

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2012

Public Authority: Christchurch and East Dorset Councils (the council)

Address: Council Offices
Furzehill
Wimborne
Dorset
BH21 4HN

Decision (including any steps ordered)

1. The complainant has requested a copy of a letter received by the council's mayor from her chaplain in connection with a planning application in which the chaplain was an interested party.
2. The Commissioner's decision is that the council acted correctly in disclosing that part of the letter which related to the planning matter and in relying on the section 41 exemption to continue to withhold the remainder of the letter.
3. The Commissioner does not require the council to take any steps to ensure compliance with the legislation.

Request and response

4. On 15 April 2012, the complainant wrote to the council and requested information in the following terms:

"Please supply full details of the meeting which took place in March 2012 between the Chief Executive and the Mayor with regard to a written communication received by the Mayor from the Mayor's Chaplain in connection with the planning application for a new vicarage in Church Street Christchurch. Please also supply a copy of this communication, if for any reason it is not available please supply full details of what it contained."

5. The chief executive of the council responded on 18 April 2012. He stated that he had not held a meeting with the then mayor ("the mayor") in connection with a letter dated 9 March 2012 ("the letter") that the mayor had received from the then mayor's chaplain ("the chaplain"). The chief executive added that the letter from the chaplain to the mayor was a personal communication which could not be disclosed to the complainant.
6. On 14 May 2012 the complainant requested an internal review of the council's refusal to provide a copy of the letter.
7. On 16 May 2012, following internal review, the council told the complainant that the information contained in the letter was exempt from disclosure by virtue of section 41 FOIA (Information provided in confidence).

Scope of the case

8. On 21 May 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He said that the letter, the existence of which had become known to him through an anonymous source, had ceased to be a purely personal communication when it was passed to the chief executive for action. In the alternative, he said, if the letter was still to be treated as confidential, then there was an overriding public interest in its contents being disclosed and that the letter constituted an unlawful interference with the normal planning process.
9. On 17 July 2012 the council told the Commissioner that during the course of the planning application decision process, in which the chaplain was an interested party, and after interest had been shown in the matter by local media, the chaplain had written a personal letter to the mayor. This letter was the subject of the information request by the complainant. The council added that if the chaplain had sought to make his personal views on the planning matter known, he could have addressed them to the council and they would then have been held on the public register along with the planning application. The council also told the Commissioner that the planning application had been determined by its planning officers using delegated powers.
10. On 15 August 2012, during the course of the Information Commissioner's investigation, the council provided the complainant with a summary of the contents of the letter which said:

"The letter to the Mayor from [the chaplain] is dated 9 March 2012 and contains his own comments on how the Trust, among others,

was seeking in his view to put pressure on Councillors regarding the new Vicarage application, and the impact the matter was having on his position as Chaplain to the Mayor."

11. On 22 August 2012 the complainant told the Commissioner that he believed that the letter had been pivotal in changing the way in which the planning application had been dealt with, an assertion the council does not accept. He also said that, in his view, the council had no authority to determine the planning matter under delegated powers; something that the council also does not accept but which is not a matter for the Commissioner.
12. On 6 September 2012, still during the Commissioner's investigation, the council disclosed the majority of the letter to the complainant, including the chaplain's views on the planning application. The council withheld a final section of the letter ("the withheld information") relying on the section 41 FOIA exemption. The Commissioner's decision relates to the withheld information.

Reasons for decision

13. Section 41(1) of FOIA states that:

"Information is exempt information if-

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

14. The traditional test of confidentiality involves determining whether the information was obtained from another person in confidence, and whether its disclosure would constitute an actionable breach of confidence. 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
 - there was an unauthorised use of the information to the detriment of the confider (the element of detriment is not always necessary).

Was the information obtained from another person?

15. On 6 September 2012 the council confirmed to the Commissioner that the mayor's chaplain was an appointment made personally by the mayor to provide her with personal spiritual support during her mayoral year. The council confirmed that the chaplain's appointment was noted by the council but that the chaplain was not an officer of the council. The Commissioner decided therefore that the letter had been obtained by the council from another person, the chaplain.

Would disclosure constitute an actionable breach of confidence?

16. The Information Commissioner reviewed the letter and noted that it was addressed to the mayor personally but did not bear any overt privacy markings. At the Information Commissioner's request, the council clarified with the chaplain what had been his intentions in writing the letter.
17. On 6 September 2012 the council told the Information Commissioner that the chaplain had indicated that he would have no objection to his comments on the planning matter being disclosed as they had not been intended for the mayor's attention alone. However, he also indicated that a final section of the letter, the withheld information, had been intended for the personal attention of the mayor and was addressed to her personally in his role as chaplain. The Commissioner decided from his inspection of the letter that its contents were consistent with that explanation.
18. The letter was addressed to the mayor at her official address at the council offices as it was the duty of the chaplain to provide personal support to the mayor in the course of her official duties.
19. The first section of the letter, which related to the planning matter, lacked the necessary quality of confidence and has already been disclosed to the complainant with the express agreement of the chaplain.
20. It was apparent to the Commissioner from his inspection of the content of the withheld information that the information is not trivial in content and is not in the public domain.
21. The chaplain confirmed that the withheld information was significant to him and that it had been imparted to the mayor as a confidence. His expectation had been that it would be treated as a private and personal communication and that any unauthorised use of it by the mayor would be a breach of confidence and would be detrimental to him. The Commissioner therefore decided that the information had the necessary

quality of confidence and had been imparted in circumstances which imported an obligation of confidence.

Would a public interest defence be available?

22. 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 there is a public interest in disclosure which exceeds the public interest in maintaining the confidence.
23. 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. In the circumstances of this particular case, the Commissioner decided that disclosure would be disproportionate to any legitimate interest in the withheld information and he saw no reason for the withheld information to be disclosed. He therefore decided that the section 41 exemption applied to the withheld information.

Right of appeal

24. 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

25. 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.
26. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF