

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 July 2023

Public Authority: South Tyneside Council
Address: Town Hall and Civic Offices
Westoe Road
South Shields
NE33 2RL

Decision (including any steps ordered)

1. The complainant has requested background information about the public and private areas of a particular town hall. South Tyneside Council ('the Council') said that it held floor plans showing public and private areas, but they were exempt from disclosure under sections 31(1)(a) (Law enforcement) and 38 (Health and safety) of FOIA. It said that it did not hold recorded information on who had decided how the town hall should be split into public and private areas, or when the decision had been made.
2. The Commissioner's decision is that the Council was entitled to apply section 31(1)(a) to withhold the floor plans. He also finds that, on the balance of probabilities, the Council does not hold recorded information on who made the decision to designate certain areas of the building as either public or restricted access, or when the decision was taken.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 21 April 2023, the complainant wrote to the Council and requested information in the following terms:

"I'm writing to request information on which parts of the town hall building has public access, ie reception, lobby's, hallways, stairwells etc.

Accompanied with the documentation that shows this.

The documentation on who & when it was decided what parts of the building has the public access.

The documentation on who, when & where are the restricted areas in comparison" [sic]

5. The Council responded on 2 May 2023. It disclosed information about the opening times of public areas of the town hall and about tours of the building. It said that the remaining areas were accessible only to council staff.
6. The complainant requested an internal review on 2 May 2023, saying that he had not been provided with the information he had asked for. He clarified the request as follows:

"I'm only interested in the main Old Town hall building (pic attached)

As a member of the public can walk up the stairs and in the reception, I'm requesting the documentation that shows all public accessible area's, eg – the hallways, stair wells or lobby's, who decides or decided what are accessible, when this was" [sic]

7. The Council provided the internal review outcome on 23 May 2023. It confirmed that it held information on the public's access to the town hall, which it refused to disclose, citing sections 31(1)(a) (Law enforcement) and 38(b) (Health and Safety) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 1 June 2023 to complain about the way his request for information had been handled. He disagreed with the decision to refuse his request.
9. During the Commissioner's investigation, the Council explained that the information in scope comprises floor plans, showing the various public and restricted areas of the town hall. It said it did not hold any information on when decisions about the public's level of access to the town hall building were made, or who made the decisions.
10. The analysis below considers:

- whether the Council was entitled to rely on sections 31(1)(a) and 38(b) of FOIA to refuse to disclose the town hall floor plans; and
- whether, on the balance of probabilities, the Council holds information on who made decisions about the public's level of access to the town hall building and when those decisions were made.

Reasons for decision

Section 31 – Law enforcement

11. Section 31 of FOIA creates an exemption from disclosure if it would, or would be likely to, prejudice one or more of a range of law enforcement activities.
12. In this case, the Council is relying on section 31(1)(a) of FOIA to withhold the town hall floor plan. Section 31(1)(a) states that information is exempt if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
13. In order for section 31(1)(a) to apply, it must be the case that if information was disclosed, it would, or would be likely to, cause prejudice to the prevention or detection of crime. Three criteria must be met:
 - the actual harm which the Council envisages must relate to the prevention or detection of crime;
 - there must be a causal relationship between disclosure and prejudice to the prevention or detection of crime. This prejudice must be real, actual or of substance; and,
 - the Council must show that the level of prejudice it envisages is met – ie it must demonstrate why disclosure 'would be likely' to result in prejudice or, alternatively, why disclosure 'would' result in prejudice.
14. Section 31 may be claimed by any public authority. The Commissioner's guidance on the exemption¹ makes it clear that section 31(1)(a) can be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime. The guidance gives the

¹ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

example of the disclosure of door access codes, and the Commissioner considers that a request for the floor plans of a local government building, to which the public has partial access, presents equivalent security concerns.

15. In this case, the Council has explained very clearly that it considers that disclosing the floor plans of the town hall, which show public and restricted areas, and entry and exit points, would weaken its security and make its staff, and any members of the public on the premises, more vulnerable to crime. The floor plans would undoubtedly be valuable to anyone interested in accessing particular areas of the town hall for criminal purposes, as the detailed plans would highlight areas of potential vulnerability. The Commissioner is satisfied that these arguments clearly relate to the prevention or detection of crime, and the first criteria is therefore met.
16. The Council has provided the Commissioner with specific examples of how knowledge of particular areas of the town hall could be exploited for criminal purposes. It has also cited instances where its security has been breached by people entering the town hall for anti social or criminal purposes. It considers such instances would have been more serious if information about the internal layout of the building was in the public domain. The Commissioner will not reproduce its arguments here, as they would themselves compromise the Council's security. However, he is satisfied that it has demonstrated a causal relationship between the disclosure of the withheld information and the prejudice envisaged, and that the prejudice is real, actual and of substance. The second criteria is therefore met.
17. The Council's position is that disclosure 'would' prejudice the prevention or detection of crime. As explained above, the examples it has provided to the Commissioner show that the disclosure of the floor plans of a building to which the general public has partial access, would present significant security concerns. The Commissioner has no difficulty in accepting that, in view of their roles in serving the public, local authority staff (including elected officials) are at increased risk of abuse, harassment and assault. Therefore, the disclosure of detailed floor plans showing public and restricted areas would represent a threat to their security, by what they reveal about the layout of the building. The Commissioner is satisfied that the Council has demonstrated that someone wanting to do harm to people in the town hall would be assisted in doing so if they had detailed plans of its layout.
18. While there is no suggestion that the complainant wants the information for that purpose, disclosure under FOIA must be regarded as being to the world at large, with no restrictions over who may have access to the information in question. The third criteria is therefore met.

19. Having considered the above, the Commissioner is satisfied that the Council has shown that the disclosure of the town hall floor plans would be prejudicial to the prevention or detection of crime, and that the exemption at section 31(1)(a) of FOIA is engaged.

Public interest test

20. Section 31 is a qualified exemption. The Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at section 31(1)(a) of FOIA outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

21. The complainant has not offered any reasons as to why the public interest favours disclosure.
22. The Council said:

"The Council accepts that there is public interest in the use of public funds and how public money is used to maintain Council buildings and that there is a public interest in disclosure of the plans because they would show the public how council buildings are organised and therefore such information may be of interest to the public. The Council also accepts that disclosure could improve transparency and increase public confidence in the council by revealing what physical security provisions are in place to maintain appropriate security measures within its buildings."

Public interest arguments in favour of maintaining the exemption

23. The Council said:

"There is strong public interest in supporting public bodies to maintain and protect the functions they are tasked with carrying out, and it is the Council's responsibility to maintain and safeguard the safety and security of all those persons legitimately accessing its buildings, and the vast amounts of data held within its buildings. There is also a real risk that disclosing documentation to the world at large showing which areas are accessible would lead to increased attempts to gain unauthorised access, commit criminal offences on the Council's premises, as well as increase the risk to staff (to whom the Council owes specific legal duties to reasonably protect), genuine visitors and elected officials who legitimately access the building.

... [the Council] does not believe it is appropriate to disclose information to the world at large that would compromise the security of its buildings, staff or elected officials. The Council strongly believes

that the balance of the public interest falls in favour of maintaining the exemptions relied upon.”

Public interest balancing test

24. When balancing the opposing public interests in a case, the Commissioner will decide whether it serves the public interest better to disclose the requested information or to withhold it because of the interests protected by the relevant exemption. If the public interest in maintaining the exemption does not outweigh the public interest in disclosure, the information must be disclosed.
25. The Commissioner accepts that there is a presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest. He also recognises the need for transparency and accountability on the part of public authorities, as regards publicly funded buildings.
26. However, in carrying out this exercise, appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to crime prevention matters. Clearly, it is not in the public interest to disclose information that would compromise the safety and security of local authority staff, elected members and members of the public.
27. The Council told the Commissioner that the public interest in transparency and accessibility as regards the town hall building is satisfied by the fact that it offers guided tours of it, on request. This permits the public to have access to an important seat of local government, whilst allowing the Council to manage the attendant security risks.
28. The Commissioner recognises that it is not in the public interest for people to be put in danger by disclosures which could be exploited for harmful purposes. The complainant has not offered any reasons as to why it would serve the public interest for the floor plans to be in the public domain, and the Commissioner is unable to identify any, other than the general public interest in public authorities being open and transparent.
29. In view of the very real risk that the floor plans would be misused, and of the risk to people's safety and security that this would represent, the Commissioner is satisfied in this case that the public interest in maintaining the exemption provided by section 31(1)(a), clearly outweighs the public interest in disclosure.
30. The Council was therefore entitled to rely on section 31(1)(a) to refuse to disclose the floor plans. In view of this decision, it is not necessary to consider the Council's application of section 38 to the request.

Section 1- General right of access

31. Under section 1(1)(a) of FOIA, anyone who requests information from a public authority is entitled to be told if the public authority holds that information.
32. In this case, the complainant has asked to know who decided which parts of the town hall should be publicly accessible, which parts should be restricted, and when those decisions were made.
33. The Council says it does not hold this information.
34. In such cases, it is seldom possible to prove with absolute certainty that information is not held. The Commissioner will, therefore, apply the normal civil standard of proof in determining the case and will decide, on the 'balance of probabilities', whether or not the information is held.
35. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments and the public authority's reasons for believing it does not hold the information.
36. The complainant has not offered any reasons for believing that the information is held; his comments suggest that he simply assumes that it is.
37. The Council consulted with its facilities management team regarding decisions on which parts of the building are accessible to the public. It was advised that any discussions about access to the building are held verbally and there is no formal recording of the outcome of these discussions. As a result of this, it has not considered it necessary to conduct searches, as its enquiries revealed that this information is not held in recordable form.
38. The Council said it has no business purpose for holding the requested information and that there are no statutory requirements for it to record and retain it. The Council's records management retention policy makes no mention of information of this type, and the Council concluded from this that it had never been its intention to hold this as recordable information.

The Commissioner's decision

39. The Commissioner considers that the Council has set out credible arguments for believing it does not hold the requested information.
40. The Commissioner understands that the town hall in question was built between 1905 – 1910. He concludes from this that it is likely that the overall usage of the building, including which parts of it should be public areas, will have been determined a long time ago, and is likely to have

remained largely fixed since then. He finds it highly unlikely that a written record of who made any longstanding decisions regarding the publicly accessible areas of the building, would still be held by the Council (if it ever was held). He notes the Council's explanation that any current variance in public access to the building would be agreed verbally.

41. In the absence of any information provided by the complainant as to why the information might be held, the Commissioner's decision is that, on the balance of probabilities, the Council does not hold this information.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

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

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