



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 6 June 2006

Name of Public Authority: Pembrokeshire County Council
Address of Public Authority: County Library
Dew Street
Haverfordwest
Pembrokeshire SA61 1SU

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under Section 1(1).

The Commissioner requires the Public Authority to release the following information within 30 days of the date of this Notice:

The company profile of ORA Ltd which was submitted to the Public Authority on 10 July 2000 in support of its tender and the list of relevant projects which was submitted at the same time.

1. Freedom of Information Act 2000 (the "Act" or "FOIA") – Applications 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 public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the "Act" or "FOIA").

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- the application has been withdrawn or abandoned,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 26 January 2005 the following information was requested from the public authority in accordance with Section 1 of the Act.

- “1. *The 18 page summary submitted by ORA Ltd on 10 July 2000 in support of their tender*
2. *Dr Michael Ryan’s cv. Submitted at the same time*
3. *The company profile of ORA Ltd. Submitted at the same time*
4. *The list of relevant projects. Submitted at the same time*”

- 2.2 The Public Authority refused to provide this information stating that it was exempt information under Section 41 of the Act in that the release of this information would constitute an actionable breach of confidence.

- 2.3 The Complainant requested an internal review of this refusal on 21 February 2005. Following that review, the Public Authority concluded that the application of the Section 41 exemption was appropriate. It advised the Complainant of the outcome of its review on 21 March 2005.

- 2.4 The Complainant had, by this time, already made initial contact with the Commissioner seeking an adjudication. He then forwarded the outcome of the Public Authority’s review to the Commissioner on 22 March 2005. As outlined in 1.2 above, the Commissioner is not under a duty to make a decision if a complainant has failed to exhaust an internal review. Having received the outcome of the internal review, the Commissioner proceeded to consider the complaint.

3. Relevant Statutory Obligations under the Act

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.”

4. Review of the case

- 4.1 Section 41(1) states that:

“Information is exempt information if-

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

4.2 In order to investigate whether Public Authority had correctly applied this exemption, the Commissioner requested a copy of the information listed in 2.1 above.

4.3 The Commissioner notes that item 1 in the list of requested information (“*the 18 page summary*”) comprises items 2-4. In addition, he notes that ORA Ltd’s company profile (Item 3) is included in Dr Ryan’s cv (Item 2). The separate components of the requested information are therefore:

- a) Dr Ryan’s cv
- b) ORA Ltd’s company profile (“the company profile”)
- c) The list of relevant projects (“the project list”)

4.4 In correspondence with the Commissioner, the Complainant acknowledged that Dr Ryan’s cv would contain personal information about Dr Ryan which is subject to the requirements of the Data Protection Act 1998 (“DPA98”) (although the Public Authority had not claimed the relevant FOIA exemption (Section 40(2)) in respect of this information). Under Section 40(2), information is exempt information if its disclosure would contravene the data protection principles listed in Schedule 1 of DPA98. In any event, the complainant confirmed that he did not wish the Commissioner to consider Dr Ryan’s cv in this Decision. Noting that the company profile is included in Dr Ryan’s cv, the Commissioner has therefore included this element of the cv in his consideration of this complaint.

4.5 The Commissioner is satisfied that the requested information in this case was obtained by the public authority from another person, that person being ORA Ltd. This satisfies the requirement of Section 41(1)(a) quoted in 4.1 above. However, requested information is not exempt under Section 41 unless its disclosure to the public would also constitute a breach of confidence actionable by ORA Ltd or any other person. The Commissioner therefore considered whether the disclosure of the company profile and the project list would constitute an actionable breach of confidence.

The company profile

4.6 The Commissioner notes that the full company name of ORA Ltd is O’Riain Associates International Limited. The company is registered in the Republic of Ireland. Dr Ryan is the Managing Director of ORA Ltd.

4.7 When the Commissioner began his investigations, the information contained in company profile that is held by the Public Authority was reproduced word for word on ORA Ltd’s website <http://www.oriain.com>. The Commissioner notes that ORA

Ltd's website has been updated since his investigations began. However, that update has expanded upon the information rather than reduced it. Given that the company profile is available on ORA Ltd's website, the Commissioner does not therefore believe that this information is exempt information under Section 41.

The project list

4.8 The Commissioner considered the following three points in order to determine whether a duty of confidence existed in relation to the project list:

1. Was the information obtained in circumstances which give rise to a duty of confidentiality
2. Is the information confidential in nature?
3. Would there be any detriment suffered if the information were to be released?

4.9 Was the information obtained in circumstances which give rise to a duty of confidentiality?

The Public Authority asserted that there was an implied duty of confidence when this information was provided by ORA Ltd based on a general expectation in local authority contractual negotiations that was prevalent at the time (July 2000). The Commissioner requested evidence to support this. The Public Authority did not provide evidence of any express statement or general practice relating to confidentiality that was either contemporaneous with or predated the tender submission but provided evidence of a retrospective assertion of confidentiality from October 2004.

4.10 As the access provisions of the Act were not in force at the time the request was made, the Commissioner would not expect the Public Authority to have negotiated the contract with ORA Ltd with the Act's information provisions in mind. He further acknowledges that neither party would have expected that the information could be the subject of an information access request some five years after it was provided.

4.11 However, the Commissioner is not persuaded that Section 41 is engaged by a retrospective assertion of confidentiality. Nor is he persuaded that a duty of confidence exists by virtue of the fact that a request for its release is not anticipated at the time information is obtained. In the absence of any other evidence, the Commissioner is not persuaded that the information was obtained in circumstances which give rise to a duty of confidentiality.

4.12 Is the information confidential in nature?

The complainant in this case drew the Commissioner's attention to a statement on the "Portfolio" page of ORA Ltd's website which advises site visitors that "a comprehensive list of Clients and Projects [is] available on request".

4.13 Having considered the information, the Commissioner does not consider that information of this kind has a sufficient quality of confidence to engage the exemption claimed. It is ORA Ltd's evidence of relevant past experience on previous contracts to support a tender bid. It explains why ORA Ltd believes it is qualified to contract with the Public Authority at public expense. It does not, in the

Commissioner's view, reveal any sensitive commercial data or information that could be regarded as sensitive. In the circumstances of this case, the Commissioner does not believe that this information can legitimately be withheld from public scrutiny.

- 4.14 Would there be any detriment suffered if the information were to be released?
The Public Authority has explained that an acrimonious relationship exists between the complainant and ORA Ltd and between the complainant and Dr Ryan. It has suggested that a pattern of previous behaviour exhibited by the complainant and an associate indicates that there may be future detriment to ORA Ltd and to Dr Ryan were this information to be released, because the complainant or an associate may approach the organisations that Dr Ryan claimed to have worked for. It is alleged that these approaches are made with the purpose of questioning the credentials of ORA Ltd and of Dr Ryan himself.
- 4.15 In the Commissioner's view it was not, at this stage, sufficiently established by the Public Authority that such approaches would take place or even what the detrimental effect on ORA Ltd or Dr Ryan would be. If such approaches did take place and they were designed merely to find out whether work was undertaken with those organisations, then the disclosure would, if anything, serve the interests of a greater transparency in relation to the council's relationship with ORA Ltd and Dr Ryan. Whilst this may represent a detriment to Dr Ryan in the event that his claims prove to be untrue, this is not the sort of detriment the Commissioner believes is needed to establish a duty of confidentiality. If there was a real prospect of direct persecution or intimidation of Dr Ryan, this would amount to a significant detriment, but this was not established by the Public Authority.
- 4.16 On 6 March 2006, the Commissioner sent a Preliminary Decision Notice ("PDN") to the Public Authority. The Commissioner elected to send a PDN because, in the circumstances of this case, he considered that it might assist informal resolution. The PDN explained that the Commissioner was minded to serve a Decision Notice requiring the Public Authority to release the company profile and the project list. The PDN outlined the basis for the Commissioner's view and stated that the Public Authority had 30 days to submit representations where it disagreed with that view.
- 4.17 The Public Authority submitted its representations on 7 April 2006 having received approval from the Commissioner for a short extension to the deadline that had been set. Its representations focussed on the assertion that release of this information would be detrimental to ORA Ltd and to Dr Ryan. It reiterated and expanded upon the points it had made earlier which are outlined in 4.14 above.
- 4.18 The Commissioner notes the Public Authority's concerns. However, he is not persuaded that the potential for detriment of the nature suggested by the Public Authority is sufficient to engage the Section 41 exemption from the duty to disclose the requested information.

4.19 **Conclusion**

As the information was neither communicated in circumstances giving rise to a duty of confidence nor confidential in nature and there is no conclusive evidence of significant detriment, the Commissioner does not believe that a duty of confidence existed in relation to the company profile and the project list. Consequently, the Commissioner believes that disclosure of the information under the Act cannot amount to an actionable breach of confidence. The Commissioner has, therefore, concluded that the exemption under s41 cannot be engaged in order to withhold the requested information.

5. **The Commissioner's Decision**

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

Section 1(1) – in that it failed to communicate to the Complainant such of the information specified in his request as did not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the public authority to refuse access.

6. **Action Required**

- 6.1 The Commissioner requires the Public Authority to disclose the following information to the Complainant:

The company profile of ORA Ltd submitted to the Public Authority on 10 July 2000 in support of its tender and the list of relevant projects which was submitted at the same time. These are items 3 and 4 of the Complainant's request for information under the Act dated 26 January 2005.

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 6th day of June 2006

Signed

**Richard Thomas
Information Commissioner**

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