

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 February 2014

Public Authority: Coventry City Council
Address: Council House
Earl Street
Coventry CV1 5RR

Decision (including any steps ordered)

1. The complainant has requested information from Coventry City Council relating to the investigation of an allegation of abuse of vulnerable adults at [a named college].
2. The Commissioner's decision is that Coventry City Council is entitled to withhold the requested information in reliance of sections 30(1)(a), 30(1)(b), 30(2)(a) and 30(2)(b) of the FOIA.
3. The Commissioner does not require the Council to take any further action in respect of this complaint.

Request and response

4. On 29 August 2012 the complainant made a request for information under the FOIA. The complainant requested a 'copy of the investigation report and its findings' concerning a joint investigation by the Council and West Midlands Police under reference 20CV/209562P/11.
5. On 2 November the complainant modified his request as follows:

"I request all information held by Coventry City Council regarding case number 20CV/209562P/11 under the Freedom of Information Act 2000."
6. The Council responded to the complainant on 16 November. It suggested that he narrow down his request to focus on the precise information that he is seeking.

7. The complainant wrote to the Council on 18 December to make the following refined request in respect of case 20CV/209562P/11:

"All information received by Coventry City Council from West Midlands Police regarding the above case number.

All information sent by Coventry City Council to West Midlands Police regarding the above case number.

All information received by Coventry City Council from [a named college] regarding the above case number.

All information sent by Coventry City Council to [a named college] regarding the above case number."

8. The Council responded to the complainant's request on 1 February 2013 and refused to confirm or deny that the requested information is held. The Council cited the exemption provided by section 40(5) of the Freedom of Information Act as its grounds for its refusal.
9. The Council provided an internal review on 11 March in which it maintained its original position.

Scope of the case

10. The complainant contacted the Commissioner on 22 March 2013 to complain about the way his request for information had been handled.
11. The complainant provided the Commissioner with information relating to the background of his information request. This consisted of information about the Relationship and Sexuality policy of [the named college], details of an Employment Tribunal case which related to the operation of that policy and reference to a West Midlands Police investigation into allegations of the abuse of young people at [the named college].
12. The Commissioner wrote to the Council on 17 July 2013 to enquire about its application of section 40(5) to the information sought by the complainant. In addition to asking questions about its application of section 40(5), the Commissioner asked the Council whether it also wanted to consider the possible application of other exemptions to disclosure provided by the FOIA.
13. The Council responded to the Commissioner's enquiries on 15 August 2013. The Council confirmed that it would set aside its reliance on section 40(5) – neither confirm nor deny and instead would rely on sections 40(2) – personal data of a third party or parties, 30 –

investigations and proceeding conducted by a public authority and 44 – prohibitions on disclosure.

14. The scope of this case is therefore to determine whether the information sought by the complainant at paragraph 7 above should be disclosed by the Council or whether the Council is able to rely on one or more of the exemptions it is now relying on; sections 40(2), 30 and 44.

Reasons for decision

Section 30 – Investigations and proceedings conducted by public authorities

15. Section 30 of the FOIA states –

“(1) 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.

(2) Information held by a public authority is exempt information if—

(a) it was obtained or recorded by the authority for the purposes of its functions relating to—

(i) investigations falling within subsection (1)(a) or (b),

(ii) criminal proceedings which the authority has power to conduct,

(iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or

(iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and

(b) it relates to the obtaining of information from confidential sources.”

16. The phrase, "at any time", means that information is exempt under section 30(1) if it relates to an on-going, closed or abandoned investigation, and may be extended to information obtained by the public authority prior to commencing an investigation if it is used for that purpose.
17. The Commissioner has examined the information held by the Council which falls within the scope of the complainant's request. He is satisfied that all of the information is held by the Council in respect of an investigation of an allegation it received.
18. Section 30 is a 'class based' exemption. As such it is not necessary to show that disclosure of the withheld information would or would likely result in any prejudice. It is enough that the information sought by the request should fall within the particular class of information described by the exemption.
19. The Council has explained to the Commissioner that it holds information relevant to the complainant's request by virtue of the Council and West Midlands Police having received allegations of abuse of vulnerable people at [the named college].
20. The Council holds information relevant to the complainant's request because of the duties the Council has under the "No Secrets (England)" National Guidance, issued under section 7 of the Social Services Act 1970 – coequally known as 'Adult Safeguarding'. The guidance is given to local authorities who have a responsibility to investigate and take action when a vulnerable adult is believed to be suffering abuse. Section 7 of the Social Services Act 1970 states:

"Local Authorities shall, in the exercise of their social services functions, including the exercise of any discretion conferred by any relevant enactment, act under the general guidance of the Secretary of State."
21. The Council asserts that the information it holds was created specifically to address the safeguarding concerns raised by the allegations it received and which, together with its partner organisations – including the police, the Council was obliged to investigate.
22. The Commissioner accepts the representation made by the Council in respect of its duty to investigate allegations of abuse. He is therefore satisfied that the withheld information is of the class covered by the exemption provided by section 30 of the FOIA. He is also satisfied that the Council holds the withheld information in its own right.
23. In consequence of the Council's duty to investigate the allegations of abuse and the fact that an investigation under West Midlands Police reference 20CV/209562P/11 took place, the Commissioner accepts that

the information it holds is subject to the application of sections 30(1)(a), 30(1)(b), 30(2)(a) and 30(2)(b).

24. The application of section 30 of the FOIA is subject to consideration of the public interest test. This is considered below:

The public interest test

Arguments in favour of disclosure

25. The Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of information held by public authorities.
26. Disclosure can assist the public in understanding the basis and how public authorities make their decisions and this in turn may help foster greater trust in public authorities.
27. The Commissioner also acknowledges that disclosure can lead to greater public participation in the public authority's decision making processes, particularly through representations made to councillors by their constituents.
28. In this case, disclosure of the requested information may help the public to understand some of the issues considered by the Council and its partner organisations in respect of the allegation it received.
29. Disclosure would also assure the public that the Council was satisfying the obligations placed on it by the "No Secrets" guidance and would further assure the public that the Council, and its partner organisations, are acting or have acted appropriately in respect of the allegation it received.

Arguments in favour of maintain the exemption

30. Central to the public interest in this exemption is the ability of the Council, and of its partners, to conduct investigations of a very sensitive and potentially criminal nature, without prejudicing the investigation and any future prosecutions which might ensue.
31. In the context of this case, disclosure of the withheld information may be detrimental to the ability of the persons involved in the investigation process. Disclosure could result in a reticence of the persons involved in the process to communicate with an appropriate degree of necessary candour. This includes those persons whose roles are to investigate the allegation and also those persons who are required to furnish evidence and opinion.

32. A disclosure of information once the investigation has concluded may still adversely affect future investigations, as it could result in persons wishing to make allegations being reticent to come forward and jeopardising the safety of the vulnerable adults the Council is charged with maintaining.
33. In this case, both the complainant and the Council have drawn the Commissioner's attention to an Employment Tribunal which involved, to some extent, the application at [the named college] of its Relationship and Sexuality policy. Having made the judgement in the Tribunal case Restricted Reporting and Anonymising Orders were made in order to protect the vulnerable adults at [the named college]. It was subsequent to the Tribunal's judgement and Orders that the complainant's request for information was made.
34. The Council assert that, while the Council itself was not involved in the Employment Tribunal, the Restricted Reporting and Anonymising Orders were still in place at the time of the complainant's request and they create a general restriction relating to the tribunal and related matters. The Council believe that the existence of these Orders engage the exemption provided by section 44(1)(c) of the FOIA – where disclosure would constitute or be punishable as a contempt of court.

Balance of the public interest

35. The Commissioner has carefully considered the withheld information and the representations made by the complainant and the Council. The Commissioner has also weighed what he considers are the main arguments germane to the public interest test.
36. The Commissioner is obliged to point out that that an investigation did take place and was acknowledged by West Midlands Police when it disclosed the reference number and the decision made following the investigation. The Commissioner considers that this information was sufficient to assure the public that the Council and its partners satisfy their duties under the "No Secrets" guidance.
37. The Commissioner considers that the Council and its partner organisations must be able to conduct their investigations with necessary candour.
38. The Commissioner must also acknowledge the inherent sensitivity of the allegation in this case; a factor which the Employment Tribunal acknowledged when making the Restricted Reporting and Anonymising Orders. This sensitivity must be given sufficient weight in terms of this case and the application of section 30 to the withheld information.

39. In this case, The Commissioner has decided that greater weight must be given to those arguments which favour maintaining the exemption.
40. The Commissioner has decided that the Council is correct to rely on section 30 of the FOIA as the grounds for withholding the information sought by the complainant.
41. The Commissioner acknowledges the Council's application of sections 40(2) and 44(1)(c) of the FOIA. In view of his decision above, he has not found it necessary to go on to consider these exemptions.

Right of appeal

42. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

43. 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.
44. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF