

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2011

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

Address: Millbank Tower
Millbank
London
SW1P 4QP

Decision (including any steps)

1. The complainant requested 'further evidence' which the public authority had purportedly relied on when dealing with a complainant she had raised against Harrow Council. The public authority refused to disclose this information and cited the exemption provided by section 44(1)(a) of the FOIA.
2. The Commissioner's decision is that the public authority withheld the information correctly under this exemption. He requires no steps to be taken.

Background

3. This information was requested under the terms of the Data Protection Act 1998 (the "DPA") as well as the FOIA. The complainant has raised separate issues concerning the DPA which the Information Commissioner will deal with by way of an assessment under the terms of the DPA.

Request and response

4. On 1 March 2011 the complainant wrote to the public authority and requested information in the following terms:

"I kindly request to have EVERYTHING that you have on file with mine and my son [name removed]'s, name on it, and that of which pertains to my case against Harrow Council, and any other information you may have. I understand that you destroy everything after 1 year, but as [name removed 1] did not make his corrupt judgement until 12th April 2010, we are still well within the time frame.

As I am now in receipt [of] damning evidence against [name removed 1], emails and documented telephone calls, (in my possession) outlining his part in this farcical cover up, courtesy of your friends at Harrow Council, I also wish to see the below;

The 'further evidence' that you give 'careful consideration', and make reference to in your letter dated 25/11/2010, para 9 where also not for the first time you get your dates wrong!

[Name removed 2] in an email to your offices, (in my possession) requests after [name removed 3] made his damning report against you in Sept 2009, that you interview some of his officers, and that [name removed 4], Head of HTS, has further evidence that the council would like you to view. I would like to see this further evidence, and documented evidence of any interviews that took place".

5. The public authority responded on 8 March 2011. It stated that the information requested was exempt by virtue of section 44 of the FOIA. It maintained this position at internal review.

Scope of the case

6. On 27 June 2011 the Information Commissioner received a complaint from the complainant. She specified that she wished him to consider the disclosure of the 'further evidence' that the public authority had referred to in a letter to her dated 25 November 2010.

Reasons for decision

7. The public authority has not stated which limb of the exemption at section 44 it is relying on. However, as it has advised that it believes the information to be exempt from disclosure by virtue of the Local Government Act 1974 (the "LGA") the Information Commissioner has concluded that it is relying on subsection (1)(a).

8. Section 44(1)(a) of the Act provides that information is exempt information if its disclosure (otherwise than under the Act) is prohibited by or under any enactment. The legislation being relied on is section 32(2) of the LGA¹ which provides, subject to certain exemptions (none of which apply in this case), that:

"Information obtained by a Local Commissioner [of the LGO], 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."

9. The Information Commissioner has viewed the relevant information and is satisfied that it consists of information which the public authority either created or was provided with in the course of an investigation. The Information Commissioner therefore considers that, as laid down in section 32(2) of the LGA, the information was obtained during the course of, or for the purposes of, an investigation.
10. Accordingly, the Information Commissioner has determined that the information falls within the prohibition on disclosure contained in section 32(2) of the LGA and that, as a consequence, the exemption provided by section 44(1)(a) applies. As section 44 of the Act is an absolute exemption, the Information Commissioner is not required to consider the public interest in disclosure.

The decision

11. The Information Commissioner's decision is that the public authority correctly applied section 44(1)(a) of the FOIA to the withheld information.

¹ <http://www.lgo.org.uk/guidance-on-jurisdiction/local-government-act-1974/#S32>

Right of appeal

12. 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

13. 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.
14. 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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