

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 September 2019

Public Authority: Portsmouth City Council
Address: Civic Offices
Guildhall Square
Portsmouth
Hampshire
PO1 2AL

Decision (including any steps ordered)

1. The complainant has asked Portsmouth City Council for a copy of the templated wording or paragraphs it uses to either accept or reject representations made in respect of Penalty Charge Notices ("PCNs"). The Council confirmed that it holds this information but refused to disclose it in reliance on section 31(1)(a) of the FOIA.
2. The Commissioner has decided that Portsmouth City Council's reliance on 31(1)(a) cannot be sustained as the public interest favours the disclosure of the information the complainant has requested.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Council is required to disclose the templated parts of its PCN letters which detail how an individual can pay the fine; what will happen if payment is not made and, details of how an individual can appeal to the Traffic Penalty Tribunal.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant wrote to the Council on 30 December 2018 and submitted the following request for information:

"I would like to ask the following:

1. Does the council have any templated wording or templated paragraphs that can be used by [sic] council officials, when composing letters to either accept or reject representations made in respect of Penalty Charge Notices for parking, bus lane or moving traffic contraventions?
 2. If the answer to question 1 is yes, I ask for a copy of all such templated letters or paragraphs."
6. On 21 January 2019, the Council wrote to the complainant to inform him that it holds template letters. The Council advised the complainant that it was withholding the information he has asked for in reliance on section 31(1)(a) of the FOIA on the grounds that disclosure would, or would be likely to, prejudice the prevention or detection of crime. The Council provided the complainant with details of its considerations of the public interest.
7. Following his receipt of the Council's response, the complainant wrote to the Council and asked it to carry out an internal review. The complainant argued that:
8. "Fraudsters wishing to impersonate a city council would derive no benefit from the form of words used in the council's rejection letters. While the council's concern around fraud may have some basis if the council were to disclose entire templated letters which include logos, crests or other items which give correspondence an impression of officialdom, the mere wording of the relevant letters could not cause such concerns"; and, "It is unlikely such wording could, on its own, be of any meaningful use to a fraudster. I draw your attention to the fact that the request was for "templated wording or templated paragraphs", so only the text of such templates is within the scope of the request. There is no request, for example, for whole letter templates to be disclosed.
9. On 22 January 2019, the Council wrote to advise the complainant that it might have misunderstood his request. It therefore confirmed that, "...Parking Service respond to the points raised by the person appealing after describing the reason for the issue of the Penalty Charge Notice. These parts of the letters are individually written as they have to consider and respond to all points raised by the person appealing and therefore their letters are individualised, although of course staff may use similar wording to describe contraventions etc. Therefore, no

template wording or paragraphs are held for the purposes of accepting or rejecting an appeal”.

10. The Council informed the complainant that the templated parts of the letters it holds contain details of how an individual is to pay the fine, including what will happen if payment is not made and details of how the individual can appeal to the Traffic Penalty Tribunal. The Council asked the complainant to confirm how it can proceed with its internal review.
11. The complainant responded to the Council request for clarification later the same day. He made clear that he is requesting the templated part of the letters the Council holds containing the details of how an individual is to pay the fine, what will happen if payment is not made and details of how an individual can appeal to the Traffic Penalty Tribunal.
12. On 29 March 2019, the Council wrote to inform the complainant of its internal review decision. The Council's review upheld its application of section 31(1)(a) of the FOIA and advised him that he could complain to the Information Commissioner if he remained dissatisfied.

Scope of the case

13. The complainant contacted the Commissioner on 29 March 2019 to complain about the way his request for information had been handled.
14. To support his complaint, the complainant submitted the following arguments and assertions:
15. He argues that it is unlikely the withheld template wording could, on its own, be of any meaningful use to a fraudster. He makes the point that he seeks only the text of such templates and not whole letter templates and suggests that the Council might disclose the text contained within the letter templates in a blank .txt file, so as to remove any style, font or formatting information that may be of use to potential fraudsters.
16. He makes the point that the Council has published details of how to pay a penalty charge, what will happen if the penalty is not paid, and how one may appeal to the Traffic Penalty Tribunal on its website. He therefore argues that, if the information he seeks would assist fraudsters, the Council would have hardly placed this information on its website.
17. He notes that the exact form of words used by a public authority in its rejection notices must follow a set of very prescriptive rules, and if such rules are not adhered to, the notice of rejection and the underlying

penalty charge notice can be held to be invalid by the Traffic Penalty Tribunal. To illustrate his point, the complainant referred the Commissioner to the decision in *Anthony Hall v Kent County Council (with Tunbridge Wells Borough Council)*, case reference JU-00042-1810, where the appeal was allowed because the council's wording concerning what would happen if payment were not made was legally flawed.

18. Noting that flawed wording can invalidate a Notice of Rejection, the complainant argues that it is impossible to know whether the templated wording in a Notice of Rejection is valid without sight of the relevant template. The complainant therefore asserts that there is an obvious public interest in ensuring that public authorities discharging a public function, do so in a lawful and transparent manner. By allowing the templated wording to be placed in the public domain the Council will ensure that the legal wording it uses is correct, complies with all the appropriate regulations and correctly informs the recipient of what the law says he should be informed of.
19. Additionally, if there are any flaws in the Council's wording, it will ensure that these can be brought to the attention of the authority for correction, or challenged before the Traffic Penalty Tribunal to ensure the flaw is rectified. The complainant says, "This will ensure motorists in future are not impacted by receiving correspondence which does not comply with the statutory requirements.
20. He maintains that, if the requested information was to be disclosed as unformatted text, with no council logos, crests or other formatting information, the information would not be of any meaningful benefit to a potential fraudster.
21. He notes that since civil parking was introduced in London in 1991, and in the 28 years which have elapsed since then, there have been no recorded incidents of a private party fraudulently issuing fake council penalty charge notices. The complainant therefore argues that, "the risk the council purports to be concerned with therefore appears to be somewhat fanciful".
22. The Commissioner advised the complainant that the focus of her investigation would be to determine whether the Council is entitled to withhold the information he has asked for in reliance on the exemption to disclosure provided by section 31(1)(a) of the FOIA.

Reasons for decision

23. The Council has confirmed its reliance on the exemption provided by section 31(1)(a) of the FOIA.

24. Under section 31(1)(a) information is exempt information if its disclosure would, or would be likely to, prejudice the prevention or detection of crime. This exemption is subject to consideration of the public interest.
25. The Council asserts that disclosing the requested information would enable fraudsters to create realistic looking letters which appear to have come from the Council. These letters could then be sent to members of the public asking them to make fraudulent payments.
26. The Council has substantiated its claim by directing the Commissioner's attention to reports of similar activity made by Barnet Council¹ – where the scam concerns the use of fraudulent emails, to letter-based scams on the Gov.uk website² and to fraud noted by the Isle of Wight Council.³
27. The Council argues that the possibility of receiving fraudulent letters and emails would be prejudicial to the interests of the recipients who might likely be persuaded to make payment under false pretences. Therefore the Council has advised the Commissioner that it is relying on the lower threshold of prejudice that disclosure "would be likely to" affect the prevention and detection of crime and not least have a prejudicial effect on members of the public and the reputation of the Council.
28. In order for a prejudice based exemption to be engaged the Commissioner considers that three criteria must be met:
 - First, 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;
 - Second, 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

¹ <https://www.barnet.gov.uk/news/council-warns-residents-fake-parking-fine-e-mails>

² <https://www.gov.uk/government/publications/reporting-fraud-about-a-company-to-companies-house/known-fraud-and-scams>

³ <https://www.iow.gov.uk/Council/OtherServices/IWASP/Current-Scams>

- Third, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
29. 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. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge. The chances of the prejudice occurring should be more probable than not.
 30. On the basis of the Council's representations in this matter, and particularly its reference to the fraudulent use of letters and emails by other council's and public authorities, the Commissioner is satisfied that the harm the Council alleges would be likely to occur through the disclosure of the requested information.
 31. The Commissioner is satisfied that a causal relationship exists between releasing into the public domain any information that may be used by criminals to obtain fraudulent payment of penalty charges.
 32. In the case of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)* the First Tier Tribunal (Information Rights) confirmed that, when determining whether prejudice would be likely, the test to apply is that, "the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk." In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote.
 33. In this case, the Commissioner accepts that the risk of disclosing the withheld information is sufficient to meet the lower threshold, i.e. that disclosure would be likely to prejudice the prevention and detection of a crime. The Commissioner considers the risk to be greater than a remote risk and therefore the prejudice test described above is satisfied and the exemption provided by section 31(1)(a) is engaged.

The public interest test

34. As noted above, the Council's reliance on section 31(1)(a) is subject to consideration of the public interest.
35. Here the Commissioner accepts that the disclosure of the requested information would serve the public interest in transparency. By disclosing the template wording the Council would increase the public's ability to understand and scrutinise the Council's procedures.

36. The Commissioner accepts that disclosure of the template wording used by the Council with regards to how to pay a fine, what will happen if a charge is not paid and how a person can appeal to the Traffic Penalty Tribunal, would enable the public to satisfy itself that the Council's PCNs are compliant with the prescriptive rules for such notices.
37. In the Commissioner's opinion disclosing this information would reduce the likelihood of appeals being made to the Tribunal on the grounds that the wording used on a PCN is invalid.
38. The Commissioner acknowledges that the Council publishes information on its website which is similar, but not identical, to the wording used on its PCNs. She also notes that the anodyne nature of the two sets of wording.
39. The Commissioner agrees with the complainant that placing the templated wording into the public domain will enable the public to check that it is correct, complies with any regulations and correctly informs the recipient of what the law says he or she should be informed of.
40. Furthermore, if the wording is found to be flawed, that or those flaws can be brought to the attention of the authority or challenged at the Traffic Penalty Tribunal. It is therefore in the public interest that motorists would not in future be impacted by receiving correspondence from the Council which does not comply with statutory requirements.
41. Weighed against this is the harm which might flow from disclosure of the requested text. Here, the Commissioner accepts that there is a genuine need to protect the public from potential fraudulent activity and she accepts that this is demonstrated by the references provided by the Council at paragraph 25 above.
42. The Commissioner accepts that there is a need to protect the integrity of the Penalty Charge Notice process and to a lesser degree, she considers that there is some public interest weight in protecting the reputation of the Council.
43. The Commissioner has considered whether scrutiny of the Council's Penalty Charge Notice process can be achieved by other means. To that end, the Commissioner asked the Council to comment on the arguments and assertions made by the complainant in support of his complaint.
44. The Council referred the commissioner to the provisions of the Traffic Management Act 2004 which requires an independent adjudication service to consider appeals against penalty charge notices. The adjudicator is responsible for ensuring that any correspondence sent to the individual is compliant with that Act and that the local authority has followed the correct procedures.

45. The Council considers that the public interest in transparency in respect of Penalty Charge Notices is served by the information it provides to the public on the Council's website⁴.
46. The required contents of a penalty charge notice is set out in The Civil Enforcement of Parking Contraventions (England) General Regulations 2007.⁵ The Council has informed the Commissioner that it is satisfied that the contents of its letters are lawful and compliant with these Regulations and that this has been routinely and recently confirmed by the Independent Adjudication Service in respect of individual appeals against a charge.
47. The Council says that it strongly disagrees with the complainant's assertion that providing only the wording of the letters, rather than a copy of the entire template, would be of no use to a fraudster. The Council advised the Commissioner that it is possible to obtain the Council's crest and the name of relevant council officers - which are in the public domain, to create a realistic scam letter.
48. The Council acknowledges the complainant's assertion that it already publishes information on its website about the Penalty Charge Notice Procedure and that there is some potential for this to be used by fraudsters. However, access to the specific wording of the template letters would enable the fraudster to create a more plausible replica.
49. The Commissioner has examined the Council's template wording used on its letters which describes how to pay a fine, the consequences of not paying a fine and how to make an appeal to the relevant tribunal. She has compared that wording to the wording which the Council provides to the public on its website.
50. The Commissioner has found that the two sets of wording are substantially the same but are not identical.
51. The Commissioner has considered the arguments advanced by the complainant and the Council in support of their respective positions. The Commissioner is not persuaded that disclosure of the template wording

⁴ <https://www.portsmouth.gov.uk/ext/parking-travel-and-roads/parking/parking-fines-penalty-charge-notices>

⁵ <http://www.legislation.gov.uk/uksi/2007/3483/schedule/made>

would increase the likelihood of a motivated fraudster creating plausible PCNs and sending them to members of the public.

52. The Commissioner accepts the Council's evidence that similar frauds have been noted elsewhere. However she does not consider that the risk of fraud would be particularly enhanced by the disclosure of the requested information.
53. The Commissioner is mindful that placing hereto unavailable information into the public domain could assist wrongdoers in committing a crime. Here however the requested template wording is substantially already in the public domain by virtue of the Council's own website. It is also available to the public via on-line forums where members post facsimiles of the PCNs they have received⁶.
54. The Commissioner has weighed the public interest considerations which concern the disclosure of the requested PCN text. The Commissioner finds that those considerations are finely balanced. However, given the current availability of the requested text, its anodyne nature and the need for PCNs to be properly worded, the Commissioner has decided that the greater weight should be given to disclosure.
55. The Commissioner's decision is that the exemption to disclosure provided by section 31(1)(a) of the FOIA is engaged but the public interest favours the disclosure of the requested template text.

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https://docs.google.com/spreadsheets/d/1pVrE76_RYY6bNmEpYGbsZkxtpfIeud_BT3SKfg7Tz_QM/edit#gid=0

Right of appeal

56. 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@justice.gov.uk

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

57. 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.
58. 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