

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 July 2023

Public Authority: Dover District Council
Address: Council Offices
White Cliffs Business Park
Dover
Kent
CT16 3PF

Decision (including any steps ordered)

1. The complainant requested a copy of the food hygiene inspection report for a restaurant. Dover District Council ("the Council") refused the request citing section 30(1)(b) (investigations and proceedings conducted by public authorities) of FOIA.
2. The Commissioner's decision is that the Council was entitled to rely on section 30(1)(b) of FOIA to refuse to provide the requested information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 3 April 2023, the complainant wrote to the Council and requested information in the following terms:

"Can you please send the recent one-star food hygiene report of the New Moonflower in High Street, Dover after an inspection was conducted this year? This should include the full report and pictures but personal information can be omitted. If a re-inspection of the premises is available, please can you send this across as well as the one-star food hygiene rating. I would like to receive the information via email – in a PDF format. If one part of

the request can be answered sooner than others, please send that information first followed by subsequent data. If the request is unclear, please contact me by email on [email address redacted]. Under the Act, you are required to advise and assist a requester. If any of this information is publicly available, please direct me to it with the appropriate URLs. If my request is denied, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all non-exempt material. Please can you confirm that you have received this request. I look forward to your response within 20 working days, as outlined in the Act.”

5. The Council responded on 21 April 2023. It withheld the requested information, citing section 30(1)(b) as its basis for doing so.
6. Following an internal review the Council wrote to the complainant on 10 May 2023. It upheld its position.

Reasons for decision

Section 30 – investigations

7. Section 30(1)(b) provides that information is exempt if it has been held at any time for the purposes of 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 the power to conduct.
8. The phrase “at any time” means that information is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.
9. Section 30 is also a class based exemption. This means that it is not necessary to demonstrate that disclosure would lead to any kind of prejudice in order to engage the exemption, only that the request falls within the class of information which the exemption is designed to protect.
10. Section 30(1) can only be relied upon by public authorities that have a duty to investigate whether someone should be charged with an offence.
11. The withheld information in this case comprises a food hygiene inspection report of a restaurant.

12. The Council confirmed to the Commissioner that its power to conduct the relevant investigation is provided for under Section 222(1)(a) of the Local Government Act 1972 and more specifically, the Food Safety and Hygiene (England) Regulations 2013.
13. The Commissioner is satisfied that the Council is a Food Authority as defined by section 5(1)(a) of the Food Safety Act 1990. He also notes that section 6(2) of the Act states that every food authority shall enforce and execute the provisions of the Act, whilst Section 6(5) states that an enforcement authority may institute proceedings under provisions of the Act, or any regulations or orders made under it. The Food Safety and Hygiene (England) Regulations 2013 are made under the Food Safety Act.
14. The Commissioner has reviewed the withheld information and is satisfied that the inspection was carried out to consider food hygiene offences under the Food Safety and Hygiene (England) Regulations 2013 and the Food Safety Act 1990. It is also clear that the Council, as a food authority, has the power to investigate potential criminal breaches of food safety legislation and to institute proceedings. Therefore, the Commissioner is satisfied that the section 30(1)(b) exemption is correctly engaged and he has now gone on to consider the public interest test, balancing the public interest in disclosure, against the public interest in maintaining the exemption.

Public interest test

Factors in favour of disclosure

15. The Council acknowledges the public interest in promoting transparency and increasing awareness in its decision making processes and to help people understand whether to use the premises concerned.

Factors in favour of maintaining the exemption

16. The Council argued that where an investigation is ongoing, disclosure of the requested information could make it harder for it to carry out its investigations regarding the business in question, and to institute legal proceedings should it prove necessary.
17. It further argued that at the time of the request, it was not in the public interest to disclose this information as it was necessary to preserve the free thinking space to consider the matter in full. It added that premature disclosure of the information into the public domain would prejudice the conclusion of the investigation.
18. The Council also argued that the published rating for the business gives the public sufficient information about whether or not they wish to use

the premises concerned, without the need to disclose the requested information.

Balance of the public interest arguments

19. The Commissioner accepts that there is a public interest in disclosure of food hygiene inspection reports as it would promote transparency and accountability in how the Council carries out its responsibilities as a food authority. In particular, such transparency could ultimately help to improve food hygiene standards by both promoting good practice and highlighting businesses that need to make improvements. It might also be argued that such transparency could also improve the standards of inspections and decisions taken by Food Authorities, such as the Council.
20. A further argument in favour of disclosure is that it is in the public interest to disclose information about businesses which do not meet the required standards of food hygiene so that the public may decide whether or not to use their services.
21. However, the Commissioner is mindful that the Food Hygiene Rating Scheme provides the public with information about the hygiene standards in food premises. The rating is publicly available for anyone to view. This does, to an extent, allow the public to make informed choices about which food businesses to use and so reduces the case for disclosure somewhat.
22. Additionally, there will always be a strong public interest in maintaining the section 30 exemption where an investigation is ongoing. It is accepted that whilst investigations and prosecutions are ongoing, public authorities require a safe space in which to operate and premature disclosures could create media pressure which could present problems for the judicial processes.
23. The Commissioner accepts that in this case, there is a significant public interest in protecting the integrity of ongoing investigations so as not to compromise it, or any future legal proceedings.
24. The Commissioner therefore considers that although there is a public interest in disclosure, given that the investigation was still live at the time of the request, the public interest in disclosure is outweighed by the public interest in maintaining the section 31(1)(b) exemption.

Right of appeal

25. 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

26. 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.

27. 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

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