

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2023

Public Authority: London Borough of Hackney Council
Address: Town Hall, Mare Street
London, E8 1EA

Decision (including any steps ordered)

1. The complainant has requested a copy of the London Borough of Hackney Council's information asset register. The London Borough of Hackney Council ("the Council") withheld the requested information, citing Section 31(1)(a) (prevention and detection of crime) of FOIA.
2. The Commissioner has concluded that the Information Asset Register is not exempt from disclosure on the basis of sections 31(1)(a) or 40(2) of FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a copy of the Information Asset Register.
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. On 19 March 2022, the complainant wrote to the Council and requested information in the following terms:

"I would like to request the current/latest version of Hackney Council's Information Asset Register (IAR). Before making this request, I carried out a search for this term on [hackney.gov.uk](https://hackney.moderngov.co.uk/ieDocSea...) as well as <https://hackney.moderngov.co.uk/ieDocSea...>

Please let me know if you require any clarifications for this request."

6. The Council responded on 22 April and provided a refusal notice, stating it considered the requested information exempt under Sections 31(1)(a) and 40(2) of FOIA.
7. Despite the intervention of the Commissioner, as of the date of this notice, the Council have failed to provide an internal review.

Reasons for decision

Section 31 – law enforcement

8. Section 31(1)(a) of FOIA states that: "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 – (a) the prevention or detection of crime,"
9. The Council have stated: "There is a strong public interest in withholding the information as it could aid potential attackers by giving them the information necessary to consider mounting a possible attack. Releasing information on how and where our information assets are stored, the sensitivity levels of each asset, and who controls these assets could give potential attackers more than enough detail to identify potential targets." The Council further advised it believed disclosure could prejudice the prevention of crime by enabling a cyber attack on the Council's networks, such as the introduction of a virus or malware.
10. The complainant argued: "I requested a static list of information asset types held by the council in its Information Asset Register (IAR) which in itself would not reveal the council's cyber/IT policies. Multiple government departments, agencies, and local councils publish their IAR."
11. In order for a prejudice based exemption, such as section 31(1), to be engaged the Commissioner considers that three criteria must be met:
 - Firstly, 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;

- Secondly, 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
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. 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. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
12. With regard to the first criterion, the Commissioner accepts that the potential prejudice described by the Council clearly relates to the interests which the exemption contained at section 31(1)(a) is designed to protect.
 13. With regard to the second criterion, the Commissioner accepts that the threat from cyber-attacks that the Council faces are clearly real ones. He also accepts that any additional information about the Council's IT systems could in theory, be useful to those with a malicious intent to allow them to better target any attack on those systems. As a result the Commissioner accepts that it is plausible to argue that there is a causal link between disclosure of the information and prejudice occurring. Consequently, the Commissioner accepts that any such resultant prejudice if the IAR were to be disclosed is real, actual and of substance.
 14. However, the Commissioner is not persuaded the chance of such prejudice occurring is more than a hypothetical possibility. He has reached this conclusion because he has reservations about the extent to which the withheld information could actually assist those intent on attacking the Council's IT systems, given that not only is the information relatively innocuous but it seems reasonable to presume the Council would hold at least some of the assets listed on the IAR.
 15. The Commissioner also notes a number of other councils have disclosed versions of their IARs. Whilst some of these have been in redacted form, the level of detail contained in the information that has been disclosed is similar to the level of detail contained in the Council's IAR. The Commissioner is well aware that each request must be considered on its own merits and that there may well be reasons why one public authority would disclose information under FOIA when another public authority

may have legitimate grounds upon which to withhold similar information. However, in the circumstances of this case in the Commissioner's view the disclosure by other councils of their versions of the IAR casts further doubt on the likelihood of prejudice occurring should the Council disclose its IAR.

16. The IAR is therefore not exempt from disclosure on the basis of section 31(1)(a) of FOIA and the Council are required to disclose it.

Section 40(2) – personal data

17. Section 40(2) of FOIA provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
18. Section 3(2) of the Data Protection Act 2018 defines personal data as: "any information relating to an identified or identifiable living individual."
19. The Council has stated the Information Asset Register is additionally exempt under Section 40(2), as it contains the names of staff members who are designated Information Asset Owners. In the Council's submission to the ICO, they have stated: "The information requested... relates to officers who would not have an expectation for their details to be placed in the public domain in this way."
20. The complainant has argued that the Information Asset Register may contain the names of Information Asset Owners at the Council, this information is already available as part of the Council's publication scheme. They also argued that if this was not the case, it was not sufficient reason to refuse disclosure of the entire document.
21. The Commissioner has been unable to locate any evidence that the names of these individuals are already in the public domain. However, in any event, the Commissioner agrees that the small amount of personal data represented by the names of these staff members is not sufficient to justify withholding the entire document.
22. Therefore, the Commissioner finds the Council are entitled to rely on Section 40(2) with regards to the names of individual staff members contained within the Information Asset Register, but not the entire document. The Council must therefore disclose the Information Asset Register with appropriate redactions under Section 40(2).

Other matters

23. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
24. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
25. In this instance, the public authority failed to respond to the request for internal review at all.
26. Section 17(1) of FOIA states that where a public authority intends to refuse a request for information on the grounds that it is subject to an exemption in Part II of FOIA, it must issue the requester with a refusal notice explaining the exemptions relied upon and why they apply (if not apparent), no later than 20 working days after the date on which the request was received.
27. In this case, the Council failed to issue the requester with a valid refusal notice within 20 working days. The Commissioner therefore finds that the Council breached section 17 of FOIA with regards to part two of the request

Right of appeal

28. 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

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

29. 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.
30. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF