

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 16 January 2008

Public Authority: Commission for Local Administration in England
(Local Government Ombudsman)

Address: Millbank Tower
Millbank
London
SW1P 4QP

Summary

The complainant made a request to the public authority for information regarding complaints she had previously made against her local authority. The public authority refused the request under section 44 of the Act which provides for an exemption from the right to know where disclosure is prohibited under any other enactment. It said that the relevant statutory prohibition was section 32(2) of the Local Government Act 1974. The Commissioner has reviewed the information withheld from the complainant and has found that section 44 was correctly applied for the majority of the information. However the Commissioner has also found that the public authority breached section 1 of the Act by misapplying section 44 to the minority of the information not covered by the statutory prohibition.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 16 August 2005 the complainant wrote to the public authority to request sight of all files relating to five specific complaints which she had previously made to the public authority.

3. The public authority responded to the request on 25 August 2005 stating that it felt that the request was phrased in vague terms and asking her to clarify what information she required.
4. On 26 August 2006 the complainant wrote to the public authority to say that she was now confining her request to information related to two specific requests. She clarified the nature of the information she required as follows:
 - I. *Copies of letters/emails from the Ombudsman/his investigators(s) to South Oxfordshire District Council.*
 - II. *Copies of letters/emails from South Oxfordshire District Council to the Ombudsman/his investigator(s) but not those already copied to me.*
 - III. *Copies of documents with notes of telephone discussions held with officers of South Oxfordshire District Council.*
 - IV. *Copies of notes of any meetings.*
5. The public authority responded on 8 September 2005 by explaining that the information was exempt from disclosure under section 44 of the Act by virtue of section 32(2) of the Local Government Act 1974. It said that under this statutory prohibition it is not permitted to disclose any information obtained in the course of, or for the purposes of, the investigation of a complaint, unless he or she considers it necessary for the purposes of the investigation. The public authority said that it believed that releasing the information is not necessary for the purposes of the investigation.
6. On 12 September 2005 the complainant asked the public authority to conduct an internal review of its decision to refuse her request.
7. The public authority provided the complainant with the outcome of its internal review on 6 October 2005. It said that it was upholding its earlier decision to refuse the request under section 44 of the Act by virtue of section 32(2) Local Government Act 1974.

The Investigation

Scope of the case

8. On 11 October 2005 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the public authority's decision to refuse her request for information.

Chronology

9. On 27 July 2006 the Commissioner wrote to the public authority notifying it of the complaint and inviting its comments. The Commissioner invited the public authority to clarify whether all of the information requested by the complainant was obtained in the course of, or for the purposes, of its investigation. The Commissioner also enquired as to whether the public authority had ever issued a formal report on any of the complaints to which the complainant's information request related.
10. In response the public authority said it was confirming that the information requested by the complainant was obtained in the course of, or for the purposes of, the investigation. The public authority also explained that its investigations into the two complaints to which the requested information relates, had been discontinued and as such no report was issued.
11. The Commissioner subsequently asked the public authority to provide him with copies of all of the information it had withheld from the complainant under section 44 of the Act and also asked that it provide him with a brief chronology of its investigations into the two complaints to which the requested information relates.
12. After explaining its reasoning behind its decision to refuse the request under section 44 of the Act, by virtue of section 32(2) LGA 1974, the public authority provided the Commissioner with the information that had been withheld from the complainant.

Findings of fact

13. The complainant's information request related to two complaints she had previously made to the public authority against her local authority South Oxfordshire District Council. The two complaints concerned the granting of planning applications which were opposed by the complainant.
14. The public authority confirmed that it discontinued its investigations into the complaints on 4 June 2003 and 21 October 2004 and that no reports were issued into the complaints.

Analysis

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15. A full text of all the relevant statutes referred to in this section is enclosed within the legal annex.

Exemption

16. The Commissioner recognises that section 32(2) of the Local Government Act 1974 acts as a statutory prohibition on the disclosure of information obtained in the course of, or for the purposes of, an investigation by the public authority and is satisfied that responding to a freedom of information request is not one of the reasons for disclosure provided for in sub-sections a) – c) of section 32(2). The main issue to be considered as part of this decision is whether the information requested by the complainant was obtained in the course of, or for the purposes of, its investigation into her previous complaints against South Oxfordshire District Council.
17. The Commissioner has reviewed the information withheld from the complainant and has considered the extent to which any or all of this information is covered by the statutory prohibition. The Commissioner has firstly considered part II of the complainant's request for copies of any letters or emails sent to the public authority by South Oxfordshire District Council. It is clear that information falling within the scope of this part of the request would have been obtained by the public authority in the course of, or for the purposes of, its investigation into the complaints against the Council. The Commissioner is satisfied that this information is covered by the statutory prohibition and that the exemption was applied correctly.
18. Parts III, IV and V of the complainant's request are requests for information generated by the public authority itself including copies of letters, emails, telephone transcripts and notes of meetings. It is the Commissioner's view that where such information draws upon, or makes reference to, the complaints against South Oxfordshire District Council or the public authority's investigation into these complaints then this constitutes information obtained in the course of, or for the purposes of, the investigation. Whilst such documents may have been generated by the public authority itself and have therefore not been physically obtained, it is clear that the information contained within the documents will have been obtained in the course of the investigation.
19. The majority of the information held by the public authority, falling within parts III, IV and V of the complainant's request is covered by the statutory prohibition. However, having reviewed the information withheld from the complainant, the Commissioner has found that a small amount of information generated by the public authority does not draw upon, or make reference to, the complaints against South Oxfordshire District Council or the public authority's investigation into these complaints. Therefore the Commissioner finds that such information is not covered by the statutory prohibition.
20. Section 44 is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.
21. The Commissioner recognises that the public authority has discretion to disclose information obtained in the course of or for the purposes an investigation where it feels that it would be beneficial for the purposes of that investigation. In reaching

his decision the Commissioner has not sought to question the public authority's use of its discretion in this regard.

The Decision

22. The Commissioner's decision is as follows:

- The public authority complied with section 1 of the Act to the extent that it correctly applied section 44 of the Act.
- The public authority breached section 1 of the Act to the extent that it misapplied section 44.

Steps Required

23. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Disclose any information falling within the scope of the request which was not obtained in the course of, or for the purposes of, its investigation.

24. The Commissioner has supplied the public authority with a list of documents which should be disclosed to the complainant in order to meet the requirements of this decision notice.

Failure to comply

25. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

26. Either party has the right to appeal against this Decision Notice to the Information 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

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

Dated the 16th day of January 2007

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

Section 44 of the Act provides that:

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- a) is prohibited by or under any enactment,
- b) is incompatible with any community obligation, or
- c) would constitute or be punishable as a contempt of court.”

Section 32(2) of the Local Government Act 1974 provides that:

“Information obtained by a local Commissioner, or any officer of either Commission, in the course of or for the purposes of an investigation under this part of the Act shall not be disclosed except:

- a) for the purposes of the investigation and any report to be made under section 30 or 31 above; or
- b) for the purposes of any proceedings for an offence under the Official Secrets Act 1911 to 1939 alleged to have been committed in respect of information obtained, by virtue of this part of this Act, by a local Commissioner or by an officer of either Commission or for an offence of perjury alleged to have been committed in the course of an investigation under this part of this Act or for the purposes of an enquiry with a view to the taking of such proceedings, or
- c) for the purposes of any proceedings under section 29(9) above.”