Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 October 2013

Public Authority: Three Rivers District Council
Address: Three Rivers House
Northway
Rickmansworth
Herts
WD3 1RL

Decision (including any steps ordered)

1. The complainant has requested the sum of money awarded to Three Rivers District Council ('the council') in settlement of its claims against two companies. The council applied the exemption for information provided in confidence at section 41 of the FOIA. The Commissioner's decision is that the exemption is not engaged as the information was not provided by another party.

2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

   - Disclose the requested settlement agreement

3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 21 January 2013, a representative of the Three Rivers District Council Conservative Group made the following request for information under the FOIA:

   "Re: Outcome of recent mediation hearing on 15th January and subsequent settlement of the legal actions between Three Rivers

District Council, Atkins and Gee Construction regarding the William Penn Leisure Centre Building Contract.

Please supply the following information to which I am advised the Council must respond within 20 working days and such information as provided will then be deemed to be in the public domain:

We would like to know what sum of money in aggregate was awarded to Three Rivers District Council in full and final settlement of its claims against W S Atkins and Gee Construction in the mediation agreement referred to above.

We would also like to have confirmation that the total costs of the William Penn Leisure Centre refurbishment referred to above, excluding Officer time but including all legal costs in pursuance of the Councils claims against W S Atkins and or Gee Construction, all building costs including all repairs and remedial costs, design fees etc etc, last reported as £9.1 million is correct."

5. The council wrote to all councillors on 24 January 2013 enclosing a copy of the settlement agreement, which detailed the sum of money awarded to the council, stating that it should not be disclosed to any member of the public or press and is not for external distribution. The letter also stated that;

"the confidentiality of the document is not negated by the Freedom of Information Act, as it is covered by paragraph 41 of Part 2 of the Act 'Exempt Information'…"

The council has confirmed that this letter to all councillors was considered to be a response to the request.

6. On 27 February 2013, the complainant (another representative of the Three Rivers District Council Conservative Group) wrote to the council challenging the application of section 41 to the information in the settlement agreement. He argued that the exemption could not apply as the terms of the agreement could not in all reasonable circumstance be described as information provided by a third party.

7. The council responded on 1 March 2013 and maintained that the requested information was confidential. It stated that;

"The information in the settlement agreement was generated by a third party – the Judge – with the agreement of the signing parties."

Scope of the case

8. The complainant contacted the Commissioner on 4 March 2013 to complain about the way his request for information had been handled. He stated that he was making the complaint on behalf of many residents of Three Rivers who believe they have been denied access to important information regarding the outcome of a contractual dispute.

9. The Commissioner has considered the council's application of section 41 to the settlement agreement.

10. The Commissioner has not considered the part of the request asking for confirmation that the total costs of the William Penn Leisure Centre refurbishment was £9.1 million. No complaint was made in respect of this and the Commissioner understands that this information is publically available on the council's website within the Audit Committee Report dated 13 June 2013.

Reasons for decision

Section 41 – Information provided in confidence

11. Section 41(1) provides that information is exempt if it was obtained by the public authority from any other person and the disclosure would constitute an actionable breach of confidence.

Was the information obtained from another person?

12. The first step is for the Commissioner to consider whether the information was obtained by the council from any other person in order to satisfy the requirement of section 41(1)(a).

13. The complainant has asserted that the information was not provided by another party. He has stated that a mediator does not impose an agreement on the parties but facilitates and helps the parties reach an agreement. He referred to the Commissioner's guidance[1] and stated that the information in this case is the same as a concluded contract agreed

[1] http://www.ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/CONFIDENCEANDCONTRACTS.ashx

between a public authority and another party which is not generally viewed as information that has been provided to a public authority, and therefore the exemption at section 41 cannot apply.

14. The council's written response to the Commissioner's enquiries as to how the exemption at section 41 applies did not explain how the information was provided by a third party. During a telephone conversation with the Commissioner, the council stated that the information is written on High Court headed paper and was not a contractual settlement but was mediation that took place within legal proceedings.

15. The Commissioner notes that, in its press release on the subject, the council referred to the agreement being subject to a confidentiality clause.

16. In deciding whether information has been 'obtained from any other person' the Commissioner focuses on the content of the information rather than the mechanism by which it was imparted and recorded. He notes that it is an agreement between the council and two companies in settlement of a claim made by the council.

17. The Commissioner considers that a settlement agreement reached by mediation would not constitute information provided by one party to another. He has drawn upon the Tribunal decision of Derry City Council v The Information Commissioner[2] in which the Tribunal upheld the Commissioner's view that a written agreement between two parties did not constitute information provided by one of them to the other, and that therefore, a concluded contract between a public authority and a third party does not fall within section 41(1)(a) of the FOIA. The Commissioner considers that this is the case even where a confidentiality clause exists as evidenced by the following statement made by the Tribunal in the above case:

> "we are aware that the effect of our conclusion is that the whole of any contract with a public authority may be available to the public, no matter how confidential the content or how clearly expressed the confidentiality provisions incorporated in it, unless another exemption applies."

[2] appeal number EA/2006/0014

18. The Commissioner has also had regard to two previous decision notices[3] in which settlement agreements were not considered to be 'information provided by another' and therefore section 41 did not apply in those cases.

19. Accordingly, the Commissioner's decision is that the exemption at section 41 of the FOIA is not engaged.

[3] http://www.ico.org.uk/~/media/documents/decisionnotices/2007/FS_50080312.ashx

http://www.ico.org.uk/~/media/documents/decisionnotices/2009/FS_50178553.ashx

Right of appeal

20. 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

21. 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.

22. 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
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Wilmslow
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SK9 5AF