requested as he has been given planning permission for the site in question and is working through the conditions set on him. He argues that public bodies have to demonstrate accountability and that it must be in the public interest to know how decisions are made by planning departments, particularly in cases such as this where large sums of public money have been spent in pursuing the case.
- 5.6 The Commissioner has considered carefully the arguments in relation to the public interest in disclosing the information. He has also taken into account the responsibilities of councils under the Town and Country Planning Act. He acknowledges the public interest in actions taken by public bodies in matters such as planning applications. Where possible public bodies should be open, transparent and accountable for actions and decisions that they have taken. However, the Commissioner accepts the argument that disclosure needs to be balanced against the public interest in bodies such as the Council being able to carry out their investigations and enforcement role effectively.
- 5.7 In this case it is clear that the Council is not satisfied that the complainant has yet demonstrated that he has complied fully with the planning conditions imposed on him, and therefore believes that the advice given in the report is still relevant. The Commissioner agrees that release of the information contained in the report could compromise the Council's position should they decide to take enforcement action. As matters stand, therefore, the Commissioner has concluded that the public interest arguments in favour of maintaining the exemption outweigh the public interest in disclosure.

Section 42 (legal professional privilege)

- 5.8 The Commissioner has reviewed the information in question and agrees that the legal professional privilege exemption is engaged in this case. For legal professional privilege to apply, information must have been created or brought together for the dominant purpose of litigation or the seeking or provision of legal advice. The bulk of the information contained in the report was provided by two principal solicitors and discusses various points of law in relation to the Town and Country Planning Act as applied to the complainant's case; and advises on enforcement of that legislation. It is clear, therefore, that the dominant purpose was to provide legal advice.
- 5.9 Section 42 is also a qualified exemption and is therefore subject to the public interest test. The Commissioner's consideration of the public interest test in relation to section 30 and 31 is set out above. These considerations also apply to information which is exempt by virtue of section 42.
- 5.10 In addition, the Commissioner also acknowledges that there is a strong public interest in protecting the established principle of confidentiality in communication between professional legal advisers and their clients. It is important that public authorities are able to obtain full and frank legal advice to ensure effectiveness in carrying out their statutory obligations. There must be reasonable certainty relating to confidentiality and the disclosure of legal advice. Without this, the principle of confidentiality would be undermined and the quality of legal advice may not be as full and frank as it should be. This is a compelling reason why such information should not be disclosed unless there is a convincing public interest in doing so. The Commissioner believes that, in this case, the public interest in disclosing the information is not sufficiently strong and that the public interest would best be served by maintaining the exemption.
- 5.11 For the reasons stated above, the Commissioner's decision in this matter is that the Council were entitled by virtue of sections 30 and 42 to withhold the requested information

6. Action Required

- 6.1 In view of the Commissioner's decision that sections 30 and 42 are engaged in this case, he does not require any remedial steps to be taken by the Council.

7. Right of Appeal

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

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 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 7th day of June 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Reference: FAC0070219