

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

### **Decision notice**

**Date:** 13 November 2023

**Public Authority:** Dover District Council  
**Address:** Council Offices  
White Cliffs Business Park  
Dover  
CT16 3PF

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

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1. The complainant has requested from Dover District Council ('the council'), information relating to a food standards agency report into a specific business. The council refused the request on the basis that section 30(1)(b) of FOIA applied, (investigations).
2. The Commissioner's decision is that the council was correct to apply section 30(1)(b) to withhold the information.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 14 June 2023, the complainant wrote to the council and requested information in the following terms:

*“I would like to make a freedom of information request for the Food Standards Agency report for [name of business redacted by the ICO]. It was inspected on March 30 of this year. Would you also please include any photographs that were taken as part of the inspection.”*

5. The council responded on 6 July 2023. It refused to disclose the requested information on the basis that section 30(1)(b) of FOIA applied.
6. Following an internal review, the council wrote to the complainant on 21 July 2023. It upheld its decision that section 30(1)(b) applies to withhold the information from disclosure.

## Scope of the case

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7. The complainant contacted the Commissioner on 26 July 2023 to complain about the way their request for information had been handled.
8. The complainant argues that the council was not correct to withhold the requested information under Regulation 30(1)(b). They argue that other authorities have disclosed similar reports previously.
9. The following decision notice therefore considers whether the council was able to withhold the requested information under the exemption in section 30(1)(b) of FOIA.

## Reasons for decision

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### **Section 30(1)(b) - Investigations and proceedings conducted by public authorities.**

10. 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.

11. 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.
12. 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.
13. Section 30(1)(b) can only be relied upon by public authorities that have a power to investigate whether someone should be charged with an offence.

#### Analysis

14. The withheld information in this case comprises a food hygiene inspection report of a food outlet. The council confirmed to the complainant that its investigations were ongoing in terms of the business in question.
15. The council confirmed to the Commissioner that its power to conduct the relevant investigation is provided for under Section 222(1)(a) of the Local Government Act 1972 and more specifically, the Food Safety and Hygiene (England) Regulations 2013.
16. The Commissioner is satisfied that the council is a Food Authority as defined by section 5(1)(a) of the Food Safety Act 1990. He also notes that section 6(2) of the Act states that every food authority shall enforce and execute the provisions of the Act, whilst 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.
17. The Commissioner has reviewed the withheld information and is satisfied that the inspection was carried out to consider whether there were any 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.

18. Section 2(2) of FOIA requires that a public interest test is carried out where section 30 is engaged. If the public interest in the exemption being maintained outweighs that in the information being disclosed, then the authority is not required to disclose it.

The public interest

The public interest in the information being disclosed

19. The council acknowledges the public interest in promoting transparency and increasing awareness in its decision-making processes and to help people understand whether to use the premises concerned.

The public interest in the exemption being maintained.

20. The council argued that where an investigation is ongoing, a disclosure of the requested information could make it harder for it to carry out its investigations regarding the business in question, and to institute legal proceedings should it prove necessary.
21. It further argued that, at the time of the request, it needed free-thinking space in order to consider the matter in full. It argued that a premature disclosure of the information into the public domain would prejudice the conclusion of the investigation.
22. The council also argued that the published rating for the business gives the public sufficient information about whether or not they wish to use the premises concerned. The public interest in the disclosure of the requested information is therefore lessened as the public already has the necessary information available to it. Therefore, the balance of the public interest rests in the exemption being maintained in order to protect the ongoing investigation and any subsequent court proceedings from being prejudiced.

Balance of the public interest arguments

23. The Commissioner accepts that there is a public interest in disclosure of food hygiene inspection reports as it 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.

24. 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.
25. However, the Commissioner is 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.
26. Additionally, there will always be a strong public interest in maintaining the exemption in section 30 where an investigation is ongoing. Whilst investigations and prosecutions are ongoing, public authorities require a safe space in which to operate and continue to conduct their investigation. A premature disclosure of their evidence could create media pressure which could interfere with the investigation. It could also create issues preparing and presenting any subsequent prosecution. It would provide some of the evidence which the council would seek to rely upon to the other party outside of the court led disclosure process, and potentially prior to any such case being brought, thereby potentially undermining its ability to build its case free from interference. It is also likely to undermine the ability of the council to be able to resolve the issues informally.
27. The Commissioner accepts that there is a significant public interest in protecting the integrity of ongoing investigations so as not to compromise it, or any future legal proceedings.
28. The Commissioner therefore considers that although there is a public interest in disclosure, given that the investigation was still live at the time of the request, the public interest in disclosure is outweighed by the public interest in the exemption being maintained in this instance.
29. The Commissioner has therefore decided that the council was correct to apply section 30(1)(b) to withhold the information in this case.

## Right of appeal

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

31. 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.
32. 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 .....**

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