

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2012

Public Authority: Public Services Ombudsman for Wales

Address: 1 Ffordd yr Hen Gae

Pencoed

Bridgend

CF35 5LJ

Decision (including any steps ordered)

1. The complainant requested copies of all witness statements received by the PSOW in relation to a complaint made by named Councillor A against named Councillor B on 26 January 2012. 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

3. On 16 July 2012, the complainant wrote to the Public Services Ombudsman for Wales ('the PSOW') and requested information in the following terms:

"I am requesting ...copies of all witness statements in the complaint made by [named Councillor A] versus [named Councillor B]. Could you please supply. I am trying to understand why the case was rejected because of insufficient evidence..."

4. The PSOW responded on 3 August 2012. 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. The PSOW informed the

complainant that the relevant legislation was the Local Government Act 2000 ('the LGA').

5. Following an internal review the PSOW wrote to the complainant on 31 August 2012. It confirmed that in view of the restrictions on disclosure under section 63 of the Local Government Act, it agreed with the original decision that the information was exempt from disclosure under section 44(1) of the Act.

Scope of the case

6. On 10 September 2012, the complainant contacted the Commissioner to complain about the way his request for information had been handled. He explained that he did not understand why he could not obtain the requested information under the Act. He further explained that he could not understand the PSOW's decision that there was insufficient evidence that Councillor B was not in breach of the Code of Conduct.
7. The Commissioner has explained to the complainant that he can only consider whether the information subject to the request should be disclosed under the Act. His remit does not extend to making a judgement regarding the actual decision made by the PSOW regarding the complaint itself.
8. The Commissioner would also 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). As any information disclosed under the Act is considered to be in the public domain, each complaint needs to be investigated on its merit to determine whether or not the requested information is appropriate for disclosure into the public domain.

Reasons for decision

9. 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.
10. 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..."

11. It should also be noted that any person who discloses information in breach of section 63 is guilty of an offence.
12. 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.
13. In this particular case, the wording of the request is for copies of all witness statements 'received' by the PSOW in the course of its investigation against named Councillor B.
14. The Commissioner therefore considers that the information falling within the scope of the request would have been obtained by the PSOW externally.
15. 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.
16. 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.
17. 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

18. 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

19. 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.
20. 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
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