

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 10 May 2011

**Public Authority:** Norfolk County Council  
**Address:** County Hall  
Martineau Lane  
Norwich  
Norfolk  
NR1 2DH

### Summary

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The complainant asked the Council to release the assessment criteria it used to assess applications it received for Blue Badges. The Council responded releasing the requested information outside the provisions of the Act. In respect of disclosure under the Act, it informed the complainant that it considered the information was exempt from disclosure under section 31(1)(a). As the complainant remained dissatisfied, he approached the Commissioner. The Commissioner has considered the application of this exemption to the requested information. He has concluded that the requested information is exempt from disclosure under section 31(1)(a) and that the public interest in favour of disclosure is outweighed by the public interest in maintaining this exemption. He therefore requires no further action to be taken.

### The Commissioner's Role

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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

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2. The complainant contacted the Council on 21 June 2010 to request the following information:

"...a copy of the objective criteria against which the County Council assesses applications for the award of Blue Badges and for details of which of these criteria the application submitted by my wife did not meet and why it did not meet them."

3. The Council responded on 20 July 2010. It issued two separate letters to the complainant. The first released the requested information to the complainant on a confidential basis outside the provisions of the Act. The second responded to the information request under the Act and advised the complainant that the Council considered the requested information to be exempt from disclosure by virtue of 31(1) of the Act as disclosure would be likely to prejudice the prevention or detection of crime.
4. The complainant wrote to the Council on 30 July 2010 to request an internal review.
5. The Council responded on 18 August 2010 upholding its application of section 31(1) of the Act to the requested information.

## **The Investigation**

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### **Scope of the case**

6. On 26 August 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Council had acted appropriately by refusing to disclose the information under the Act by virtue of section 31(1).
7. The Commissioner noted that the Council released the requested information to the complainant on a confidential basis. He therefore made enquiries to the complainant as to why this disclosure did not satisfy his request. The complainant clarified that he required disclosure of the requested information to be made under the Act to enable him to use the information to raise awareness about the assessment of Blue Badges and to assist him with his own personal complaint against the Council in respect of its decision to refuse his wife a Blue Badge.
8. The Commissioner also clarified the scope of the complaint he had received. He is satisfied that the complaint is limited to the provision of the assessment criteria for Blue Badges used by the Council. Other matters such as the complainant's request for further details relating to

his wife's application have been addressed separately and therefore do not form part of this complaint.

## **Chronology**

9. The Commissioner wrote to the Council on 25 October 2010 to inform it that he had received a complaint from the complainant.
10. The Commissioner wrote to the Council on 8 November 2010 to request a copy of the withheld information and more detailed arguments to support its application of section 31(1)(a) of the Act.
11. The Council responded on 17 November 2010 forwarding a copy of key correspondence to the complainant and a copy of the withheld information.
12. As the Council did not supply further, more detailed, arguments to the Commissioner to support its application of section 31(1)(a) of the Act, he contacted the Council on 30 November 2010 to request that this outstanding information is provided as soon as possible.
13. The Council responded on 9 December 2010 providing the information requested.

## **Analysis**

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### **Exemptions**

#### Section 31(1)(a) – law enforcement

14. Section 31(1)(a) of the Act states that information is exempt from disclosure under the Act if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
15. The Council confirmed that the withheld information is a decision tree which includes the scores allocated to specific questions and answers during the on-line Blue Badge application process. The withheld information also contains the exact scores that are required in order to gain an automatic acceptance on line for a Blue Badge, an automatic refusal and the score that would require a referral to Council staff for a decision to be made.
16. It advised that disclosure under the Act is disclosure to the world at large and if this information was placed into the public domain it could be used by members of the public wishing to apply for a Blue Badge

and enable a person to falsely obtain one. It confirmed that disclosure would be likely to increase the number of fraudulently obtained Blue Badges already in operation and provide members of the public with the tools required to commit such fraud. It argued that such effects are not conducive to the 'prevention of crime'.

17. The Council confirmed that a false application is an offence of Regulation 9(2)(b) of the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 (SI 2000/682) and as an authority it is obliged to take appropriate steps to prevent such offences. One such step is the non disclosure of the scoring system applied to its assessment criteria.
18. The Council explained in more detail that it no longer operates a paper based application service. Instead it operates an automated on line application service, which was put into place to ensure Blue Badge applications are dealt with quicker and are easier and more accessible to those that believe they need one. As stated above, dependent upon how the applicant answers the assessment criteria the system will generate automated scores. The system will then either generate an automatic refusal, acceptance or inform the applicant that their application will require more detailed consideration by Council staff before a decision is made.
19. It argued that if the assessment criteria and the scores awarded to each were released into the public domain an applicant could quite easily know in advance how to answer each question correctly in order to attain a Blue Badge. It also confirmed that it would also be possible for an applicant to make multiple applications via the automated system. With the correct answers to the relevant questions, an applicant could obtain more than one Blue Badge.
20. The Council therefore concluded that disclosure would be likely to increase the number of fraudulent Blue Badges in operation and would therefore be likely to prejudice the prevention of such offences.
21. The Commissioner has given the arguments presented by the Council detailed consideration. He is satisfied that the fraudulent use of a Blue Badge is an offence of Regulation 9(2)(b) of the Disabled Persons (badges for Motor Vehicles) (England) Regulations 2000 and therefore such fraudulent activity is a 'crime' for the purposes of this exemption. He now needs to consider how likely disclosure of the requested information in this case would or would be likely to prejudice the prevention or detection of crime.

22. There are two limbs to the prejudice test; “would be likely to prejudice” and “would prejudice”. The first limb of the test places a lesser evidential burden on the public authority to discharge. “Would be likely to prejudice” was considered in the Information Tribunal hearing of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)*. The Tribunal stated that:

“the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk”.
23. The second limb of the test “would prejudice” places a much stronger evidential burden on the public authority to discharge. Whilst it would not be possible to prove that prejudice would occur beyond any doubt whatsoever, it is the Commissioner’s view that prejudice must be at least more probable than not.
24. The Council did not state explicitly which limb of the prejudice test is being claimed in this case. The Commissioner will therefore go on to consider the lesser threshold of “would be likely to”. It follows that if this threshold is not met, the higher threshold of “would” is not met also.
25. The Commissioner notes that there is a significant problem in the UK with the fraudulent use of Blue Badges. The National Fraud Initiative (NFI) 2008/09 conducted by the Audit Commissioner<sup>1</sup> identified fraud, overpayments and errors in public spending to the value of £215 million; £13.7 million of this related to the misuse of Blue Badges across the UK. He also notes that there is a lucrative black market currently in operation in the UK for the sale of these Badges. The NFI 2008/09 highlighted that fraudsters are forging badges and stealing them from cars to sell on this black market for as much as £500. The Commissioner considers it is easy to see why there is such a market for these badges. They not only provide badge holders with unlimited free parking at ‘on-street’ parking meters and pay-and-display car parks and up to 3 hours parking on single or double yellow lines anywhere within the UK, but also an exemption from the congestion charge in London.
26. The requested information in this case not only contains the scoring for each individual question used in the assessment process but also the total score that is required in order to generate an automatic acceptance and refusal. Considering the widespread problem in the UK

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<sup>1</sup> [http://www.audit-commission.gov.uk/SiteCollectionDocuments/Downloads/10\\_0084\\_NationalFraudInitiative\\_Report\\_WEB2.pdf](http://www.audit-commission.gov.uk/SiteCollectionDocuments/Downloads/10_0084_NationalFraudInitiative_Report_WEB2.pdf)

with the fraudulent use of Blue Badges, it is easy to see exactly how this information would be desirable to those wishing to fraudulently obtain a badge for themselves or a number of badges to sell on the black market. If this information was disclosed, such individuals would be able to apply on line and tailor their responses to the assessment questions to ensure the application is automatically accepted. Disclosure would therefore be likely to result in an increase in the number of fraudulently used Blue Badges across the UK. Currently there are no mechanisms in place at the Council to prevent individuals making multiple applications. Disclosure of this information would be likely to therefore make it easy for criminals to obtain a number of Badges to sell on the black market.

27. The fraudulent use of a Blue Badge is a criminal offence. The number of public authorities prosecuting offenders is increasing and currently they face a fine of up to £1500.00. The Commissioner is satisfied in this case for the reasons explained above that disclosure of the requested information would be likely to result in an increase in the number of fraudulent Blue Badges in operation in the UK and would therefore, overall, be likely to prejudice the prevention of such crime. For this reason, the Commissioner is satisfied that section 31(1)(a) is engaged in this case.
28. As the Commissioner has concluded that section 31(1)(a) applies in this case, it is now necessary for him to go on to consider the public interest test.

#### Public interest arguments in favour of disclosing the requested information

29. The Council stated that it acknowledged there is a public interest in the overall transparency and accountability of the Council. It accepted that there was also a public interest in the Blue Badge scheme and members of the public having access to information which enables them to scrutinise exactly how these badges are awarded to ensure applications are assessed fairly and correctly and are only granted to genuine applicants who meets the appropriate criteria.

#### Public interest arguments in favour of maintaining the exemption

30. However, the Council felt in this case that the public interest rested in non disclosure. The Council stated in this case that if disclosure were ordered, it would effectively be releasing into the public domain information which could be used in the commission of an offence and this would not be in the public interest.

31. It also stated that the knock-on effects of people being able to obtain a Blue Badge when they are not entitled to it are not in the public interest. The Council confirmed that it considers disclosure would be likely to lead to greater public expense in tracking down and prosecuting offenders. It would also lead to a rise in the use of disabled parking spaces and those with legitimately obtained badges being unable to park thereby diminishing their independence.

#### Balance of the public interest arguments

32. The Commissioner considers there is a public interest in members of the public gaining access to information which enables them to understand more clearly exactly how Blue Badges are awarded. He notes that the Blue Badge scheme involves a considerable amount of public funds. He therefore accepts that the public have a right to know how this scheme is operated and gain access to information which enables them to review whether Blue Badge applications are being assessed fairly and effectively.
33. The Commissioner also notes that individual public authorities have their own way of assessing Blue Badge applications and that the assessment criteria used in one authority may differ to that being used in another. He accepts that there is a public interest in understanding more clearly exactly what assessment criteria is being used within local authorities to ensure overall applications are still only being granted to those that meet the wider guidance issued by the Department of Transport.
34. However, in this particular case the Commissioner considers the public interest in maintaining the exemption outweighs the public interest in disclosure. He will now explain why.
35. In this case the requested information is very specific. As stated in paragraph 26 above, it not only contains the individual scores for each assessment question it also contains the overall score that is required to generate a particular response from the online application service operated by the Council. If this information was released, it could be used by applicants who would not normally meet the criteria to gain access to a Blue Badge. Disclosure would also assist those criminals that sell such badges on the black market to gain access to more fraudulent badges, increasing the already widespread problem within the UK of the misuse of Blue Badges. The Commissioner considers such effects are likely if this information was disclosed and such consequences are not in the public interest. He considers the public interest rests in reducing this widespread problem not releasing information which would in this case make the situation worse.

36. The Commissioner accepts that an increase in fraudulent Blue Badges would result in an increase in the demand for disabled facilities which would in turn result in those individuals who genuinely qualify for a badge being less and less able to park. Such consequences would reduce the independence of disabled people which would be unfair.
37. It is also noted that parking fees from publicly owned car parks and facilities is an important source of revenue for the government. If there was an increase in the number of fraudulent Blue Badges in use, this would mean that there are fewer people paying the parking fees charged in such car parks. The revenue generated from such facilities is used to support local services. A reduction in the revenue generated from such public facilities for Blue Badges that are not legitimately obtained is not in the public interest.
38. For the reasons explained above the Commissioner has concluded that the public interest in favour of disclosure is outweighed by the public interest in maintaining this exemption in this case.

## **The Decision**

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39. The Commissioner's decision is that Council dealt with the request for information in accordance with the Act. The Council was correct to rely on section 31(1)(a) of the Act for the non disclosure of this information.

## **Steps Required**

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40. The Commissioner requires no steps to be taken.



## Right of Appeal

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41. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

**Dated the 10<sup>th</sup> day of May 2011**

**Signed .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### 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.”

### Section 31(1)

Provides that –

“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-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”