

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2021

Public Authority: St Helens Council
Address: 3rd Floor
Wesley House
Corporation Street
St Helens
WA10 1HF

Decision (including any steps ordered)

1. The complainant requested an inspection report relating to St Helens College. St Helens Council (the council) initially refused the request under sections 30 (investigations) and 31 (law enforcement) of the FOIA, but following an internal review, relied only on section 30(1)(a)(i) of the FOIA to uphold its refusal.
2. The Commissioner's decision is that section 30(1)(a)(i) of the FOIA is not engaged in relation to this request and she therefore does not uphold the refusal.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with requested information.
4. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 14 January 2020 the complainant requested the following information from the council relating to a food hygiene inspection:

"Please could you provide me with the full environmental health report for the inspection of St Helens College, St Helens Town Centre, Water Street, WA10 1PP (inspection date:5 June 2019). I would like you to include all photos submitted with or alongside the report."

6. The council responded on 10 February 2020 refusing the request under sections 30 and 31 of the FOIA.
7. The complainant requested an internal review on 18 February 2020 disputing the refusal and highlighting that it had not stated which subsections of the cited exemptions it was relying on to refuse the request.
8. The council provided its internal review on 25 March 2020. It stated that it was relying on section 30(1)(a)(i) of the FOIA to maintain its refusal of the request and that it was no longer relying on section 31 of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner disputing the council's refusal of his request.
10. The scope of this case and the following analysis is to determine whether the council correctly relied on section 30(1)(a)(i) of the FOIA to refuse the request.

Reasons for decision

Section 30 of the FOIA – Investigations and proceedings

11. Section 30(1) of the FOIA states:

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

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it,

(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, or

(c) any criminal proceedings which the authority has power to conduct."

12. The Commissioner considers the phrase "at any time" means that information may be exempt under section 30(1) of the FOIA 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 held and used for this purpose.

13. Consideration of section 30(1) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Is the exemption at section 30(1)(a)(i) engaged?

14. In order for the exemption to be engaged, information must first be held for a specific or particular investigation and not for an investigation in general.

15. The council has advised the Commissioner that the food safety inspection was not carried out in response to a complaint, but was fulfilling its duty to inspect at a particular time.

16. The council holds the position that a food safety inspection is essentially an assessment as to whether a business operation is complying with the

requirement of food safety legislation and whether charges need to be brought if non-compliance is found.

17. The principle legislation under which food safety inspections are undertaken is the Food Safety and Hygiene (England) Regulations 2013, which contains specific provisions which must be met by food businesses and the powers and enforcement tools available to council officers carrying out the inspections.
18. The council told the Commissioner that failure to comply with these regulations can be dealt with in a number of ways, which includes whether charges should be taken before court.
19. The Commissioner's guidance¹ on section 30(1)(a)(i) at paragraph 14 states:

*"Any investigation must be, or have been, conducted with a **view** to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it."*
20. And at paragraph 15 of the guidance it states:

"...the purpose of the investigation must be to establish whether there were grounds for charging someone, or if they have been charged, to gather sufficient evidence for a court to determine their guilt"
21. The Commissioner in consideration of the above is of the view that the food safety inspection that was carried out was not an "investigation" for the purpose of establishing whether there were grounds for charging someone.
22. As the council has stated, this food safety inspection was not brought about by a complaint, it was fulfilling its duty to "inspect at a particular time". The Commissioner notes that the withheld information appears to relate to what was a routine inspection.
23. The exemption at 30(1)(a) is very specific in that it relates to "any investigation". The Commissioner accepts that a food safety inspection could ultimately lead on to an investigation to ascertain whether there

¹ [investigations-and-proceedings-foi-section-30.pdf \(ico.org.uk\)](https://ico.org.uk/for-the-public/foi/section-30-investigations-and-proceedings-foi-section-30.pdf)

are grounds to charge someone for an offence. However, the Commissioner has not been convinced by the council that the purpose of the inspection in question here was to investigate whether any person should be charged with an offence, as there is no mention of this happening in the council's submissions to the Commissioner. This particular food safety inspection was, in the Commissioner's view a general routine food safety inspection.

24. Based on the above, the Commissioner considers that the council was not conducting an investigation which meets the criteria of section 30(1)(a)(i) of the FOIA and therefore finds that the exemption is not engaged in this case.
25. The Commissioner requires the council to carry out the step in paragraph 3 above.

Right of appeal

26. 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

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

27. 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.
28. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House

Reference: IC-42534-G2Q2

**Water Lane
Wilmslow
Cheshire
SK9 5AF**