

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 May 2020

**Public Authority:** Bristol City Council  
**Address:** The Council House  
College Green  
Bristol  
Avon  
BS1 5TR

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to an investigation carried out by the council into a charity, Help Bristol's Homeless. The council provided some information, however it withheld other information on the basis that section 40(2) and section 31(1)(g) applied.
2. The Commissioner's decision is that the council was correct to apply section 31(1)(g) to withhold the information and that the public interest rests in the exemption being maintained. She has not therefore found it necessary to consider the application of section 40(2) further in this instance.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 27 August 2019 the complainant wrote to the council and requested information in the following terms:

*"The BBC reported recently that the council was looking into the charity Help Bristol's Homeless, run by [name of individual redacted].*

*Under the FOIA, I would like to know / be sent the following:*

- 1. Has that been done?*
- 2. What was the result? I would like the final report that was compiled please, plus any draft versions.*

*I would also like copies of any and all email or other correspondence [sic] between the following people that references either Help Bristol's Homeless and/or [name of individual and councillors names redacted]"*

5. The council responded on 26 September 2019. It provided some information, in the form of redacted correspondence, and confirmed that an investigation had been carried out, and that it holds a copy of a report. However, it refused to provide a copy of the report on the basis that section 40(2) of the Act applied (personal data of third parties).
6. On the same date the complainant then requested that the council carry out a review of its decision, suggesting that the council could redact any personal data from the information it disclosed.
7. Following its internal review, the council wrote to the complainant on 21 October 2019. It revised its position and relied upon Section 31(1)(g) of the FOI Act – (Law enforcement), identifying the purpose in section 31(2)(c) as the relevant section, to withhold the information from disclosure. It also continued to rely upon section 40(2). It did however summarise the outcome of the investigation. It said that *"The enquiry was inconclusive and no further action was required"*.

## Scope of the case

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8. The complainant contacted the Commissioner on 22 October 2019 to complain about the way his request for information had been handled. He considers that the council is not correct to withhold the information under the exemptions it has claimed.

9. During the course of the Commissioner's investigation the council clarified that it was seeking to rely upon Section 31(1)(g) and sections 31(2)(a) to (c) of the FOI Act to withhold the entire report. It also continued to rely upon section 40(2). It also confirmed that it does not hold any draft copies of the report.
10. The Commissioner therefore considers that the complaint is that the council was not correct to apply sections 40(2) and 31(1)(g) to withhold the information from disclosure.

## Reasons for decision

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### **Section 31(1)(g) - Law enforcement**

11. Section 31(1)(g) of FOIA states that

*"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*

*(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),*

12. The relevant sections of section 31(2) provide that:

*"The purposes referred to in subsection (1)(g) to (i) are-*

*(a) the purpose of ascertaining whether any person has failed to comply with the law,*

*(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,*

*(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,*

13. The Commissioner has published guidance on the application of section 31 which is available at <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>.

14. The Commissioner's guidance states that in order to engage the exemption a public authority must:
  - identify the public authority that has been entrusted with a function to fulfil one of the purposes listed in subsection (2),
  - confirm that the function has been specifically designed to fulfil that purpose, and
  - explain how the disclosure would prejudice that function.
15. The council demonstrated that it has a statutory responsibility under the Care Act 2014. It therefore has a function to investigate where it has concerns which relate to its duties under the Care Act 2014. A disclosure of any information that would prejudice the council's ability to perform that function would engage the exemption.
16. The council described to the Commissioner the purpose of its investigation and clarified how the conditions of FOI Act Section 31(2)(a) to (c) were engaged by the purposes behind its investigation.
17. Having considered these arguments, the Commissioner is satisfied, under the circumstances of the case, that the investigation was to meet the purposes set out in the Care Act 2014, and that these purposes meet a function which the council is obliged to carry out under the Care Act 2014, thus meeting the requirements for section 31(1)(g) to be engaged.
18. The council also explained why it considered that a disclosure of the information would prejudice its ability to carry out its function in this area.
19. The Commissioner has set out her analysis of these arguments further in a confidential annex to this decision notice. The analysis explores the council's arguments in terms of the withheld information. Due to this, the confidential annex is only able to be provided to the council, and not to the complainant.
20. In conclusion, the Commissioner is satisfied that that the council's arguments are persuasive, and that the prejudice envisaged would be likely to occur in this instance. The Commissioner's decision is therefore that the council was correct to identify that section 31(1)(g) is engaged as a relevant exemption under the circumstances of the case.

21. As section 31(1)(g) is engaged, the Commissioner is required to carry out a public interest test, required by section 2 of the Act. The test is whether, *"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"*.

### The public interest

#### The public interest in the information being disclosed

22. The council recognised the factors in favour of the information being disclosed. Some of these are outlined below, and further considerations are taken into account within the confidential annex to this decision notice:

- There is public interest in providing transparency to the public and demonstrating that investigations are conducted properly. A disclosure of investigation details would increase public confidence in this respect.
- There is an additional public interest in ensuring that where investigations do not lead to further action being taken, the reasons for not taking action are made clear, thereby raising public confidence that the council has carried out its functions effectively and appropriately.

#### The public interest in the exemption being maintained

23. The council recognised a number of factors in favour of the exemption being maintained which are explained fully in the confidential annex to this decision. These include:

- A disclosure could hinder any current or future investigations undertaken by the Council and prejudice its ability to comply with its duties under the Care Act.
- It argued that releasing the requested information would undermine and compromise the council's approach to enquiries and investigations.
- It considered that releasing information about the council's enquiries would be likely to discourage people from coming forward with concerns about organisations or individuals if they knew that the issues they raised might be routinely disclosed into the public domain.

- Disclosing information relating to specific enquiries could lead to the identification of the individuals involved, including victims and witnesses involved in an investigation.

#### The Commissioner's analysis of the public interest arguments

24. Having considered the arguments and taking into account the nature and the content of the withheld report, the Commissioner is persuaded that the council was correct to consider that the public interest in favour of maintaining the exemption outweighs that in the information being disclosed.
25. Although there is a public interest in the council demonstrating that it takes concerns seriously, and in it demonstrating the work it carries out in such scenarios, in effect, a disclosure of this sort of information would hinder the effectiveness of its work, and could lead to the council being unable to investigate effectively and appropriately.
26. The Commissioner has elaborated further on her analysis within the confidential annex it has provided to the council in relation to this decision notice.
27. The Commissioner has therefore decided that the council was correct to rely upon section 31(1)(g) to withhold the information, and that the public interest rests in the exemption being maintained in this instance.

#### **Section 40 personal information**

28. As the Commissioner has decided that the council was correct to rely upon section 31(1)(g) to withhold the information she has not found it necessary to consider the application of section 40(2) further in this instance.

## Right of appeal

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

30. 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.
31. 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**  
**Head of FoI Casework and Appeals**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**