

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 7 March 2006

Name of Public Authority: POWYS COUNTY COUNCIL
Address of Public Authority: County Hall
Llandrindod Wells
Powys
LD1 5LG

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint from the above person (the "Complainant") which states that the following information was requested from Powys County Council (the "Council") under section 1 of the Freedom of Information Act 2000 (the "Act"):

An unredacted copy of a letter written by the Headteacher of Llanidloes Community Primary School to the Council on 1 April 2004

It is alleged that:

The Council failed to provide the Complainant with some of that information in accordance with its obligations under section 1(1) because it applied the following exemptions from disclosure inappropriately: section 30 (Investigations and proceedings conducted by public authorities); section 31 (Law enforcement); section 40 (Personal information) and section 41 (Information provided in confidence).

Relevant statutory obligations

Section 17 provides that:

"(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

Review of the case

The Complainant sought access to a letter dated 1 April 2004, written to the Council by the headteacher of his child's school. The bulk of the letter was released to him but some passages were redacted.

The Council initially asserted that the redacted passages in the letter were, variously, exempt under sections 30, 40 and 41 of the Act. No further explanation was given to the Complainant by the Council. At internal review stage the Council again cited these exemptions: it also asserted that the information exempt under section 30 was exempt under section 31 as well. Although the Council gave some further explanation at this stage, there was no consideration of the public interest test aspects of sections 30 and 31 of the Act.

The Commissioner obtained a full copy of the letter. The Commissioner considered the Council's responses and the applicability of the Act. As part of his consideration the Commissioner noted that in this particular case, on behalf of his child, that the Complainant might have rights to some of the redacted information under the Data Protection Act 1998.

Accordingly, the Commissioner decided to try to resolve the matter informally. In the course of the informal resolution process the Council disclosed some additional information to the Complainant following consideration of the rights of the Complainant's child under the Data Protection Act 1998. However, as some information remained withheld, the Complainant requested that the Commissioner issue a Decision Notice.

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.

The Commissioner's decision is as follows:

The Commissioner's decision in this matter is that the Council has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

Section 17(1)(c) in that it failed to state, where it was not otherwise apparent, why the exemption being relied upon to refuse the request for some of the information applied.

The Commissioner also considered the exemptions cited by the Council. It is the Commissioner's view that some of the exemptions claimed (specifically, sections 30 and 31) were not appropriate. The Commissioner considers that all of the information which was withheld by the Council would have fallen under section 40 (personal information) as it constitutes personal data about third parties. As such, the Commissioner does not consider that any more information needs to be released to the Complainant under the Act.

Consideration of the exemptions cited by the Council

Sections 30 and 31 of the Act

The Council asserted that both sections 30 and 31 applied to the same information. Section 30 of the Act covers information relating to investigations and proceedings conducted by public authorities. Section 31 of the Act refers to information held for the purposes of law enforcement.

The Council has not provided at any stage, either to the Complainant or to the Commissioner, any detailed argument as to why it considers these exemptions apply to the information it seeks to protect, nor has it put forward any detailed consideration of the public interest test.

Notwithstanding this, it is the Commissioner's view that none of the redacted information falls within any of the categories listed in the Act under either of these exemptions. The Commissioner also notes that the Act does not permit sections 30 and 31 to apply simultaneously to the same information.

Section 40 of the Act

The information withheld by the Council under section 40 of the Act does, in the Commissioner's view, constitute personal data about third parties. The Commissioner considers that the release of this information to a member of the public would contravene at least one of the data protection principles found in the Data protection Act 1998.

Section 41

Section 41 of the Act covers information that was provided in confidence. In view of the paragraph above, the Commissioner has decided not to consider the applicability (or otherwise) of section 41.

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 does not require Powys County Council to take any remedial steps under the Act.

This Decision Notice does not deal in any detail with any rights the Complainant, on behalf of his child, may have under the Data Protection Act 1998.

Right of Appeal

Reference: FS50066311

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 7th day of March 2006

Signed:

Graham Smith
Deputy Commissioner

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