



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 27 April 2006

Public Authority: The City and County of Swansea
Address: County Hall
Oystermouth Road
Swansea
SA1 3SN

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has dealt with the complainant's request in accordance with Part I of the Act, because it applied the exemption at section 31 appropriately.

- 1. Freedom of Information Act 2000 (the 'Act') – 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').
 - 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 - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.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 13 May 2005 the following information was requested from the public authority in accordance with section 1 of the Act:

“full copies of the Royal Society for the Prevention of Accidents reports into safety at Swansea Marina which Swansea Council asked for. There is one from September 2001 and another from August 1994.”

- 2.2 The public authority replied on 1 June 2005, stating that it holds one report from the Royal Society for the Prevention of Accidents (the ‘RoSPA report’). However, the public authority withheld it, citing the exemptions at sections 22 and 31(1)(c) of the Act.
- 2.3 On 7 June 2005 the complainant requested an internal review of this decision. The outcome of this review was sent to the complainant on 23 June 2005. The review upheld the decision to refuse the request, citing sections 22 and 31 of the Act.

3. Relevant Statutory Obligations under the Act

- 3.1 **Section 1(1)** of the Act 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 22(1)** of the Act states –

“Information is exempt information if –

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”

- 3.3 **Section 31(1)(c)** of the Act states –

“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 –

- (c) the administration of justice”.

4. Review of the case

The Complaint

- 4.1 In complaining to the Commissioner, the complainant argued that there is an overriding public interest in the RoSPA report being released, as it relates to issues of public safety.
- 4.2 In particular, the complainant stated that, as no date had been given for the future publication of the RoSPA report, it was being withheld indefinitely. According to the complainant, this could not be justified on public interest grounds.

The Public Authority's view

- 4.3 In seeking to rely on the exemptions at sections 22 and 31 of the Act, the public authority stated that the RoSPA report has been submitted as evidence in a forthcoming Coroner's inquest into the death of Mr Craig Lucas in March 2003.
- 4.4 In terms of the section 22 exemption, the public authority stated that the RoSPA report would be published after the inquest. In terms of section 31, the public authority believed that the Coroner's inquest would be prejudiced if the RoSPA report was disclosed prior to the completion of the inquest. At the time of the request, no date had been set for the inquest.
- 4.5 The public authority has acknowledged that there is a strong public interest in the disclosure of the RoSPA report. However, it has argued that it would not be in the public interest to risk any prejudice to the Coroner's inquest. Therefore, the public authority concluded that the public interest in maintaining the exemptions outweighed the public interest in disclosure.

The Commissioner's Investigation

- 4.3 In his investigation, the Commissioner has paid particular attention to the views of the Coroner himself. Whilst it is important to consider this case on its own merits, the Commissioner feels that the Coroner's views as to the risk of any prejudice to his inquest are persuasive.
- 4.4 It is the view of the Coroner that, should the inquest be heard in front of a jury, there is a significant risk that the disclosure of the RoSPA report could lead to the inquest being prejudiced. However, the Coroner does not feel that there would be a significant risk of prejudice if the inquest was heard by him alone – he has already seen a copy of the RoSPA report and does not feel that he would be unduly influenced by the public disclosure of the report.
- 4.5 Before reaching a decision, the Commissioner has looked at ways of resolving the case informally. In particular he has explored the changing nature of the risk of prejudice as the circumstances of the case have altered over time. It is clear that the progress of the inquest has changed the likelihood of prejudice and therefore application of exemptions under the Act.

- 4.6 Whilst this Decision Notice relates to the public authority's handling of the original request (dated 13 May 2005), the Commissioner notes that the outcome may have been different had the request been made at a later date. In particular, at a hearing on 22 February 2006, the Coroner determined that the inquest would not be heard before a jury. Accordingly, the Commissioner notes that the risk of prejudice to the inquest, and hence the administration of justice, has reduced to the extent that it may be difficult for the public authority to rely on the exemption at section 31 of the Act if it had to respond to a future request for this information.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the public authority has dealt with the complainant's request in accordance with the requirements of Part I of the Act. The reasons for this decision are described in more detail below.

Section 31

- 5.2 In order to determine whether the exemption has been applied appropriately in this case, it is necessary to determine whether the disclosure of the RoSPA report would, or would be likely to, prejudice the purpose of the exemption (in this case, the administration of justice).
- 5.3 The public authority has claimed that disclosure would prejudice the inquest into the death of Mr Craig Lucas, which is to be held by the Coroner for the City and County of Swansea. At the time of the request, it was anticipated that the inquest would be held in the autumn of 2005. It was not yet clear whether the inquest would be heard with, or without, a jury.
- 5.4 Having taken advice from the Coroner (see paragraph 4.4, above), the Commissioner is satisfied that, whilst there was no certainty of prejudice to the administration of justice, there was a significant risk that prejudice would occur as a result of disclosure. Accordingly, the Commissioner concludes that the exemption at section 31(1)(c) of the Act was triggered in this case.
- 5.5 Section 31 is a 'qualified' exemption and it has therefore been necessary to consider the public interest arguments in relation to this exemption. The Commissioner agrees with the complainant that there are strong public interest arguments in favour of disclosure, as the RoSPA report deals with issues of public safety. However, the Commissioner believes that there is a clear public (as well as private) interest in ensuring that the inquest reaches its verdict without fear of prejudice. Accordingly, he has concluded that the public interest in ensuring that the Coroner's inquest is not prejudiced outweighs the public interest in disclosure.

Section 22

- 5.6 The Commissioner has not looked in detail at the arguments in relation to the use of the section 22 exemption, as he has decided that the public authority applied the Act correctly in withholding the information by virtue of the exemption at section 31 of the Act.

5.7 However, the Commissioner notes that the public authority has not provided sufficient evidence to satisfy him that the decision to publish the RoSPA report was made prior to the receipt of the request for information.

6. Action Required

6.1 The Commissioner has decided that the public authority applied the Act correctly in withholding the information requested in this case by virtue of the exemption at section 31(1)(c) of the Act. Accordingly, he does not require the public authority to take any remedial steps.

6.2 However, the Commissioner notes that the circumstances relating to the request have changed in the time since the original request was made and considered by the public authority. Whilst the Commissioner has found that the public authority applied the Act correctly in responding to this particular request, he would expect the public authority to consider any new request for this information in the light of the changed circumstances.

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 27th day of April 2006

Signed

**Graham Smith
Deputy Commissioner's Office
Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF**