

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 July 2017

**Public Authority:** Sandwell Metropolitan Borough Council

**Address:** Sandwell Council House

Freeth Street

PO Box 2374

Oldbury

B69 3DE

### Decision (including any steps ordered)

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1. The complainant submitted a request to Sandwell Metropolitan Borough Council (the Council) for copies of correspondence in relation to the allocation of a particular council house. The Council sought to withhold this information on the basis of section 30(1)(b) (investigations) of FOIA. The Commissioner is satisfied that the requested information falls within the scope of the exemption and furthermore that the public interest favours maintaining the exemption.

### Request and response

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2. The complainant submitted the following request to the Council on 27 October 2016:

*'I would be grateful if you would treat this correspondence as a formal request for disclosure of the following information, under the Freedom of Information Act 2000 ("FoI").*

*Description of information sought:*

- *Copies of all correspondence - particularly involving Sandwell MBC's housing, property and audit departments and the former ALMO Sandwell Homes – about the addresses 7 Century Road in Oldbury and 2 Judge Close in Oldbury. Each piece of correspondence does not have to relate to both of the addresses but I would like copies of all*

*correspondence that relates to either of the addresses and any correspondence that relates to both if applicable'.*

3. The Council responded to this request on 25 November 2016. The Council confirmed that it held the requested information, but it explained that it considered this to be exempt from disclosure on the basis of section 31 (law enforcement) of FOIA.
4. The complainant contacted the Council on 22 December 2016 and asked for an internal review of this decision.
5. The Council informed him of the outcome of the internal review on 31 January 2017. The review found that the requested information was exempt from disclosure but concluded that this was on the basis of section 30(1) (investigations) of FOIA rather than section 31.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 3 February 2017 in order to complain about the Council's handling of his request. He argued that the requested information was not exempt from disclosure; his submissions to support this position are referred to below.
7. The Council confirmed to the Commissioner that it was seeking to rely on section 30(1)(b) of FOIA as a basis to withhold the requested information.

### **Reasons for decision**

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#### **Section 30 – investigations and proceedings**

8. Section 30(1)(b) of FOIA states that:

*'Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-*

*(b) 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 power to conduct'*

9. Section 30(1)(b) is a class-based exemption; if information falls within its scope there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. However, the public authority must have the power to conduct the investigation **and** the power to institute and conduct any criminal proceedings that result from its investigation. In order for the exemption to be applicable, any information must be held

for a specific or particular investigation and not for investigations in general. The exemption can cover investigations which commence with specific criminal proceedings identified even if ultimately they do not result in a prosecution. It will also cover information concerning initial investigations, or vetting processes, to determine whether a full investigation is warranted as long as the public authority can explain why any full investigation may, in the circumstances, lead to criminal proceedings.

10. The Council explained to the Commissioner that at the time of the request, the information in question related to an ongoing investigation that it was conducting in relation to concerns over housing allocations. Some details of this have been published in a report to the Council's Audit Committee in January 2017 which confirmed that '*The council has found patterns of behaviour that, at this point in time, look like a conspiracy to defraud and/or misconduct in a public office*'.<sup>1</sup> The Council explained to the Commissioner that it assumed that as a result of this investigation it may bring charges under either the Local Government Act 1972 or the Localism Act 2011.
11. Having examined the information in question the Commissioner is satisfied that it was clearly held by the Council in respect of a specific investigation into housing allocations. Furthermore, the Commissioner is satisfied, given the findings of the report referred to in the preceding paragraph, that the Council assumed that criminal charges may be brought in respect of these matters. Furthermore, the Commissioner notes that under section 222 of the Local Government Act 1972 local authorities have the power to prosecute where they consider it expedient for the promotion or protection of the interests of the inhabitants of their area. Consequently, the Commissioner is satisfied that the information falls within the scope of section 30(1)(b) and it is therefore exempt from disclosure on the basis of this exemption.

### **Public interest test**

12. However, section 30(1) is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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<sup>1</sup> [Audit Committee, 26 January 2017. Council update on allegations of fraud and misconduct](#)

### **Public interest in maintaining the exemption**

13. The Council explained that in balancing the public interest it had considered the need for disclosing information in order to ensure trust in its actions and increase transparency. The Council explained that this was the reason why it had decided to confirm to the complainant that it held information falling within the description of his request and moreover that such information formed part of an ongoing investigation.
14. However, the Council explained that it was of the view that the public interest overwhelmingly favoured withholding the information itself. It argued that disclosure of the information could undermine the effectiveness of the investigation specifically because certain parts of the information could be used as part of a 'trial by media' before the full investigation is completed and people involved had the chance to respond in an appropriate manner. More broadly, the Council argued that disclosure of the information at the point the request was submitted could discourage witnesses from coming forward, either for this or future cases, where they may think their confidentiality might not be preserved. The Council acknowledged that some of these factors will change over time as the investigation is concluded, which could potentially allow for the release of some of withheld information, however given that the investigation remained live at the point of the request the Council argued that the public interest clearly favoured maintaining the exemption. In reaching this conclusion, the Council suggested that the complainant had, in its view, misunderstood the meaning of public interest by taking the view that because the public may be interested that means it is in the public interest. The Council emphasised that it was of the view that the public interest is 'for the good of the public' and that in this case it was best served by the information not being disclosed at the point the request was submitted.

### **Public interest in disclosing the withheld information**

15. The complainant argued that there was a compelling case to support his view that the public interest favoured disclosure of the withheld information. In order to support his position, the complainant made the following points to the Commissioner:
16. The complainant explained that he submitted a request for information concerning the two properties in question because it was alleged that a member of Councillor Mahboob Hussian's family had been awarded a council house at 2 Judge Close despite part-owning a house at 7 Century Road. The complainant noted that this allegation was first made in

October 2014 on a blog which covered issues concerning the Sandwell area.<sup>2</sup> The complainant argued that it was clear that the Council was aware of the blog in question and in some cases had sought to take action on what the blog had published.<sup>3</sup>

17. In light of this the complainant argued that at the point he made his request, the Council had already had more than two years notice to investigate this allegation, given that it had shown its form in monitoring the blog in question and responding to any allegations the council perceived to be untrue or inaccurate.
18. The complainant argued that the initial findings of the Council's own investigation (ie the report published in January 2017) highlight why the correspondence he requested should be disclosed. In particular the complainant pointed to the finding that since 1997 the award of 10 council houses 'seemed to all benefit members of Councillor [Mahboob] Hussian's family'. The complainant acknowledged that there was an ongoing investigation. However, he suggested that it was not plausible to argue that the Council had been investigating matters since 1997 and it would appear that the Council has not taken any action between October 2014 and the end of 2016 at least in respect of the specific allegation which is the focus of the request. The complainant argued that this inaction did not inspire confidence in the Council's ability, or its compunction, to investigate itself or this elected councillor and his family members in particular.
19. Consequently, the complainant argued that there is a strong public interest in the disclosure of the withheld information as it would shed light on what the Council did or did not do after first being made aware of this allegation, and what it knew or did not know prior to the 2014 blog post.
20. The complainant argued that there is also a strong public interest in discovering if there was any attempt to wilfully suppress information about the allocation of council housing coming into the public domain, especially since 2014.
21. The complainant suggested that his argument gained further weight in light of the aforementioned report. He noted that the report was based upon work undertaken by law firm Gowling WLG (formerly Wragge & Co) and that the company was commissioned in March 2015 – six months

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<sup>2</sup> <http://thesandwellskidder.blogspot.co.uk/2014/10/mahboob-hussains-caring-nature.html>

<sup>3</sup> <http://thesandwellskidder.blogspot.co.uk/2016/10/cllr-simon-hackett-part-1.html>.

after the blog alluded to the allegation – and any mention of the two addresses about which he requested correspondence was omitted from the remit of that report. The complainant suggested that the omission suggests an attempt by the Council to avoid investigating the allegation in question and in light of that the public interest arguments in favour of disclosure gain further weight.

### **Balance of the public interest arguments**

22. When considering the public interest in maintaining the exemptions provided by section 30(1), the Commissioner takes the view that consideration should only be given to protecting what is inherent in those exemptions – the effective investigation and prosecution of crime - which requires the following:
  - the protection of witnesses and informants to ensure people are not deterred from making statements or reports by fear they might be publicised;
  - the maintenance of independence of the judicial and prosecution processes;
  - the preservation of the criminal court as the sole forum for determining guilt;
  - allowing the investigating body space to determine the course of an investigation; and
  - protecting information that deals with specialist techniques.
  
23. Therefore, when weighing up the public interest in relation to the exemption the following factors (amongst others) should be considered:
  - the stage or stages reached in any particular investigation or criminal proceedings;
  - whether and to what extent the information has already been released into the public domain;
  - the significance or sensitivity of the information; and
  - the age of the information.
  
24. The Commissioner considers that the phrase 'at any time' means that information can be exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation.
  
25. The Commissioner acknowledges that the allegations which the complainant has highlighted, and to which the withheld information relates, are clearly serious ones. She acknowledges that there is, understandably, a significant level of local interest in these allegations and indeed in the other matters referred to in the report cited above. Consequently, the Commissioner agrees with the complainant that there is a strong public interest in disclosure of information which would confirm what the Council knew about these allegations, when they knew

it and what action it had taken. Disclosure of the withheld information would provide some insight into these matters.

26. However, the Commissioner disagrees with the complainant that it is unclear whether the Council has taken any action about the allegation which is the focus of his request. Rather, the confirmation provided by the Council that it held information falling within the scope of his request, as opposed to it refusing to confirm or deny whether it held any information, is an indication of this. In essence, the Council has confirmed that it is investigating allegations relating to the two properties in question. Furthermore, the Commissioner agrees that the public interest in maintaining the exemption attracts significant weight given that the investigation remains ongoing. In the Commissioner's view disclosure of the information whilst the investigation remains live risks undermining the Council's ability to effectively and efficiently conclude the investigation. In particular, the Commissioner believes that given the local interest in this matter, disclosure risks undermining the safe space the Council needs to determine the course of the investigation. Whilst some details of the allegation are in the public domain, not least by virtue of the blog referred to by the complainant, the information contained within the requested information is not. On balance, the Commissioner has therefore concluded that the public interest favours maintaining the exemption contained at section 30(1)(b).

## Right of appeal

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27. 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)

28. 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.
29. 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** .....

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