

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 2013

Public Authority: Nottingham City Council
Address: Information Governance Team
Loxley House
Station Road
Nottingham
NG1 4BT

Decision (including any steps ordered)

1. The complainant has requested information from Nottingham City Council about any complaints made about a specific business.
2. The Commissioner's decision is that Nottingham City Council has correctly applied the exemption in section 44 of the Act to the information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 7 January 2013 the complainant wrote to the council and requested information in the following terms:

"Have there been complaints about this business – (name of business redacted) made to Nottingham City Council?"

5. The council responded however through subsequent correspondence it became clear that the initial request had been misinterpreted. A further request was therefore issued on 4 April 2013. This requested:

"Have there been complaints about this business – (name of business redacted) made to Nottingham City Council?"

6. The council responded on 11 April 2013 stating that it could neither confirm nor deny whether any information was held and that section 44 of the Act applied.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner considers that the complainant's complaint is whether the information he requested should have been disclosed to him.

Reasons for decision

9. Section 44(1) of FOIA states that:

"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

(a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation, or

(c) would constitute or be punishable as a contempt of court."

10. In this case, the council stated that section 237(2) of the Enterprise Act 2002 provided a statutory bar to disclosure. Section 237 is held in part 9 of the Enterprise Act 2002 and relates to restrictions on disclosure.
11. Section 237 of the Enterprise Act 2002 prevents the disclosure of 'specified information' that relates to the affairs of an individual or business which a public authority has obtained in connection with the performance of certain functions. Specified information must not be disclosed during the lifetime of the individual or while the business continues to exist unless the disclosure is permitted under sections 239 to 243 of the Enterprise Act 2002.
12. Section 238 of the Enterprise Act 2002 defines specified information as information that has come to a public authority in connection with the exercise of any function it has under or by virtue of:
 - a) Part 1, 3, 4, 6, 7 or 8 of the Enterprise Act 2002;
 - b) An enactment listed in Schedule 14 of the Enterprise Act 2002; or

- c) Such subordinate legislation as the Secretary of State may by order specify for the purposes of this subsection.
13. The Commissioner is satisfied that in this instance the complainant has requested information which relates to the affairs of a business. The council explained that any information it might hold regarding complaints about the business would have been provided to Trading Standards by complainants or via the national helpline 'Consumer Direct', which would also have obtained that information directly from complaints made to it. The information obtained by the council would therefore have been obtained in relation to its function under Part 8 of the Enterprise Act 2002 or under legislation specified in Schedule 14 to that Act; including the Consumer Protection from Unfair Trading Regulations 2008. Part 8 of the Enterprise Act 2002 is specified in s238(1)(a) of that Act.
 14. The Consumer Protection from Unfair Trading Regulations 2008 are listed in Schedule 3 of the Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 as amended. It therefore falls within s238(1)(c) Enterprise Act 2002.
 15. The council therefore argued that the information requested would be non-reportable specific information held by its Trading Standards Service about businesses and identified retailers which are held on its database. It considered that any information it holds in this respect would be market sensitive and said it believes that such information would qualify as 'specified information' under Part 9 of the Enterprise Act 2002; therefore disclosure would be prohibited.
 16. The council further considered whether any of the exemptions to the restrictions to disclose information were applicable. The council said that it would not be able to provide any information it might hold about the business as to do so would not be compliant with any of the permitted disclosure routes contained within the Enterprise Act 2002, and, furthermore would not be compliant with the disclosure considerations contained within Section 244(3) of the Enterprise Act 2002. This subsection relates to whether a disclosure of information would damage the interests of a business or the private affairs of an individual.
 17. The council further explained that it did not believe that any of the exceptions listed in sections 239 – 243 of the Act would be applicable.
 - It explained that any information it holds has not legitimately been disclosed before.

- It explained that a disclosure of any information it holds is not required for the purposes of a community obligation.
 - It explained it was not aware of any civil or criminal proceeding being undertaken.
 - It explained that it did not have consent to disclose any information it might hold.
 - It explained that it was not being asked to make an overseas disclosure for any of the purposes contained in section 243 of the Enterprise Act.
 - It explained that for the purposes of the exception in section 241(1) it had followed the Commissioner's guidance and previous cases in finding that this section does not provide a route to the disclosure of the information. Section 241 states that a public authority which holds information to which section 237 applies may disclose that information for the purpose of facilitating the exercise by the authority of any function it has under or by virtue of this Act or any other enactment. Following the Commissioner's guidance and the Tribunal in the case of *Dey v Information Commissioner* (EA/2006/0057) it considered that this could not be interpreted as saying that obligations under FOIA overrode the prohibition and allowed a disclosure of the information.
18. The Commissioner has therefore concluded that section 44(1)(a) of the FOIA is engaged, through the provisions of section 237 of the Enterprise Act 2002. The Council was therefore correct to withhold the requested information.
19. As section 44 is an absolute exemption there is no need to consider the public interest test.

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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