

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 October 2012

**Public Authority:** Public Services Ombudsman for Wales  
**Address:** 1 Ffordd yr Hen Gae  
Pencoed  
Bridgend  
CF35 5LJ

#### Decision (including any steps ordered)

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1. The complainant requested copies of all correspondence received by the PSOW in relation to his complaint against a named Councillor. The PSOW refused to provide the information relying on section 44(1)(a) of the Freedom of Information Act 2000 ('the Act').
2. The Commissioner's decision is that the PSOW correctly relied on section 44(1)(a) of the Act and is not therefore required to provide the information.

#### Request and response

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3. On 24 April 2012, the complainant wrote to the Public Services Ombudsman for Wales ('the PSOW') and requested information in the following terms:  
  
*"...copies of all correspondence received by you in relation to our complaint against [named Councillor]."*
4. The PSOW responded on 27 April 2012. It confirmed that it held information falling within the scope of the complainant's request. However, it refused to disclose the information on the basis of section 44(1)(a) of the Act which provides an exemption from the duty to disclose information if it is prohibited by any enactment other than the Act.
5. Following an internal review the PSOW wrote to the complainant on 1 June 2012. It confirmed that in view of the restrictions on disclosure

under the Local Government Act, it agreed with the original decision that the information was exempt from disclosure under section 44 of the Act.

## **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He explained that he had made a complaint to the PSOW against a named Councillor but that the Ombudsman was refusing to give him copies of the replies from the Council. He added that he needed to be aware of the responses to his statements in order to complete his complaint.
7. The Commissioner would point out that the Act is both applicant and purpose blind meaning that it cannot take into consideration either the identity of the requestor or the purpose of the request (unless it is considering refusing the information on the basis of section 14(1) of the Act). The Commissioner would also point out that any information disclosed under the Act is considered to be in the public domain. Each complaint therefore needs to be investigated on its merit to determine whether or not the requested information is appropriate for disclosure into the public domain.
8. The Commissioner also notes that some of the information falling within the scope of the complainant's request was considered to be his own personal data and that this was withheld under section 31(4) of the Data Protection Act 1998 ('the DPA'). A separate investigation of the information identified as the complainant's own personal data has been undertaken by the Commissioner under case reference RFA0454851. The scope of this notice is therefore solely concerned with the information withheld under the Act.
9. The Commissioner considers that the PSOW correctly relied on section 44(1)(a) of the Act in relation to this request and that it is not therefore required to provide the information.

## **Reasons for decision**

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10. Section 44(1)(a) of the Act provides that information is exempt if disclosure is prohibited by any enactment other than the Act. The Commissioner has therefore considered whether the disclosure of the information requested by the complainant is prohibited by law.
11. In this particular case, the PSOW considers that the disclosure of the information is prohibited by virtue of section 63 of the Local Government

Act 2000 ('the LGA'). Section 63 of the LGA sets out the restrictions on disclosure of information and states:

*"Information obtained by ethical standards officers under section 61 or 62 must not be disclosed.."*

12. It should also be noted that any person who discloses information in breach of section 63 is guilty of an offence.
13. The Commissioner has therefore considered whether the information was 'obtained by' the PSOW from an external source, whether it was obtained for the purpose of a specific investigation and whether any of the exceptions referred to in section 63 of the LGA would apply.
14. In this particular case, the wording of the request is for information 'received' by the PSOW. Additionally, the PSOW has identified the following three categories of information it holds falling within the scope of the request.
  - Category 1: correspondence received by the PSOW from the complainant.
  - Category 2: correspondence received by the PSOW from the member in question.
  - Category 3: correspondence received by this office from third parties.
15. The Commissioner therefore considers that the information falling within the scope of the request would have been obtained by the PSOW from external sources.
16. The Commissioner has also considered the withheld information itself to determine whether it was obtained for the purposes of an investigation and he is satisfied that this is the case.
17. Section 63(1)(a) to (e) of the LGA set out conditions where the non-disclosure clause would not apply. A disclosure in line with the Act is not amongst the situations listed therefore none of these exceptions would apply.
18. In view of the above, the Commissioner is satisfied that section 63 of the LGA prohibits the disclosure of the requested information and has therefore concluded that section 44(1)(a) of the Act is engaged. As section 44 is an absolute exemption there is no need to consider the public interest test.

## Right of appeal

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19. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

20. 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.
21. 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** .....

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**