

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 February 2016

**Public Authority:** Local Government Ombudsman  
**Address:** PO Box 4771  
Coventry  
CV4 0EH

#### Decision (including any steps ordered)

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1. The complainant has requested the number and dates of all public complaints directly made against two named individuals. The Local Government Ombudsman (LGO) originally explained that it did not consider it held this type of information as it deals with complaints about corporate bodies rather than specific individuals. However the Commissioner considers that if complaints have been made because of the actions about specific individuals employed by such a corporate body, this information would be held. The LGO explained that either way, it would not be obliged to confirm or deny whether the requested information was held in this case under section 44(2) FOIA.
2. The Commissioner's decision is that the LGO was correct to neither confirm nor deny whether it held the information requested under section 44(2) FOIA.
3. The Commissioner requires no steps to be taken.

#### Request and response

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4. On 1 November 2015 the complainant requested information of the following description:

"I believe it is in the public interest to know and assess how executive local government staff perform in their duty send me the "number and dates of all public complaints directly made against":

- 1) [named individual]
- 2) [named individual]
5. On 3 November the LGO responded. It denied holding the requested information.
6. The complainant requested an internal review on 4 November 2015. The LGO sent the outcome of its internal review on 9 November 2015. It upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 7 December 2015 to complain about the way his request for information had been handled.
8. The Commissioner wrote to the LGO and explained that if the reason behind a complaint made about a corporate body was because of the actions of a specific member of staff, such as the individuals named in this request, this would be information held by the LGO. He asked the LGO to conduct searches to determine whether any such complaints existed. The LGO responded to explain that even if it were to search for this information it would not be obliged to confirm or deny whether it is held under section 44(2) FOIA.
9. The Commissioner has therefore considered whether the LGO is exempt from its obligation to confirm or deny whether the requested information is held under section 44(2) FOIA.

### **Reasons for decision**

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#### **Section 44**

10. Section 44 FOIA provides that

“(1) 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.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a)

would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1)."

11. The LGO has explained that section 44(1)(a) exempts information from disclosure if its disclosure is prohibited by any other enactment or rule of law.
12. The LGO has explained there is a statutory bar at Section 32(2) of the Local Government Act 1974, that says the LGO is not permitted to disclose any information obtained in the course of, or for the purposes of, the investigation of a complaint, unless she considers it is necessary for the purposes of the investigation (or for other very limited reasons mostly related to legal proceedings).
13. It therefore explained that the number of complaints about any given individuals is covered by the exemption at section 44(2), as to even confirm or deny whether this information is held would disclose information obtained for the purposes of an investigation of a complaint.
14. The Commissioner must therefore decide whether (if held):
  - a) the information was obtained by the LGO
  - b) whether the information was obtained as part of, or for the purposes of an investigation under Part III of the LGA, and
  - c) whether any of the exceptions to the prohibition on disclosure apply in this case.

*Has the information requested been obtained by the LGO?*

15. The Commissioner is satisfied that if the information were held, it would have been sent to the LGO within a complaint. It is therefore information that would have been obtained by the LGO from a complainant.

*Was the information obtained in the course of, or for the purposes of, an investigation under Part III of the LGA?*

16. Part III of the LGA covers investigations by the LGO into complaints about maladministration in local government. In order for section 32(2) of the LGA to apply, the information must have been obtained in relation to such an investigation.
17. The LGO has confirmed that if the information were held it would relate to an investigation into such a complaint.

18. The Commissioner therefore considers that the information, if held, would have been obtained during the course of, or for the purposes of an investigation under part III of the LGA.

*Would any of the exceptions from section 32(2) of the LGA apply?*

19. Sections 32(2)(a) to (c) of the LGA set out the specific situations where the prohibition on disclosure does not apply. The Commissioner accepts that none of those exceptions applies in this case.
20. Furthermore, the LGO has explained that if the information were held and a report relating to such an investigation were published, Section 30(3) of the Local Government Act 1974 states that in relation to reports produced on complaints the LGO has investigated:

"Apart from identifying the authority or authorities concerned the report shall not –

- Mention the name of any person, or
- Contain any particular which, in the opinion of the Local Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless, after taking into account the public interest as well as [the interests of the complainant (if any) and of other persons], the Local Commissioner considers it necessary to mention the name of that person or to include in the report any such particulars."

21. It therefore summarised, that if the information were held, it is highly unlikely it would be able to disclose the number of complaints it has investigated about specific named individuals.
22. The Commissioner is therefore satisfied that the requested information in this case is subject to a statutory prohibition contained in section 32(2) of the Local Government Act 1974. The Commissioner is satisfied that even to confirm or deny whether the requested information is held in this case would disclose information obtained for the purposes of an investigation of a complaint. Therefore the LGO is not obliged to confirm or deny whether the requested information is held under FOIA by virtue of the absolute exemption at section 44(2).

## Right of appeal

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23. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. 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** .....

**Gemma Garvey**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**