

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 02 May 2012

Public Authority: West Berkshire Council
Address: Council Offices
Market Street
Newbury
Berkshire
RG14 5LD

Decision (including any steps)

1. The complainant has requested a copy of a report into a health and safety-related incident that the public authority investigated. This was withheld under the exemptions at sections 30 (investigations) and 40 (personal information). The Information Commissioner's decision is that the public authority correctly withheld the information under section 30. He does not require the public authority to take any steps.

Background

2. An accident occurred at Newbury Football Ground in 2008 when a gentleman lost some of his fingers. The incident was investigated by the public authority and it wrote a report summarising its findings. The public authority explained to the Information Commissioner that:

"The purpose of the report was not to allocate responsibility for the accident, but to establish whether an offence under the Health and Safety at work legislation had occurred. It's the task of the current civil case to establish whether any blame for the accident attaches to any individual or legal person, and therefore whether any compensation is due."

3. The public authority completed its investigation on 14 January 2009.

4. The complainant is a local journalist. It is his belief that one of the parties is *"entirely innocent of any culpability"* and he thinks that release of the report will clear this party entirely.
5. There are on-going civil proceedings.

Request and response

6. On 16 November 2011 the complainant wrote to public authority and requested a copy of a report about an accident which occurred at Newbury Football Ground in January 2008.
7. On 9 December 2011 the public authority confirmed that it held the information but advised that it was exempt by virtue of the exemption at sections 31(1)(g) and (h) and 31(2)(a),(e), (i) and (j).
8. Following an internal review the public authority wrote to the complainant on 6 January 2012. It stated that it had erred in applying section 31, but had concluded that the information was exempt under sections 40 and 30(1). It did not state the subsection of either exemption.

Scope of the case

9. On 9 January 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He asked for the Information Commissioner to consider the withholding of the information and gave the following reasons in support of his view that the information should be disclosed:
 - 1) *Public interest over a safety issue at a public sports ground.*
 - 2) *West Berkshire Council are the owners and landlords of the sports ground and had been responsible for its maintenance prior to leasing.*
 - 3) *West Berkshire Council had carried out maintenance work on the floodlight pylon involved in the incident and may be open to allegations concerning that work".*
10. The Information Commissioner will therefore consider whether or not the exemptions have been properly applied to the information.

Reasons for decision

Section 30 – investigations and proceedings

11. Sections 30(1)(a)(i) and (b) of FOIA state that:

'Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it'.

12. Section 30 is a class-based exemption. Therefore, in order for it to be engaged, there is no need for a public authority to demonstrate any level of prejudice should the requested information be disclosed, simply that the information is held for the purposes specified in the relevant part of the exemption which has been cited.

13. The exemptions cited can only be relied upon by public authorities with the powers to conduct investigations of the kind specified in this subsection. The exemption can only apply to information which is held for a specific or particular investigation, not for investigations in general. The phrase 'at any time' means that information is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation.

14. The public authority advised the complainant that:

"The report provides the findings and recommendations of the investigation into whether a prosecution under the Health and Safety at Work Act 1974 should be pursued and as such is covered by the scope of the Section 30 exemption".

15. During his investigation, the public authority further explained to the Information Commissioner that:

"The information requested (the Investigation Report) was created and held for the purposes of determining whether an offence had been committed under the Health and Safety at Work Act 1974 and consequently that engages the exemption at 30(1)(a)(i). The Council relied on the exemption at S30(1)(a)(i) of the Freedom of Information Act 2000 in making its decision at

review (the original decision in respect of this request, which relied on S31, was overturned at review).

S18(2)(b) of the Health and Safety at Work Act 1974 makes provision for the HSE to transfer responsibility for enforcing any of the relevant statutory provisions to a local authority. Following discussion with the Health and Safety Executive (HSE) as to which organisation (the Council or the HSE) should carry out the investigation, the investigation was carried out by the authority under its powers under the Health and Safety at Work Act 1974. The withheld information (the Investigation Report) is the formal report generated by that investigation”.

16. In this case, the Information Commissioner is satisfied that the report in question concerns the circumstances surrounding a health and safety-related incident. The withheld information is therefore held by the public authority for the purposes of its investigation into that incident and, depending upon the outcome of the investigation, criminal charges may have been brought. The Information Commissioner is satisfied that the public authority has the statutory power to conduct an investigation of this kind and the exemption is therefore engaged.
17. Section 30(1)(a)(i) is a qualified exemption. Therefore, the Commissioner must consider the public interest test set out at section 2(2)(b) of the Act and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of maintaining the exemption

18. The public authority initially cited section 31 (law enforcement) of the FOIA, changing it to section 30 at internal review. In its initial response it provided the following public interest considerations which the Information Commissioner considers are still pertinent to section 30:

“The investigation was carried out by the authority under its health and safety remit. It is not appropriate that the report of the investigation should be made available in the public domain, nor is this what the HSE [The Health & Safety Executive] would expect or require.

Publication of the report would be very likely to prejudice not only the investigative process, but any future investigations or civil proceedings should such be contemplated. It is contrary to the due process of law to carry out an investigation of this nature in the public domain, or publicise the information related to it,

beyond that which might be expected to be made public to prevent future incidents of a similar nature occurring.

The public interest lies in ensuring that future incidents of this nature are prevented. However, the Health and Safety process is already set up to ensure this. Publicising the report on the incident will not assist or inform this process”.

19. It also advised the Information Commissioner:

“[Name removed] is seeking to take civil action in respect of the accident. The Report, as the formal investigation of the accident, will be evidential in any civil action. The Council officers who carried out the investigation and the formal interviews are also likely to be called as witnesses. While this process is in train we would consider that the exemption at S30(1)(a)(i) is still engaged.

While the Council's investigation has been completed, the existence of an ongoing civil action means the public interest in withholding the information (so that it may be presented as evidence to the hearing which will consider whether any person should be charged with an offence, and whether, if charged, they are guilty of an offence) outweighs the public interest in providing the information to the requester (name removed). While we recognise that there is some public interest in the case, in the main promoted by stories in the local press, there is a higher degree of public interest in a fair, unbiased and equitable hearing for the three principals concerned in the accident, which provision of this Report in response to the request would prevent”.

Public interest arguments in favour of disclosing the requested information

20. The public authority has recognised the local interest in the incident and its coverage in the local press. It has also recognised the interest in ensuring that processes are in place to prevent such accidents recurring.

21. It is the complainant's belief that the Report will 'clear' one of the parties of any blame associated with the incident. He also provided the following arguments to support disclosure:

“1) Public interest over a safety issue at a public sports ground.

2) West Berkshire Council are the owners and landlords of the sports ground and had been responsible for its maintenance prior to leasing.

3) West Berkshire Council had carried out maintenance work on the floodlight pylon involved in the incident and may be open to allegations concerning that work”.

22. The Information Commissioner accepts that there is clearly a strong public interest in the disclosure of a report which concerns safety failings at a football ground; such a disclosure would promote transparency and accountability in this area. It could also be argued that such transparency could ultimately drive up safety standards by bringing the causes of a serious incident to the public's attention and, in doing so, promoting good practice and highlighting areas where there is a need to make improvements. It might further be argued that such transparency could improve the standards of inspections and decisions taken by public authorities.

Balance of the public interest arguments

23. The Commissioner considers the following general arguments in favour of maintaining the exemption referenced in the case of *Digby-Cameron v ICO and Bedfordshire Police and Hertfordshire Police* (EA/2008/0023 & 0025) to be relevant here. In that case the Tribunal stated that, in considering the public interest test, the starting point is to focus on the purpose of the relevant exemption. The Tribunal asserted that the general public interest served by section 30(1) is the effective investigation and prosecution of crime, which inherently requires, in particular:

- the protection of witnesses and informers to ensure people are not deterred from making statements or reports by fear it might be publicised;
- the maintenance of independence of the judicial and prosecution processes;
- preservation of the criminal court as the sole forum for determining guilt.

24. With the above underpinning the consideration of 30(1), when weighing up the public interest in relation to the exemption the following factors (amongst others) should be considered:

- the stage or stages reached in any particular investigation or criminal proceedings;
- whether and to what extent the information has already been released into the public domain;
- the significance or sensitivity of the information; and

- the age of the information.
25. The Information Commissioner understands that the public authority had completed its investigation on 14 January 2009, predating this request by almost three years. As such, the public authority's own involvement in the criminal aspect of the case was complete, subject to any enquiries being reopened.
 26. The Information Commissioner further understands that some information about the incident has already been placed in the public domain via the local press. However, this does not include the details of the report which is the subject of this request and he does not therefore consider that this particular information has been made public.
 27. Following on from the incident the associated floodlights were dismantled and removed. The Information Commissioner therefore considers that the public interest has been met to some extent in that the floodlights can no longer pose any ongoing health and safety concern.
 28. The information is significant in that it is the findings of the investigation undertaken by the public authority; the Information Commissioner has been advised that it is rare that the public authority would investigate a major incident such as this, which is why it is of particular significance.
 29. The case was 'closed' at the time of the request and the complainant made it clear that he wanted a copy to ascertain where any responsibility for the incident fell. The Information Commissioner considers it is properly the responsibility of the appropriate authority to ascertain what happened and to recommend any further action accordingly. He does not believe that such matters should subsequently fall to be considered openly by the public and, in essence, to have a "trial by media". Such an occurrence would not only interfere with a formal outcome and resolution of events but would also severely prejudice the possibility of fairness in any future proceedings that may be brought. He again notes that a major factor in the incident, namely the floodlights, has been removed, so a similar event cannot recur. He finds this to be a particularly compelling argument for maintaining the exemption.
 30. The withheld information represents key evidence central to the investigation in question including details of witness statements made by parties interviewed in connection with the incident. Furthermore, as there are only a small number of parties, all of which have been named in the press coverage of the incident, then it would not be possible to

redact details and anonymise those parties concerned. The Information Commissioner understands that those parties would expect the comments they provided to be used only for the purposes of the investigation and not for them to be released into the public domain. Had the witnesses been aware that their comments may be given to the public at large, then such knowledge could prevent them from providing accurate and honest comments about the incident for fear of any reprisals. Whilst it would be expected that their comments would have to be relied on as part of any formal proceedings, this is not the same as their comments being released for public scrutiny. The Information Commissioner considers that release of personal statements in such matters may well act as a deterrent to witnesses providing statements in the future, thereby undermining the administration of justice. The Information Commissioner again finds this to be a compelling argument for maintaining the exemption.

31. Finally, in attributing weight to the factors in favour of maintaining the exemption the Commissioner has taken into account the seriousness of the matter. There is considerable public interest in such a matter being investigated as thoroughly and efficiently as possible and ensuring that the best evidence is available to the public authority to inform its decisions. Although it may be a rare occurrence, the public authority may be required to conduct investigations into health and safety incidents, which may include those as severe as this incident, in the future. He recognises that such investigations would be severely harmed if witnesses were dissuaded from coming forward or being as free and frank as possible.
32. Whilst the arguments in favour of disclosure are deserving of some weight, in the Information Commissioner's view the arguments in favour of maintaining the exemption have far more weight for the reasons given above. Therefore he has concluded that the public authority appropriately refused the requests on the basis that section 30(1)(a) applied and the public interest favoured maintaining the exemption.
33. As he has concluded that the report is properly withheld under section 30(1), the Information Commissioner has not gone on to consider the applicability of section 40(2).

Right of appeal

34. 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: 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

35. 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.
36. 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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