

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2013

Public Authority: Bolton Council

Address: Town Hall
Civic Centre
Bolton
Lancashire
BL1 1RU

Decision (including any steps ordered)

1. The complainant has requested information relating to the telephone systems at Bolton Council. The Commissioner's decision is that Bolton Council has correctly applied the exemption at section 36(2)(c) of the FOIA where disclosure of the information would otherwise prejudice the effective conduct of public affairs and that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. However, the Commissioner has found that Bolton Council breached section 10(1) of the FOIA by failing to respond within the statutory time limit of 20 working days. The Commissioner does not require any steps to be taken.

Request and response

2. On 23 July 2012 the complainant wrote to the council and requested information in the following terms:

"Please supply any information which refers to the ability to allow Town Hall telephones to send their number when say for example an officer of the council would wish to telephone another telephone which has anonymous call barring.

Supply any information regarding any telephones within the Town Hall which can send a telephone number when ringing outside lines.

(a) How many of these phones are there?

- (b) What is the direct dial number for these phones?
 - (c) Which department and/or person these phones belong to?
 - (d) Provide the names of any member of the (Anti-Social Behaviour Team) who have a mobile phone provided by Bolton Council?"
3. The council responded on 21 August 2012 and provided some narrative information but refused to provide the information requested at point (b) citing the exemption at section 36 of the FOIA as disclosure would prejudice the council's ability to deliver fair access to public services for the residents of Bolton. It also refused to provide the information requested at point (d) citing the exemption at section 38 of the FOIA.
 4. The complainant requested an internal review on 21 August 2012. The council provided its response on 1 October 2012 in which it provided some more narrative information, maintained its application of sections 36(2)(c) and 38 and also applied the exemption at section 40(2) to the information requested at point (d).

Scope of the case

5. The complainant contacted the Commissioner on 21 August 2012 to complain about the way his request for information had been handled. Specifically his complaint was that the information was provided one day late. On 15 October 2012, after having received the council's internal review response, the complainant widened the scope of the complaint to include the application of the cited exemptions.
6. In correspondence with the Commissioner on 5 December 2012, the complainant confirmed that the complaint related to the application of section 36(2)(c) to the information requested at points (b) and (c) only.
7. Therefore the Commissioner has not considered the application of sections 38 and 40(2). He has only considered the application of section 36(2)(c).
8. The Commissioner has also considered whether the response to the request was provided within the statutory time limit for compliance.

Reasons for decision

9. Section 36 states that information is exempt from disclosure where, in the reasonable opinion of a qualified person, disclosure would or would be likely to prejudice the effective conduct of public affairs. Section 36

operates in a slightly different way to the other prejudice based exemptions in the FOIA. For section 36 to be engaged, information is exempt only if, in the reasonable opinion of a qualified person, disclosure of the information in question would, or would be likely to, prejudice any of the activities set out in sub-sections of 36(2).

10. In this case the council is applying the exemption at section 36(2)(c).
11. 36(2)(c) provides an exemption where disclosure would, or would be likely to, otherwise prejudice the effective conduct of public affairs.

Is the exemption engaged?

12. In order to establish whether the exemption has been applied correctly the Commissioner has:
 - a. Ascertained who is the qualified person or persons for public authority in question;
 - b. Established that an opinion was given;
 - c. Ascertained when the opinion was given; and
 - d. Considered whether the opinion given was reasonable.
13. With regard to the first two criteria, the Commissioner has established that the reasonable opinion was given by Helen Gorman, Borough Solicitor. The Commissioner is satisfied that Helen Gorman, being the council's Monitoring Officer, is a qualified person for the purposes of section 36(5) of the FOIA.
14. In relation to the third criterion, the council has provided dates of when the opinion was sought and given and the Commissioner is satisfied that the opinion was provided after the receipt of the request and before the response.
15. With regards to the fourth criterion, in deciding whether an opinion is reasonable the Commissioner will consider the plain meaning of that word, that being, not irrational or absurd. If it is an opinion that a reasonable person could hold, then it is reasonable. This is not the same as saying that it is the *only* reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only unreasonable if it is an opinion that *no* reasonable person in the qualified person's position could hold. The qualified person's opinion does not even have to be the *most* reasonable opinion that could be held; it only has to be *a* reasonable opinion.

16. The Commissioner has also been guided by the Tribunal's indication, in the case *Guardian Newspapers & Brooke v Information Commissioner & BBC*¹, that the reasonable opinion is limited to the degree of likelihood that inhibition or prejudice may occur and thus 'does not necessarily imply any particular view as to the *severity* or *extent* of such inhibition [or prejudice] or the *frequency* with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant' (paragraph 91). Therefore, when assessing the reasonableness of an opinion the Commissioner is restricted to focussing on the likelihood of that inhibition or harm occurring, rather than making an assessment as to the severity, extent and frequency of prejudice or inhibition of any disclosure.
17. With regard to the degrees of likelihood of prejudice the Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Information Tribunal decisions. In terms of 'likely to' prejudice, the Tribunal in *John Connor Press Associates Limited v The Information Commissioner*² confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (paragraph 15). With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner*³ commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (paragraph 36).
18. In its initial response to the complainant, the internal review response and in its submission to the Commissioner, the council stated that disclosure of the information *would* prejudice the effective conduct of public affairs. Therefore, the Commissioner considers that it is appropriate to apply the stronger evidential test.
19. At the Commissioner's request, the council provided a copy of the qualified person's opinion and further details relating to that opinion. The council did not provide the Commissioner with any submissions made to the qualified person but informed the Commissioner that the qualified person was provided with a draft section 36 form, an explanation of the Instant Voice Recognition ('IVR') system functionality, an overview of processes in place in Access Bolton contact centre and

¹ Appeal numbers EA/2006/0011 & EA/2006/0013

² Appeal number EA/2005/0005

³ Appeal number EA/2005/0026 & 0030

issues that would arise from disclosure. The Commissioner notes that there would have been no benefit in providing the qualified person with a copy of the withheld information.

20. With regards to the nature of the prejudice, the council stated that it needs to manage demand and customer expectations on council services to ensure that all its customers receive efficient, effective and value for money services. It stated that there is a requirement of local authorities to improve the speed and quality of information a customer receives at the first point of contact with the authority and to 'get it right' first time, thus reducing further additional and avoidable contact, resulting in efficient and improved services for the customer at reduced cost. This is partly achieved by the use of technology in terms of the IVR system and policy and organisational set up by the use of the Access Bolton Contact Centre which is the first telephone point of contact for many council services. It stated that if it were not able to manage incoming calls in the manner as described above this would have a damaging and detrimental effect to the council and the customers it serves and would prejudice its ability to deliver fair access to public services for the residents of Bolton. Where customers dial the wrong number they would be confused and calls would need to be transferred. Back office functions would be severely impacted if calls were incorrectly directed and it would adversely affect the provision of council services. It stated that the consequences are significant as there is in excess of 3500 telephone numbers which apply to all areas of the council including non-public requirements and that a number of these phones are there for health and safety reasons (such as emergency planning and alarm lines) and should not be engaged with incoming calls.
21. In relation to the causal link between disclosure and the prejudice arising, the council stated that if the list of numbers were released into the public domain calls could be made to any number for any reason from any person. Customers will be able to call any council number in order to make contact. The council submitted that the numbers, once known, will be shared or recommended between customers allowing them to bypass the current systems and processes which enable to the council to manage demand and implement contingency plans when customer demand is high. It stated that some of the numbers in the list will naturally be associated with particular services or particular staff. However due to organisational changes those numbers are likely to be reassigned to alternative services and different staff so the list will be out of date. The use of the out of date list will result in confused and frustrated customers and staff and wasted time for customers and council employees. As an example of the this type of prejudice occurring in the past, the council stated that prior to the implementation of Access Bolton Contact Centre it had actual experience of customers, frustrated by engaged telephone numbers, dialling another known number to make

contact with the council, albeit that the person answering the phone was in a different service and could not assist with the enquiry or transfer their call.

22. With regards to the likelihood of prejudice, the council stated that it receives an average of 2550 number of telephone calls through Access Bolton each day and if 1% of those callers used one of the of 3500+ numbers on the list this could result in a minimum of 26 incorrect dialled numbers on a daily basis. This effect is multiplied if the callers use a range of the 3500+ numbers. It stated that these figures apply only to calls directed through Access Bolton which is a small fraction of the calls the council receives on a daily basis via the IVR system or via direct dialling to a service. It submitted that prejudice would be likely to occur for each incorrectly dialled number as there is a real probability that the customer enquiry cannot be resolved at that point and the customer would have to be transferred to another service. It further explained that where an incorrect call is received in a back office where administrative functions are being performed it is without doubt that the interruption will result in lost time spent on those functions. It also submitted that calls of a general nature received by a senior member of staff when the call could have been resolved at a more junior level will undoubtedly result in lost time and effort. As an example of this type of prejudice occurring, the council stated that it has had previous experience of customers dialling any, or alternative known numbers, of council telephone numbers expecting their enquiry to be answered or put though to another extension number.
23. Having considered the councils submissions detailed in the preceding three paragraphs, the Commissioner finds that the opinion of the qualified person is a reasonable one; namely, it is reasonable to consider that disclosure would have a detrimental effect on the council and the customers it serves through not being able to manage incoming calls which would prejudice the effective conduct of public affairs. He therefore finds that section 36(2)(c) is correctly engaged.

Public interest test under section 36

24. Section 36(2) is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure of the information. The Tribunal in *Guardian Newspapers & Brooke v Information Commissioner & BBC*⁴ indicated the distinction between the consideration of the public

⁴ Appeal numbers EA/2006/0011 & EA/2006/0013

interest under section 36 and consideration of the public interest under the other qualified exemptions contained within the FOIA:

"The application of the public interest test to the s36(2) exemption involves a particular conundrum. Since under s36(2) the existence of the exemption depends upon the reasonable opinion of the qualified person it is not for the Commissioner or the Tribunal to form an independent view on the likelihood of inhibition under s36(2)(b), or indeed of prejudice under s36(2)(a) or (c). But when it comes to weighing the balance of public interest under s2(2)(b), it is impossible to make the required judgment without forming a view on the likelihood of inhibition or prejudice." (Paragraph 88)

25. As noted above, the Tribunal indicated that the reasonable opinion is limited to the degree of likelihood that inhibition or prejudice may occur and thus 'does not necessarily imply any particular view as to the *severity* or *extent* of such inhibition [or prejudice] or the *frequency* with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant' (paragraph 91). Therefore, the Commissioner's view is that whilst due weight should be given to reasonable opinion of the qualified person when assessing the public interest, the Commissioner can and should consider the severity, extent and frequency of prejudice or inhibition to the subject of the effective conduct of public affairs.

Public interest arguments in favour of disclosing the requested information

26. The council submitted that, in disclosing the requested information, customers would be able to call any number.
27. The complainant has stated that it is important that this directory is made available to members of the public who already know who they wish to speak to. He alleges that the Access Bolton system is being used as a barrier by the council to stop people speaking to the person they want to speak to, operating as a middleman to vet all the calls and often terminating with call-takers refusing to put callers through to the person they may wish to speak to and in many cases just simply passing callers onto another member of the Access Bolton team the caller never wanted to speak to in the first place and is not qualified to deal with the requested enquiries.
28. The complainant believes the council and the people who work for it on behalf of the rate payer should be available when requested to speak to citizens wishing to speak to them. He has alleged that the automated system in operation which allows callers to say the name of the person

they wish to speak is an incomplete service which individuals and departments can opt out of.

29. The Commissioner considers that the 'default setting' of the FOIA is in favour of disclosure. This is based on the underlying assumption that disclosure of information held by public authorities is in itself of value because it promotes better government through transparency, accountability, public debate, better public understanding of decisions and informed and meaningful participation of the public in the democratic process. In this case, there is public interest in the council being transparent and members of the public being able to contact their council and access its services.

Public interest arguments in favour of maintaining the exemption

30. The council restated its reasons as to why the exemption applies as public interest arguments in favour of maintaining the exemption, specifically that the council needs to manage demand for services.
31. It also stated the following:
- The list of numbers without additional information such as the service provided by that number will not improve customer service. It will hamper the customer and the council.
 - Numbers may be used inappropriately – automated diallers, cold callers, social engineering.
 - At periods of high demand for service the council cannot implement contingency plans or increase additional staffing levels if the customer can dial any number.
 - A range of general service numbers is pro-actively made public.
 - Where an officer has a prolonged relationship with a customer such as social care relationship the telephone number is exchanged with that customer.
33. The Commissioner also considers that there is general public interest in efficiency in the use of public resources which in this case lies in maintaining systems and processes which enable the council to achieve efficient use of public funds.

Balance of the public interest arguments

33. Where, as with this case, a qualified exemption is engaged the information must still be disclosed unless, in all circumstances of the

case, the public interest in maintaining the exemption outweighs the public interest in disclosing it.

34. The Commissioner will consider where the balance of the public interest lies.
35. The Commissioner notes that the council already has systems in place for fielding incoming calls and ensuring that these are directed to the most appropriate member of staff. The council provided the Commissioner with details of how its IVR system and the Access Bolton service work. This included the council confirming that individuals and departments cannot opt out of the IVR system and refuting the allegation that calls handled by Access Bolton are often terminated with call-takers refusing to put customers through.
36. The Commissioner notes that the advantages of intelligent routing systems are widely recognised and allow organisations to move work around depending on demand and capacity. He also notes that the council's current system allows it to assess if it is meeting its own customer care standards and make necessary improvements. He considers that providing the requested information would facilitate the bypassing of the council's telephony system depriving it of call management information.
37. The Commissioner does not believe it would be in the public interest to hinder the council's ability to handle calls; the results of which would negatively affect the callers experience and access to council services.
38. The Commissioner has placed significant weight on the argument that a mass disclosure of telephone numbers would result in random contacts which would divert the council's resources in order to manage the disruption caused. The Commissioner does not consider this to be a cost effective use of public money.
39. Given the current provision for handling calls and the negative impact that release of the requested information would have, on both the council and its callers, the Commissioner has concluded that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

Procedural requirements

Section 10 – Time for compliance

40. Section 10(1) states:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

41. The council received the request on the 23 July 2012 and responded on 21 August 2012 which is the 21st working day following the date of receipt. Therefore, the council responded to the request one day outside the statutory time limit which is a breach of section 10(1).

Other matters

Internal review

42. Paragraph 39 of the Code of Practice issued under section 45 of the FOIA (the 'Code') recommends that complaints procedures should:

"...provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."

43. Paragraph 40 of the Code states that in carrying out reviews:

"The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint."

44. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that the public authority provided an internal review 28 working days after the receipt of the internal review request. The public authority should ensure that internal reviews are carried out promptly in future.

Right of appeal

45. 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

46. 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.
47. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF