

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2023

Public Authority: Hastings Borough Council
Address: Hastings Town Hall
Queens Square
Hastings
TN34 1TL

Decision (including any steps ordered)

1. The complainant has requested information regarding the use of parking spaces from Hastings Borough Council ("the Council").
2. The Commissioner's decision is that the Council was entitled to rely on section 31 when refusing to disclose the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 24 February 2023, the complainant wrote to the Council and requested information in the following terms:

"Further to the announcement in the council's "Hastings Matters" publication concerning 20 new reserved spaces in the Castle Hill Car Park, please answer the following questions:

1) Which organisation is renting these spaces?

2) How much is the council charging said organisation in question 1)?

3) How did this arrangement come into being - was there any advertisement or any kind of bidding process?

4) Under what authority has the council removed these bays from

public use?

5) Will these bays be returned to public use and if so, after what amount of time?"

5. The Council responded on 10 March 2023. It provided some of the requested information and advised the remaining information was either exempt under section 31(1)(a), or was not a valid request for information.
6. Following an internal review the Council wrote to the complainant on 12 April 2023. It indicated that it was upholding its application of section 31(1)(a), and provided some additional information within the scope of the request.

Scope of the case

7. The complainant contacted the Commissioner on 19 April 2023 to complain about the way their request for information had been handled.
8. The complainant confirmed they were satisfied with the responses provided to questions 2-5, however they did not agree with the application of section 31(1)(a) in response to question 1.
9. The Commissioner considers that the scope of his investigation is to consider whether the Council was entitled to rely on section 31(1)(a), when withholding the requested information for question 1.

Reasons for decision

Section 31(1)(a): Prevention or detection of crime

10. Section 31(1)(a) of FOIA states:

"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 –

(a) the prevention or detection of crime".

11. In order for a prejudice based exemption such as section 31(1)(a) to be engaged, the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view; this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
12. The complainant explained that the car park in question, is shared with members of the public and located directly on a busy road. Therefore, members of the public and the employees of the 'organisation' will be coming into contact each day. The complainant advised that the Council has also implied that the workplace of this organisation is nearby, so it is possible that an interested member of the public could watch where the employees walk to, after they park.
13. The complainant concluded that although the Council states that the 'organisation' and its employees/family members have previously been the victims of crime, it seems logical that any individual who has a grievance with the 'organisation' or its employees, already know who that 'organisation' is and where they are located. Therefore, withholding the information would seem unlikely to protect said 'organisation' and employees as claimed by the council.
14. Having reviewed the withheld information and the reasoning provided by the Council, the Commissioner is satisfied that if the requested information was disclosed, it would prejudice the prevention or detection of crime. The Council have clearly explained to both the Commissioner and the complainant, that the individuals using the car park have previously been victims of serious violent crime by stating the following;
- “Over the years members of staff from this organisation have been subject to violent serious attacks not only on themselves but towards members of their families...

The severity of these attacks has resulted in a very serious level of anxiety for the staff group, the safety of staff is paramount not only at work but also at home. The release of the organisation who now rent the reserved parking bays in Castlehill Car Park could lead to further staff being re-targeted again leading to serious harm to them and their families.”

15. Although the Commissioner acknowledges that it may be possible for a motivated intruder to identify those using the car park, this does not mean disclosing the requested information would be appropriate under FOIA. Disclosing the information under FOIA would only make it easier to obtain or access the information, which would increase the risk of the prejudice occurring.
16. Based on the above reasoning and additional information provided to the Commissioner by the Council, the Commissioner is satisfied that the Council has met the three part test required when relying on section 31. The Commissioner will now go on to consider the public interest test.

Public interest test

17. Section 31 is a qualified exemption. The Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at section 31 of FOIA outweighs the public interest in disclosing the information requested by the complainant.
18. In reaching a view on where the public interest balance lies in this case, the Commissioner has taken into account the views of both the complainant and the Council, as well as factors that apply in relation to the information in question
19. The Council advised that it believed there is no wider public interest in the requested information, other than the one expressed by the complainant.
20. The Council explained that there is a public interest in maintaining the exemption, as it will protect the safety of any individual(s) linked to the information. The Council also explained that if it was disclose, those individual(s) would be more vulnerable to crime.
21. The Council concluded that it has a duty to protect any individual(s), who would likely be subject to harm, if it was to disclose the requested information.
22. The Complainant stated that they were interested in the requested information, as the Council seemed to be removing a number of public parking spaces for various projects. The Complainant further advised

that if the Council were to disclose the requested information, this would ensure the Council is acting in a transparent manner.

23. The Commissioner acknowledges that there is a public interest in transparency and openness from all public authorities when information is requested. The Commissioner also acknowledges that there may be an interest as to why a limited amount of car park spaces have been removed from public access.
24. However, the Commissioner also recognises that there is a strong public interest in preventing individuals who are intent on committing crimes, from having access to information which may support them in conducting these unlawful activities. He also acknowledges that there is a strong public interest in protecting individuals who are at risk from serious crimes or being revictimised.
25. Having given due consideration to the opposing public interest factors in this case, the Commissioner has concluded that the factors in favour of maintaining the exemption outweigh those in favour of disclosure. The Commissioner is therefore satisfied that section 31(1)(a) of FOIA was appropriately applied in this case.

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: 0203 936 8963

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

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