

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2017

Public Authority: Nottingham City Council

Address: Guildhall
Nottingham
Nottinghamshire
NG1 4BT

Decision (including any steps ordered)

1. The complainant has requested information concerning Nottingham City Council's 'Begging: Watch Your Money' campaign. He particular seeks the identity of the agency that produced advertisements, the amount of money paid to the agency by the Council and the name of the person who authorised the campaign. Following the Commissioner's intervention, the Council disclosed to the complainant the name of the person who authorised the campaign but continued to rely on section 38 to withhold the name of the agency and the amount of money the agency was paid.
2. The Commissioner has decided that the Council has complied with section 1 of the FOIA in respect of part 3 of the complainant's request. However, because the Council's disclosure was made significantly after the twenty day compliance period, the Commissioner is obliged to find that the Council has contravened section 10 of the FOIA.
3. The Commissioner has also considered the Council's reliance on section 38 of the FOIA to withhold the information requested by the complainant at parts 1 and 2 of his request. She has decided that Nottingham City Council is entitled to rely on section 38 of the FOIA on the grounds that this best serves the public interest.
4. The Commissioner requires the public authority to take no further action in this matter.

Request and response

5. On 20 July 2016, the complainant submitted a request for information via the WhatDoTheyKnow website. The terms of the complainant's request are:

'Begging: Watch your money campaign'

"The above campaign is a recent advertising campaign sponsored (in part) by the city council. I request the following information.

1. The name of the agency that produced the advertisements.
2. The total cost paid by the council to the agency.
3. The names of the officers and councillors who authorised the campaign, and the minutes of the meeting where it was authorised.
4. The brief that was given to the agency.

For all of the above, a link or reference to publicly available minutes will suffice if all of the requested information is contained within."

6. The Council sent its response to the complainant on 28 July 2016. It informed the complainant that it was refusing his request in reliance of section 21(1) of the FOIA, as the information he seeks is reasonably accessible to him by other means.
7. The Council advised the complainant to search its Disclosure Log for case IG 7385, where it had already provided a response to a previous request for information.
8. On 16 August 2016, the complainant asked the Council to conduct an internal review of its refusal to provide the information he seeks. The complainant referred the Council to the response it made in case IG 7385. In that case, the Council had refused to provide information to questions 1, 2 and 3. The complainant asserted that the Council's response was "deeply flawed" and cannot be accepted as an appropriate response to his request. He then asked the Council to review its position on the exemptions cited in case IG 7385 or to disclose the information he had asked for.
9. The Council conducted its internal review and wrote to the complainant on 16 September to advise him of its final decision in this matter.
10. The Council determined that the complainant's complaint was not upheld and it maintained its reliance on section 31, 38 and 40(2) of the FOIA. The complainant rebutted the Council's arguments concerning the

legitimacy of its reliance on these exemptions by virtue of there being “zero threats received in relation to the Begging Watch Your Money Campaign”.

Scope of the case

11. The complainant contacted the Commissioner on 19 September 2016 to complain about the way his request for information had been handled.
12. The Commissioner initially investigated the Council’s refusal to disclose the information the complainant seeks at parts 1, 2 and 3 of his request.
13. During the course of the Commissioner’s investigation the Council disclosed information relevant to part 3 of the request and abandoned its reliance on section 31(1) to withhold information relevant to parts 1 and 2 in favour of its reliance solely on section 38 of the FOIA.

Background information

14. The Council has informed the Commissioner that the posters were produced by Nottingham Community Protection, Nottingham City Council and Nottingham Crime and Drugs Partnership.
15. The Council is the non-metropolitan district Council for the unitary authority of Nottingham in Nottinghamshire.
16. Nottingham Community Protection exercises certain functions of the Council and Nottingham Police whereby officers provide a local presence in each city neighbourhood, together with a network of specialist departments including Environmental Health and Trading Standards.
17. Nottingham Crime and Drug Partnership is a multi-agency entity made up of the Council and Nottingham Police. The Partnership seeks to address identified issues by forming strategies, commissioning services and implementing those services.

The Council's reliance on Section 21 – Where information is available to the applicant by other means

18. The Council has provided the Commissioner with its rationale for its application of section 21 to the complainant’s request.

19. On receipt of the complainant's request¹ the Council noted that it was identical to a request it had previously dealt with². Having made a response to the previous request, and having noted that this response would not have altered; the Council directed the complainant to its previous response and cited section 21.
20. The Council's action was in error because it had failed to recognise that it had refused to provide information to questions 3 and 4 of the first request and therefore the information sought by the complainant was not publicly available.
21. The Council accepts that it should not have relied on this exemption. It has informed the Commissioner that it has responded to a number of similar requests on the same topic as this request – the 'Begging: Watch Your Money' campaign, and it believes that this caused a misunderstanding within its Information Rights Department.

Question 3 of the complainant's request

22. During the course of the Commissioner's investigation of this case, the Council determined that it should have provided the information sought by the complainant in the third part of his request.
23. The Council advised the complainant that its Director of Community Protection was responsible for authorising the 'Begging: Watch Your Money' campaign. To assure the complainant that this was the correct information, the Council provided the complainant with a copy of the Council's constitution which gives the Director of Community Protection delegated the necessary authority to make that decision and also a copy of the Crime and Drug Partnership minutes 14 March 2016, which records the decision to mount the advertising and media campaign.
24. Having provided the complainant with the information the complainant requested at part three of his request, the Council has complied with section 1 of the FOIA. Notwithstanding this compliance, the Commissioner is obliged to record the fact that it was outside of the twenty working day compliance period required by section 10 of the FOIA.

¹ Council reference IG-8008

² Council reference IC-7385

Reasons for decision

Questions 1 and 2 of the complainant's request

Section 38

25. The Council had refused to provide the complainant with the information he requested at parts 1 and 2 of his request. The Council initially relied on section 31(1) – law enforcement - as the grounds for its refusal. In the light of the Commissioner's investigation, the Council determined that this exemption could not be relied on.
26. The Council has advised the Commissioner that it now seeks to rely solely on the exemption provided by section 38 of the FOIA to withhold the information relevant to parts 1 and 2 of the request.
27. Section 38 states that information is exempt if disclosure would, or would be likely to, endanger the physical or mental health, or safety of, any individual. This is a qualified exemption, and is therefore subject to the public interest test.
28. The Commissioner considers that the term 'endanger' should be interpreted in the same way as the term 'prejudice' in other exemptions of the FOIA.
29. The Commissioner's approach to the prejudice test is based on that adopted by the Information Tribunal in *Hogan and Oxford City Council v ICO* and it involves the identification of the "applicable interests" within the relevant exemption and the identification of the "nature of the prejudice". This requires that the prejudice claimed is "real, actual or of substance"; there is a "causal link" between the disclosure and the prejudice claimed and that there is a likelihood of the prejudice occurring.
30. To support its position, the Council has provided the Commissioner with information about the 'Begging: Watch Your Money' campaign ("the campaign") which it considers to be relevant to its application of section 38. It has directed the Commissioner's attention to the large amount of media coverage the campaign has received³ and it has provided her with details of some of the complaints the Council has received.

³ <http://www.bbc.co.uk/news/uk-england-nottinghamshire-36064567>

31. The Council has assured the Commissioner that it has received Twitter and email messages which have harassed its staff and it has drawn her attention to one email in particular which personally attacks the Council's Director for Community Protection.
32. In addition to the above, the Council asserts that there are members of the public who are actively attempting to connect its staff to the campaign and to subsequently harass them. This has included staff members who have not worked for the Crime and Drug Partnership for some time but who still have their professional profiles available to the public.
33. In the Council's opinion the evidence suggests there is a distinct possibility that persons who have worked on this campaign, or who are perceived to have worked on this campaign, could be exposed to threats, harassment and possible harm.
34. The Council points out that the campaign posters were produced by a small agency and that the way it is required to publish its accounts, the agency's identity would easily be identified.
35. The Council assures the Commissioner that when the agency was given this particular brief, it was unforeseen that the agency's work would result in risks to the health and safety of its staff.
36. Having experienced the threats and harassments to its own staff, the Council took the decision that the agency's identity should be withheld to protect the agency's staff. This decision is founded on the status of the Council's relationship with the agency, which the Council describes as being equivalent to a junior member of the Council's staff, such as a graphic designer working at the Council on posters for a campaign.

<https://www.change.org/p/nottingham-city-council-remove-outdated-and-offensive-anti-begging-posters-in-nottingham>
<http://www.nottinghampost.com/City-council-hateful-disgusting-anti-begging/story-28985493-detail/story.html>
<https://www.youtube.com/watch?v=A4QldhL6C4Q>
<https://www.youtube.com/watch?v=bbNG1H3k2fE>
<http://ncclols.blogspot.co.uk>
<http://www.nottinghampost.com/nottingham-s-anti-begging-poster-campaign/story-29027403-detail/story.html#ixzz44V4oB4k1>

37. Such junior members of staff would not expect their names to be disclosed to the public in any circumstances, since it is the Council's general policy not to do so. Here, the Council is extending to the agency the same concern it has for its own staff and to the staff of small contractors who carry out equivalent work to that of Council employees.
38. The Council has advised the Commissioner that for a period of several years, demonstrations and activism against the Council has been a distinct feature. The Council has identified a network of individuals who have used a variety of techniques to target individual members of its staff, and it has provided evidence of one such protest at one of its public meetings⁴.
39. A particularly disturbing aspect of the threatening behaviour experienced by the Council has been the targeting of certain members of its staff at their home addresses.
40. The Council has advised the Commissioner that both its Chief Executive and its Head of Community Protection have been targeted at their home addresses and this has required security measures to be taken to protect their homes from potential harm. Regular senior management meetings had to be held in which the safety of individual staff members was discussed.
41. Additionally, between November 2015 and January 2016, a group of protestors, living as homeless persons at a camp at Station Street outside the Council's main office, resulted in a number of incidents involving Council staff. One such incident involved the Council's Head of Community Protection who was repeatedly shouted at and sworn at by protesters.⁵
42. In the context of the above information, the Council asserts that there is a heightened sense of concern for the safety of its staff and those involved in what has proved to be a controversial campaign. The Council believes that there is a connection between this particular campaign and the previous protests it has experienced. It is clear to the Council that a small section of the public views its campaign as the Council's mistreatment of the homeless.

⁴ <https://www.youtube.com/watch?v=3xKKrxGcojE>

⁵ <https://www.youtube.com/watch?v=K64T-Y3-CYA&t=315s>

43. The Council has drawn the Commissioner's attention to her decision in case FS50092069⁶ and also to the Commissioner's guidance note on section 38.
44. In case FS50092069, the Commissioner noted that, 'The council provided evidence of previous incidents of harassment, including physical and oral abuse, following disclosure of similar information and also explained why it had concerns for the safety of its staff. It was not absolutely certain that the release of the withheld information would put the individuals and organisations concerned at risk, however there was sufficient evidence for the Commissioner to conclude that there was a likelihood that they would be singled out for harassment, intimidation and possible violence by others'. In case FS50092069 the Commissioner was satisfied that section 38 was engaged.
45. The Council points out that the agency is local to its area and that its address is available on the agency's website. If the agency's name is released to the public the threats to its staff's health and safety identified above become a real possibility, in much the same way as the Council's own staff have.
46. This threat is perhaps more so in respect of the agency. This is because the agency's staff's names are listed alongside their photographs and it would be relatively easy for persons to seek out the agency staff's social media accounts and then target them for harassment. Those individual protesters with whom the Council has come into contact previously would likely target the agency's staff physically and on-line.
47. It is for the above reasons why the Council maintains its reliance on the exemption to disclosure which is provided by section 38(1)(a) and (b).
48. Having considered the Councils' representations, the Commissioner is satisfied that the section 38 exemption is engaged: The Commissioner is accepts that there is a clear causal link between the withheld information and the health and safety of the agency's staff.
49. The Commissioner is also satisfied that there is a real and present risk to the health and safety of the agency's staff. This risk is clearly connected to the potential disclosure of the agency's name and the ability of the public to identify the agency through the publication of the

⁶ https://ico.org.uk/media/action-weve-taken/decision-notices/2007/404180/FS_50092069.pdf

amount of money the agency received by virtue of the way in which the Council presents its published accounts.

50. The Commissioner must now consider whether it is in the public interest for the requested information to be disclosed.

The public interest test

51. 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. This assists the public in understanding the basis and how public authorities make their decisions and in turn it fosters greater trust in public authorities and may allow greater public participation in the decision making process.
52. In this case, disclosure of the requested information would inform the public of the amount of money the council spent with a particular agency for its work on the campaign. Disclosure of the information relevant to parts 1 and 2 of the request would clearly provide accountability in terms of the way in which the Council spends its tax payers' money.
53. The Commissioner has considered the nature of the information which the complainant seeks. She is not convinced of the necessity of making the identity of the agency involved in the Council's campaign public, particularly where it is the Council itself that is the body with over-riding responsibility for its decision to mount this particular campaign: It is surely the Council which, as the responsible body, is subject to public accountability.
54. The Commissioner accepts that the public may disagree with the Council's homelessness and begging campaign and she fully supports the public's right to question this and to make legitimate protests about the Council's decisions. In this case however, the evidence suggests that a line has been crossed where disagreements and protests have become unacceptable. The Commissioner must take seriously the threat of harassment which disclosure of the withheld information poses for those persons who have been associated with the Council's campaign.
55. The Commissioner cannot support the disclosure of information which would allow elements of the public to engage in activities which target individuals - whether Council or agency employees - either at their work place or at their homes: It is for this reason that the Commissioner considers that it is not in the public interest for these employees, whether senior or quite junior, to have their health and safety put a risk for decisions taken by their employers.

56. The nature of the withheld information is, by itself, relatively innocuous and it is such that the Commissioner would normally expect a public authority to publish. Here, however, there are special circumstances which cannot be ignored. These circumstances, described above, have weighed the balance of the public interest to the point where the Commissioner has decided that the Council is entitled to withhold the information it holds which is relevant to parts 1 and 2 of the complainant's request.
57. Large numbers of small businesses are employed by local authorities. It is the duty of a local authority to ensure the health and safety of its staff of those businesses that work for it. These businesses often rely on Council contracts for their income and to expose these businesses to the types of actions described above may result in a loss of confidence and a reluctance to enter into contracts in the future. It is the Council that is responsible for its actions and not the employees or businesses that work for it.
58. The Commissioner's decision is that Nottingham City Council is entitled to rely on section 38 of the FOIA.

Right of appeal

59. 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@hmcts.gsi.gov.uk

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

60. 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.
61. 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
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