

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2015

Public Authority: London Borough of Bexley
Address: Bexley Civic Offices
2 Watling Street
Bexleyheath
Kent
DA6 7AT

Decision (including any steps ordered)

1. The complainant has requested details of any public health funerals that had not been published at the time of the request. This request was refused by the London Borough of Bexley (the Council) in accordance with the 'law enforcement' (section 31(1)(a)) exemption in FOIA. The Commissioner has determined that the exemption is engaged and that in all the circumstances the public interest in withholding the requested information outweighs the public interest in disclosure. He does not therefore require any steps to be taken as a result of this notice.

Request and response

2. On 2 April 2015, the complainant wrote to the Council and made the following requests for information:
 1. *Does your Council Publish a List of Public Health Funerals it has carried out?*
 2. *How often is this late [sic] updated (Including the last time it was updated)?*
 3. *Does the Council have any Public Health Funeral cases on record that are not presently published on the website?*
 4. *If the answer to question 3 is Yes (either because there is no list or because the list is not up-to date), what are the details*

(including names, last known address, date of birth, date of death, date of funeral, and whether the case has been/will be/or even might be referred to the Treasury Solicitor?)

5. *Has the Council given any of this information away to another individual or organisation (either formally through an FOI request or informally through other communications?)*
 6. *Have you been approached by any research or probate firms for this information, if so which ones?*
 7. *What is the name, email and telephone number of the individual(s) responsible for overseeing public health funerals within the Council?*
 8. *What is the name, email and telephone number of the individual(s) responsible for overseeing Treasury Solicitor referrals within the Council?*
3. The Council responded on 7 April 2015 and confirmed that it held information captured by the requests. The Council disclosed some of the information but withheld details of the public health funerals in accordance with the 'information accessible by other means' (section 21) and 'law enforcement' (section 31(1)(a)) exemptions in FOIA. Section 31 is qualified by the public interest test and the Council found that on balance the public interest favoured maintaining the exemption.
 4. The complainant subsequently asked the Council to reconsider its decision to withhold information, setting out the reasons that explained why he was challenging the use of the exemptions. The Council therefore carried out an internal review, the outcome of which was provided on 12 May 2015. The reviewer upheld the original decision to withhold the information but revised its position for doing so – continuing to rely on section 31(1)(a) of FOIA but applying the 'information intended for future publication' (section 22) exemption to disclosure in place of section 21.

Scope of the case

5. The complainant contacted the Commissioner on 21 May 2015 to complain about the way his requests for information had been handled.
6. It was originally agreed with the complainant that the Commissioner's investigation should concentrate on requests 4 and 5. Upon further analysis, it became apparent that the Council had misunderstood request 5 and erroneously applied an exemption to the information. The

revision of the Council's position has disposed of request 5, leaving request 4 as the only outstanding issue.

7. The Council has maintained a reliance on section 31(1)(a) of FOIA to withhold the requested information and the Commissioner's consideration of the application of the exemption is set out in the body of this notice.

Reasons for decision

Section 31 – Law Enforcement

8. The Council has confirmed that the disputed information consists of the full names of the deceased, dates of births, dates of deaths, last known addresses and dates of funerals. This has been withheld under section 31(1)(a) of FOIA.
9. Section 31(1) states that:

Information which is not exempt information by virtue of section 30 [information held for the purposes of investigation and proceedings conducted by public authorities] is exempt information if its disclosure under the Act would, or would be likely to, prejudice –

a) the prevention or detection of crime.

10. The exemption may cover all aspects of the prevention and detection of crime and could, for example, be used to protect against the disclosure of information that may increase a party's vulnerability to crime.
11. This case is the latest of a series in which the Commissioner has been asked to consider a public authority's refusal to comply with the same request for public health funeral information. On 14 October 2015 the Commissioner served decision notices on Barnsley Metropolitan District Council and Birmingham City Council under respectively the case reference numbers FS50586033 and FS50584670. The Commissioner found in each instance that section 31(1)(a) of FOIA had been correctly applied by the relevant authority and accepted that the public interest favoured maintaining the exemption.
12. A decision notice is not precedent-setting and the Commissioner is required to consider the application of an exemption on a case-by-case basis. That being said, the Commissioner will be guided by previous determinations where the same or substantially similar issues have been considered.

13. The aforementioned decisions share a number of characteristics with the present case, in that they involve the consideration of the application of the same exemption to the same request which was made to a public authority at around the same time. Accordingly, the Commissioner considers that the principles underpinning the decisions are likely to apply equally here. It is for the Commissioner, however, to determine whether the nature and severity of the harm cited varies in the present case which may mean that a different finding can and should be reached.
14. To test this, the Commissioner has considered whether the specific arguments advanced reveal factors that are distinct from the circumstances considered in the *Barnsley* and *Birmingham* decisions. In his view, they do not. The Commissioner therefore considers it appropriate to rely on the same reasoning set out previously.
15. Extending this finding, the Commissioner has decided that section 31(1)(a) of FOIA is engaged and that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.

Right of appeal

16. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF