

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2012

Public Authority: Leicester City Council
Address: New Walk Centre
Welford Place
Leicester
LE1 6ZG

Decision (including any steps ordered)

1. The complainant requested a copy of the accounts provided to Leicester City Council ("the council") by Leicester Hindu Festival Council. The council refused to provide the information on the basis that it had been provided to it in confidence and it was therefore exempt under section 41(1) of the Freedom of Information Act 2000 ("the FOIA").
2. The Commissioner's decision is that the information was correctly withheld.
3. He does not require the council to take any steps.

Request and response

4. The complainant requested information from Leicester City Council ("the council") in the following terms:
"Can you please arrange to send me the copy of accounts you received by Leicester Hindu Festival Council for the year 2005 to 2010".
5. The council responded on 14 February 2011. It said that the information requested was exempt under section 41(1) of the FOIA.
6. Following a request for an internal review, the council wrote again on 21 March 2011. It said that it wished to maintain its position that the information was exempt.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider whether the council had correctly refused to provide the accounts.

Background

8. The council explained to the Commissioner that this request relates to a grant that is provided by the council to Leicester Hindu Festival Council to deliver a diverse arts event, Navratri, which is open to all. The Navratri celebrations are held at two venues in the city. The grant is for £20,000 per annum and is a contribution from the Cultural Services budget. No specifications are made as to the content of the event. The grant is a general contribution for delivery of the two Navratri events. The council requests various items of information to be provided as part of its internal audit processes. Amongst this information are independently audited accounts which cover the period of the funded activity. This is the information that has been requested by the complainant in this case.

Reasons for decision

9. Section 41(1) of the FOIA provides that information is exempt if it was obtained by the public authority from any other person and the disclosure would constitute an actionable breach of confidence. The exemption is "absolute" and therefore not qualified by the public interest test set out in section 2 of the FOIA.

Was the information obtained from another person?

10. It is clearly the case that the accounts were obtained by the authority from another person (in this case Leicester Hindu Festival Council).

Would disclosure constitute an actionable breach of confidence?

11. For the purposes of this exemption, the Commissioner considers that it is appropriate to adopt the test set out in *Coco v A N Clark (Engineers) [1968] FSR 415* that a breach will be actionable if:

- The information has the necessary quality of confidence

- The information was imparted in circumstances importing an obligation of confidence; and
 - Disclosure would represent an unauthorised use of the information to the detriment of the confider
12. Information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial. The Commissioner is satisfied that this is the case.
13. However, a breach of confidence will not be actionable if the information was not communicated in circumstances that created an obligation of confidence. An obligation of confidence may be expressed explicitly or implicitly.
14. The Commissioner understands that although the council is now more explicit about what can be expected, at the time of receiving the information, nothing had been said to Leicester Hindu Festival Council to set a particular explicit expectation. The council's argument is instead that the understanding was implicit that the information was only going to be used for the purpose of the council's own internal audit. It said that it had always been its custom to keep the information confidential. The council also confirmed to the Commissioner that Leicester Hindu Festival Council had been consulted about the request and had strongly objected to the disclosure. Although an objection is not conclusive proof that an obligation of confidence arose, it is at least an indication of what expectation may have existed regarding the prospects of disclosure.
15. Having considered the above circumstances, the Commissioner agrees with the council that an implicit obligation of confidence arose in the circumstances of this case. There was never any indication given to the Hindu Festival Council that the information would be disclosed to the public, and the Commissioner expects that it would have been reasonable in any event for them not to expect this given that the clear purpose of providing the accounts is for the council's own internal audit and the fact that the accounts contain sensitive financial information that goes beyond the donations made to it by the council.
16. The Commissioner considers that an unauthorised use of the information would be of detriment to the confider because it may draw unwarranted and undue attention to the activities of Leicester Hindu Festival Council, which may result in it deciding not to take up grants from the council in the future. Furthermore, in *Attorney General v Guardian Newspapers [1990] 1AC 109*, Lord Keith of Kinkel found that it would be a sufficient detriment to the confider if information given in confidence was disclosed to persons whom the confider "...would prefer

not to know of it, even though the disclosure would not be harmful...in any positive way”.

17. In view of the above, the Commissioner considers that disclosure to the public would constitute an actionable breach of confidence.

Would a public interest defence be available?

18. Case law suggests that a breach of confidence will not be actionable in circumstances where a public authority can rely on a public interest defence. The duty of confidence public interest test assumes that the information should be withheld unless the public interest in disclosure exceeds the public interest in maintaining the confidence.
19. The Commissioner takes the view that a duty of confidence should not be overridden lightly. Disclosure of confidential information undermines the principle of confidentiality itself which depends on a relationship of trust between the confider and the confidant. It is the Commissioner's view that organisations may be discouraged from confiding in public authorities if they did not have a degree of certainty that such confidences would be respected.
20. In the circumstances of this particular case, the Commissioner's view is that it is important that organisations undertaking activities that benefit the community are not discouraged from applying for grants because they are fearful that sensitive information about their organisation could be made publicly available without their permission.
21. There is always some public interest in the disclosure of information held by public authorities to help to bring about more accountability and transparency. This is especially so in relation to activities involving the spending of public money. However, there is no evidence available to the Commissioner in this case to indicate that the public interest in disclosure of the full accounts requested is sufficient to outweigh the strong public interest in maintaining confidentiality. The council already has a thorough audit process in place and it publishes information about how much money is given to the Hindu Festival Council. The Commissioner notes that the accounts reveal a broader category of information rather than just being restricted to how the council's grant was spent. Disclosure of the full accounts would be disproportionate to any legitimate interest in the Commissioner's view.

Right of appeal

22. 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

23. 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.
24. 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

Andrew White
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