

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 January 2017

Public Authority: Wigan Metropolitan Borough Council
Address: Town Hall
Library Street
Wigan
WN1 1YN

Decision (including any steps ordered)

1. The complainant made a freedom of information request to Wigan Metropolitan Borough Council ("the Council") for a copy of a food hygiene inspection report. The Council refused the request under the section 30(1)(b) (investigations) exemption.
2. The Commissioner's decision is that the section 31(1)(b) was correctly engaged and the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner requires no steps to be taken.

Request and response

3. On 17 May 2016 the complainant made a freedom of information request to the Council which read as follows:

"...I hereby request under the Freedom of Information Act (2000), a copy of the inspectors report for the Food Hygiene Rating inspection carried out on the 4th April 2016 at the premises of the [a named business]."
4. The Council responded to the request on 1 June 2016 when it confirmed that the information was held but that it was considered to be exempt under section 31 of FOIA. Whilst the Council referred to the section 31 exemption, it also borrowed some of the wording from the section 30

exemption and so at this stage it was unclear exactly which exemption it was relying on to refuse the request.

5. The complainant subsequently asked the Council to carry out an internal review and it presented its findings on 11 July 2016. The review upheld the decision to withhold the requested information.

Scope of the case

6. On 11 July 2016 the complainant contacted the Commissioner to complain about the Council's decision to refuse to disclose the information he requested.
7. During the course of the Commissioner's investigation the Council confirmed that it was seeking to rely on the section 30(1)(b) exemption. Therefore the Commissioner considers that the scope of this decision notice is to consider whether this exemption applies to the withheld information and whether or not the public interest in maintaining the exemption outweighs the public interest in disclosure.

Reasons for decision

Section 30 – investigations

8. Section 30(1)(b) provides that information is exempt if it has been held at any time for the purposes of any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has the power to conduct.
9. The phrase "at any time" means that information is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose. Section 30 is also a class based exemption. This means that it is not necessary to demonstrate that disclosure would lead to any kind of prejudice in order to engage the exemption, only that the request falls within the class of information which the exemption is designed to protect. Section 30(1) can only be relied upon by public authorities that have a duty to investigate whether someone should be charged with an offence.

10. The withheld information in this case comprises a copy of a food hygiene report of the premises of the business named in the complainant's request.
11. The Council explained that it is a Food Authority as defined by section 5(1)(a) of the Food Safety Act 1990. Section 6(2) of the Act states that every food authority shall enforce and execute the provisions of the Act, and Section 6(5) states that an enforcement authority may institute proceedings under provisions of the Act, or any regulations or orders made under it. The Food Safety and Hygiene (England) Regulations 2013 are made under the Food Safety Act.
12. The Commissioner has reviewed the withheld information and is satisfied that the inspection was carried out to consider food hygiene offences under the Food Safety and Hygiene (England) Regulations 2013 and the Food Safety Act 1990. It is also clear that the Council, as a food authority, has the power to investigate potential criminal breaches of food safety legislation and to institute proceedings. Therefore, the Commissioner is satisfied that the section 30(1)(b) exemption is correctly engaged and she has now gone on to consider the public interest test, balancing the public interest in disclosure against the public interest in maintaining the exemption.

Public interest test

Public interest arguments in favour of disclosure

13. The complainant argued that disclosure would allow him to make an informed decision about whether to continue eating at the takeaway which was the subject of his request. He also argued that if the Council was considering taking criminal proceedings against the business then the public had the right to know what was in the report otherwise this would be "rather dangerous for us the public as the takeaway will be open for business...unsupervised, carrying out potentially criminal behaviour".
14. For its part, the Council said that it had taken into account that disclosure would provide public confidence regarding its inspection and investigatory procedures and it may also result in improving the levels of compliance in food businesses.

Public interest arguments in favour of maintaining the exemption

15. The Council argued that the following factors favoured maintaining the exemption.

- The investigation in relation to this food business is still ongoing.
- The information contained within the Food Hygiene Inspection Report was withheld as it is likely to be considered in determining whether or not legal proceedings against the business should be instigated.
- The information would also form part of any prosecution file. Premature disclosure of this information could compromise the proceedings and prejudice the right to a fair trial.

Balance of the public interest arguments

16. The Commissioner accepts that there is a public interest in disclosure. Disclosure of food hygiene inspection reports would promote transparency and accountability in how the Council carries out its responsibilities as a food authority. In particular, such transparency could ultimately help to improve food hygiene standards by both promoting good practice and highlighting businesses that need to make improvements. It might also be argued that such transparency could also improve the standards of inspections and decisions taken by Food Authorities, such as the Council. A further argument in favour of disclosure is that it is in the public interest to disclose information about businesses which do not meet the required standards of food hygiene so that the public may decide whether or not to use their services, as the complainant himself suggested.
17. However, the Commissioner is also mindful that the Food Hygiene Rating Scheme provides the public with information about the hygiene standards in food premises. The rating is publicly available for anyone to view. This does, to an extent, allow the public to make informed choices about which food businesses to use and so reduces the case for disclosure somewhat.
18. On the other hand, the Commissioner finds that there is a strong public interest in maintaining the exemption on the particular circumstances of this case. In her view there is a strong and inherent public interest in protecting the conduct of investigations and proceedings. This also requires maintaining the independence of the judicial and prosecution processes, and the preservation of the criminal court as the sole forum for determining guilt. All of these factors are relevant here.
19. The Council explained that its inspection of this business highlighted a number of potential criminal breaches of legislation in relation to food hygiene requirements. It said that it always tries to work with and support businesses to secure compliance with legal requirements, which

it said was the approach it had taken with this particular business. It referred to its Corporate Enforcement Policy which states that formal enforcement action is seen as a final means of securing compliance. It said that it had given the business the opportunity to implement improvements so as to avoid any formal legal proceedings but it would still need to consider whether legal proceedings are necessary and appropriate. It is clear to the Commissioner that the Council's investigation is ongoing and this report may lead to a decision by the Council to institute criminal proceedings in the future.

20. There will always be a strong public interest in maintaining the section 30 exemption where an investigation is ongoing. It is accepted that whilst investigations and prosecutions are ongoing, public authorities require a safe space in which to operate and premature disclosures could create media pressure which could present problems for the judicial processes. Disclosures prior to the conclusion of a court case could also interfere with an individual's right to a fair trial and frustrate a judge's ability to manage the judicial process. Any of these potential consequences would impact on the interests which section 30 serves to protect. Therefore, the Commissioner considers that in this case there is a significant public interest in protecting the integrity of ongoing investigations so as not to compromise it or any future legal proceedings.
21. The Commissioner is satisfied that disclosure would make it harder for the Council to carry out its investigations regarding this business and institute legal proceedings should this prove necessary. The Commissioner accepts that there is a public interest in disclosure but given that the investigation was still live at the time of the request the Commissioner finds that this was outweighed by the public interest in maintaining the section 31(1)(b) exemption.

Right of appeal

22. 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

23. 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.
24. 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

Paul Warbrick
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF