

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 December 2024

**Public Authority:** East Lindsey District Council  
**Address:** Tedder Hall  
Manby Park  
Louth  
Lincolnshire  
LN11 8UP

#### Decision (including any steps ordered)

---

1. The complainant has requested correspondence relating to the resignations of named Parish Councillors. East Lindsey District Council (ELDC) provided some information, but withheld the rest on the basis of section 31(1)(g) (prejudice to law enforcement) of FOIA.
2. The Commissioner's decision is that ELDC was entitled to rely on section 31(1)(g) in relation to the withheld information.
3. The Commissioner does not require further steps.

#### Request and response

---

4. On 8 February 2024, the complainant wrote to ELDC and requested information in the following terms:
  - "1. Copies of emails and related documents concerning the resignation of all parish councillors at this parish, with the exception of [name redacted]
  2. All emails and documents between the ELDC and [name redacted], and relevant internal emails within the ELDC concerning the collapse of

the North Thoresby parish council. (this will be found by doing a simple email search for "North Thoresby" within mailboxes)

These will include, but not be limited to:

- the formal instructions to [name redacted] informing that she has been given control of the council, what her responsibilities will be, and the scope of her powers.
- who authorised this to happen,
- who authorised her to act as the parish clerk and change the contact details to her own private email address
- who authorised and gave her access to the official parish council website
- who authorised her to delete all council meeting minutes from 2023 that had already been approved by democratic vote of the council while in public session
- who authorised her to delete the draft minutes of the January council meeting and replace them with the attached one that has been written by a member of the public who was in Cheshire at the time, and not present virtually (see appendix)
- who authorised her to use a private email address faked to look like an official one ie [redacted instead of the official parish council address of [redacted] that is still operational
- Who authorised her to reopen the village hall when none of the committees that are in place to legally protect the hall, employees and users and safeguard their health, and ensure good governance and anti-fraud and corruption policies are adhered to ie the Finance Committee and the HR & Facilities Committee
- who authorised her to contact the previous clerk on behalf of the District Council and instruct him to return all documents and control of the council online drive to herself and [name redacted], threatening action by the ELDC Cyber Crimes Unit (see appendix)

This information will be found by a simple search for "North Thoresby" in the email accounts of

[name redacted], Monitoring Officer  
[name redacted], Deputy Monitoring Officer  
[name redacted], District Councillor

- [name redacted]  
[name redacted]  
the elections officer or officers (names unknown to myself).”
5. ELDC responded on 8 March 2024, it provided some information, and cited sections 30 (investigations and proceedings by public authorities) and 41 (information provided in confidence) of FOIA to withhold the remaining information.
  6. Following an internal review, ELDC wrote to the complainant on 26 June 2024, withdrawing its reliance on section 41.
  7. It confirmed that it was upholding its reliance on section 30(1)(c) and also section 31(1)(g) and 31(2)(b) (law enforcement) of FOIA to withhold the requested information.

## **Scope of the case**

---

8. The complainant contacted the Commissioner on 10 June 2024, to complain about the way their request for information had been handled. In particular they were unhappy with the application of exemptions to withhold information.
9. During the Commissioner’s investigation ELDC withdrew reliance on section 30(1)(c), confirming instead that its position was that section 31(1)(g) was engaged. The Commissioner also notes that when citing 30(1)(c) in its refusal notice and internal review response, ELDC did not explain how the withheld information fell within that class.
10. Therefore the scope of the case is to consider whether ELDC was correct to rely on section 31 of FOIA to withhold some of the requested information.

## **Reasons for decision**

---

### **Section 31 – law enforcement**

11. Section 31 provides a prejudice-based exemption which protects a variety of law enforcement interests.

12. ELDC has cited section 31(1)(g) which states that:

“(1) 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 of any public authority of its functions for any of the purposes specified in subsection (2).”

13. Within their submissions to the Commissioner the relevant purposes cited by ELDC in subsection (2) 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.

14. As stated in the Commissioner’s [guidance](#) on this section, in order to engage section 31(1)(g) a public authority should:

- 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 could harm that function.

15. ELDC has confirmed that it is the public authority in question and that it is carrying out functions under the following.

16. 31(2)(a) - the purpose of ascertaining whether any person has failed to comply with the law

- Under the Local Government and Housing Act 1989 (LGHA 89) part of the role of ELDC’s Monitoring Officer is to investigate any matter which they may have reason to believe may constitute, or where they have received an allegation that a matter may constitute, a reportable incident under sections 5 and 5A of the LGHA 89.

17. 31(2)(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper.

- ELDC has the power to promote and maintain high standards of conduct as specified in section 27 of the Localism Act 2011. This includes adopting a code of conduct as detailed in section 28 of the Localism Act 2011 and enforcing the same. Section 28 of the Localism Act provides that ELDC must have in place:

(a) arrangements under which allegations can be investigated and

(b) arrangements under which decisions on allegations can be made.

18. The Commissioner is satisfied that these are relevant functions which fall under section 31(1)(g) for the purposes of 31(2)(a) and (b) of FOIA, and which are specifically entrusted to ELDC as a local authority to fulfil.

### **Is the exemption engaged?**

19. In order for the exemption to be engaged, the following criteria must be met:

- first, the actual harm which ELDC 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, ELDC 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 ELDC is met – i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

20. In relation to the lower threshold (would be likely to prejudice), the chance of prejudice occurring must be more than a hypothetical possibility. Rather, there must be a real and significant risk. The higher threshold (would prejudice) places a stronger evidential burden on a public authority to discharge. Where arguing that disclosure would prejudice, the chances of the prejudice occurring should be more probable than not.

21. Consideration of the exemption at section 31 is a two-stage process. Even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
22. In respect of the level of likelihood, ELDC has confirmed that it is relying on the lower limb of 'would be likely' to prejudice.
23. In considering the first part of the test laid out at paragraph 19, the Commissioner has considered if the actual harm which ELDC alleges would be likely to occur if the withheld information was disclosed, relates to the applicable interests within the relevant exemption, in this case, sections 31(2)(a) and (b).
24. From the reasoning provided by the Council the Commissioner accepts that this does relate to the applicable interests in sections 31(2)(a) and (b). Therefore the first part of the test is met.
25. The Commissioner has gone onto consider the second and third parts of the test: whether ELDC has demonstrated a causal link between disclosure of the withheld information and the prejudicial outcome it has predicted, and whether the likelihood of that prejudice occurring is real and significant.
26. ELDC has explained that as part of the events surrounding the resignations mentioned in the request, various claims and counter claims were made in respect to the legitimacy of Parish Clerks, activities of Parish Councillors and other individuals.
27. These claims are currently being investigated by ELDC which argued that, as the withheld information relates to the various claims, disclosure would be likely to prejudice its ability to carry out its statutory functions specified above on the following grounds:
  - It would be likely to undermine the ability of ELDC to undertake Members Code of Conduct investigations in the future. Information generated during a preliminary investigation is sensitive and its disclosure could set a precedent of release which could affect future Code of Conduct investigations.
  - Information being released into the public domain while investigations are still in progress, could be further disclosed or shared, which would obscure or obfuscate the investigation being conducted by ELDC.

28. While the request does not specifically ask for information relating to any investigations being carried out by ELDC, the Commissioner, having seen the withheld information, is persuaded that disclosure of the withheld information would be likely to negatively affect those investigations.
29. This is because, contained within the withheld information are various comments about the conduct of individuals connected with the Parish Council at the time of the request. ELDC has argued that it needs to be able to consider and investigate such comments impartially, and that disclosure of the withheld information would be likely to directly prejudice internal examination options, and open thinking around issues. This may result in a chilling effect and stifle the decision making process.
30. It is clear from various information provided to the Commissioner, that opinions about events surrounding the resignations of the Parish Councillors are very strong. Therefore disclosure of any claims made against specific individuals while a Code of Conduct investigation is ongoing, and before any decision has been made, would be likely to negatively affect those individuals and potentially escalate what are already strongly held opinions.
31. Having considered the above, the Commissioner is satisfied that a causal relationship between the disclosure of the withheld information has been shown, and that the likelihood of the prejudice occurring is real and significant. Therefore the Commissioner finds that section 31(1)(g) is engaged.
32. Section 31 is a qualified exemption. The Commissioner must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at section 31(1)(g) of FOIA, outweighs the public interest in disclosure of the information.

### **Public interest test**

#### Factors in favour of disclosure

33. The complainant has argued that it is in the public interest to disclose the requested information because this would show how the District Council complies with regulatory requirements.
34. They have also argued that disclosure of the information would increase public confidence in ELDC.
35. ELDC accepts that it is in the public interest to ensure that any process or intervention by ELDC into Parish Council affairs is appropriate and fair.

### Factors in favour of maintaining the exemption

36. ELDC has explained that the background to this case relates to the breakdown of a Parish Council leading to the resignations of the majority of Parish Councillors, and various claims and counter claims of misconduct stemming from those resignations.
37. ELDC has a regulatory function in investigating such claims and therefore argued that sharing information about such disputes while they were live and on-going would not be in the public interest.
38. There is a clear process to address these matters through ELDC and it is in the public interest to allow this process to take place without interference or external pressure which would potentially damage or obstruct this process.
39. ELDC also considers that disclosure of the information during the course of an investigation, could be taken as an indication that similar information may be disclosed in the future. It argued that there is a strong public interest in ensuring that it is able to carry out such investigations without concern that they might be compromised by such disclosure.

### **The Commissioner's conclusion**

40. In carrying out the balancing exercise in this case, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption, that is the public interest in avoiding likely prejudice to law enforcement matters.
41. In that respect, the Commissioner recognises that there is a strong public interest in protecting the law enforcement duties of local government and avoiding prejudice to the purpose of ascertaining whether any person is responsible for any conduct, as set out in section 31(1)(g) by virtue of section 31(2)(a) or 31(2)(b).
42. The withheld information relates both to the resignations of various Councillors and the Clerk of the Parish Council, and to code of conduct complaints currently being investigated by ELDC.
43. The Commissioner acknowledges that there is likely to be local interest both in the circumstances surrounding the resignations, and in what claims may have been made which led ELDC to instigate code of conduct investigations.
44. In considering the balance of the public interest, it should be noted that 'public interest' here means the public good. It is not the same as what is of interest to the public.



45. Therefore, in considering the balance of the public interest on this point the Commissioner is of the opinion that while there may be local interest in events leading to the resignations, this is not the same as there being a strong public interest in that information being released.
46. The Commissioner recognises the need to ensure transparency and accountability on the part of local councils. However, he finds that there is a strong public interest in ensuring the continued strength and effectiveness of Members Code of Conduct investigations, particularly while such investigations are ongoing, as in this case.
47. He is of the view that there is a strong public interest argument against disclosing any potential accusations of wrongdoing while they are being investigated and which may, on the conclusion of any investigations, prove to be unfounded.
48. He recognises that disclosure of the withheld information, while investigations are ongoing, is likely to cause prejudice to the Members Code of Conduct process itself by inducing a potential reluctance on the part of the various parties to provide information for fear that it might be disclosed. This is likely to lessen the effectiveness of the process which would not be in the public interest.
49. In all the circumstances of this case, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It follows that the Council was entitled to rely on sections 31(1)(g) by virtue of section 31(2)(a) and (b) of FOIA to refuse to disclose the withheld information.

## Right of appeal

---

50. 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)

51. 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.
52. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**