

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2011

Public Authority: Local Government Ombudsman
Address: 10th Floor
Millbank Tower
London
SW1P 4QP

Decision (including any steps ordered)

1. The complainant requested information obtained by the Local Government Ombudsman (LGO) describing action taken by public authorities to comply with recommendations made by the LGO. The LGO refused to disclose this information, citing the exemption provided by section 44(1)(a) of the FOIA.
2. The Commissioner's decision is that the LGO applied the exemption provided by section 44(1)(a) of the FOIA correctly and so it is not required to disclose the information requested.

Request and response

3. On 6 April 2011, the complainant wrote to the LGO and requested information in the following terms:

"For the reporting year 2009/10 only, please supply any and all information you received from the authorities concerned, or the complainants involved, that prove the authorities concerned complied in full with the recommendations made in the reports you issued finding maladministration leading to injustice."
4. The LGO responded on 9 May 2011. It stated that the request was refused under the exemption provided by section 44(1)(a) (statutory prohibitions) of the FOIA.

5. Following an internal review the LGO wrote to the complainant on 27 May 2011. It stated that the refusal under section 44(1)(a) was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 5 June 2011 to complain about the way his request for information had been handled. The complainant at this stage set out his reasoning as to why the exemption provided by section 44(1)(a) of the FOIA had been cited incorrectly.

Reasons for decision

7. Section 44(1)(a) of the FOIA provides that information is exempt if disclosure is prohibited by any enactment other than the FOIA. The task for the Commissioner here is, therefore, to consider whether the disclosure of the information requested by the complainant is prohibited by law; if this is the case, this exemption will apply.
8. The position of the LGO is that disclosure of the information in question is prevented by section 32(2) of the Local Government Act 1974 (the LGA). This provides that information obtained by the LGO in the course of, or for the purposes of, an investigation carried out by the LGO shall not be disclosed, apart from where certain exceptions apply. The Commissioner's analysis as to whether section 32(2) of the LGA applies here is as follows.

Has the information requested been obtained by the LGO?

9. In order for section 32(2) of the LGA to apply, the information must have been obtained by the LGO from elsewhere. If this information had been generated by the LGO, this exception from disclosure could not apply.
10. In this case the wording of the request is for information *received* by the LGO. The Commissioner therefore considers it clear that information falling within the scope of this request would have been obtained by the LGO from elsewhere.

Was the information obtained in the course of, or for the purposes of, an investigation under Part III of the LGA?

11. Part III of the LGA covers investigations by the LGO into complaints about maladministration in local government. In order for section 32(2) of the LGA to apply, the information must have been obtained in relation to such an investigation.
12. The complainant's grounds for arguing that section 44 of the FOIA is not engaged centred on the issue of whether the requested information would have been obtained in relation to an investigation. The complainant believed that as the information he had requested would post-date the issuing of a report by the LGO, this would indicate that the investigation would have been completed prior to the obtaining of this information and so it could not be said to have been obtained in the course of, or for the purposes of, an investigation.
13. This point was raised with the LGO and it responded with an explanation as to why it believed that information that was obtained following the issuing of a report would have been obtained for an investigation. The LGO explained that its procedures are only exhausted at the point at which it has received a response from the body that was the subject of the investigation and it is satisfied with the steps that have been taken. Alternatively, if it not satisfied, a further report can be issued. In any event, the LGO maintained that at the point that it received the information described in the request, it was open to it to take further steps and so its investigation remained ongoing.
14. The Commissioner recognises that the complainant has raised a valid point as to whether section 32(2) would apply to the information he had requested given the stage that would have been reached in the LGO investigation by the time it obtained that information. However, the Commissioner accepts the explanation provided by the LGO as to why the information requested would have been obtained in the course of, or for the purposes of, an investigation carried out under Part III of the LGA, despite it having been obtained after the issuing of an LGO report.

Would any of the exceptions from section 32(2) of the LGA apply?

15. Sections 32(2)(a) to (c) of the LGA set out situations where the non-disclosure clause in the LGA would not apply. A disclosure in line with the FOIA is not amongst the situations listed and so none of these exceptions apply here.

Conclusion

16. As noted above, the Commissioner recognises that the complainant has raised a valid point as to whether information obtained after the LGO has issued a report would be subject to the bar to disclosure provided by the LGA. The Commissioner would also note that the LGO should ensure that it does not take the approach that the LGA provides a blanket exemption from the requirement to disclose anything within complaint files. In particular, it should ensure that it has regard to the requirement that information be obtained from elsewhere; information generated by the LGO will not be covered by the exception to disclosure within the LGA.
17. However, in this case the Commissioner has accepted the explanation provided by the LGO as to why the information in question was obtained for an investigation that was effectively ongoing at that time. For this and the other reasons set out above the Commissioner accepts that section 32(2) of the LGA does provide a statutory bar to disclosure for the information requested by the complainant. The exemption provided by section 44(1)(a) is, therefore, engaged and the LGO is not required to disclose this information.

Right of appeal

18. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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