

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **17 November 2014**

Public Authority: **Wirral Metropolitan Borough Council**

Address: **Wallasey Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED**

Decision (including any steps ordered)

1. The complainant has requested information from Wirral Metropolitan Borough Council ("the council") about housing benefit arrears. The council withheld the information under the exemption provided by section 31(1)(c) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has incorrectly applied section 31(1)(c), and has breached the requirement of section 10(1) by failing to respond to the request within 20 working days.
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Disclose the requested information.
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 26 September 2012, the complainant wrote to the council and requested the following:

"Please see the following link to the minutes of the 12th December 2007 of the cabinet:

<http://democracy.wirral.gov.uk/CeListDoc...>

This is described as:

NOT FOR PUBLICATION: Exempt by virtue of paragraph 5, Part I, Schedule 12A (as amended), Local Government Act 1972.

Please see the minute 422 and decision made by elected members which resolved:

(1) the appeal not be pursued to the Court of Appeal;

(2) the arrears of £3.09m be met from the Housing Benefit Reserve;

(3) the Benefit payments from January to March 2008 of £47,100 and the Counsel fees of £24,300 be met from the Housing Benefit Reserve;

(4) the revenue budget for 2008-09 be increased by £188,500 to meet ongoing claims; and

(5) representations be made to the Department for Work and Pensions to amend the relevant regulations and the support of Wirral's MP's be sought in this matter.

1. Please disclose following the explicit decision of cabinet to meet the arrears of £3.09m from the HB Reserve how much was of this arrears was actually paid to SIL.

2. Please disclose the dates of payment and amounts

3. Please disclose if the full amount of was not paid then signpost the further decision from cabinet changing or amending the decision of elected members.

4. If no further decision is evident or available to be signposted or disclosed, and the full payment was not made, then please

disclose which officers acted contrary to the elected members decision and minutes of their decisions."

6. The council responded on 7 June 2013 and refused the request citing section 43(2).

Scope of the case

7. The complainant contacted the Commissioner on 17 July 2013 to contest the council's response. During the course of the Commissioner's investigation the council revised its position and claimed exemption under section 31(1)(c).
8. The Commissioner therefore considers that the scope of this case is the determination of whether the council has correctly applied the exemption provided by section 31(1)(c).

Reasons for decision

Section 31(1) – Law enforcement

9. Section 31(1) states that:

"Information which is not exempt information by virtue of section 30 [information held for the purposes of investigations and proceedings conducted by public authorities] is exempt information if its disclosure under this Act would, or would be likely to, prejudice- [...]

c) the administration of justice..."

Would disclosure be likely to prejudice the administration of justice?

10. In *Hogan v Information Commissioner and Oxford City Council* (EA/2005/2026, EA/2005/0030), the Information Tribunal stated that:

"The application of the "prejudice" test should be considered as involving a number of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption...Second, the nature of the 'prejudice' being claimed must be considered...A third step for the decision-making concerns the likelihood of occurrence of the prejudice."

The relevant applicable interest

11. The council has claimed that the relevant applicable interest in this exemption is the administration of justice.
12. In his guidance on the exemption for law enforcement¹, the Commissioner explains that;

"The administration of justice is a broad term. It applies to the justice system as a whole. Amongst other interests, the exemption will protect information if its disclosure would undermine particular proceedings."

13. The council has advised the Commissioner that the information has been withheld on the basis that it relates to ongoing cases with the Housing Benefit Appeal Tribunal and current negotiations to reach a settlement with a third party landlord. The Commissioner therefore accepts that the relevant applicable interest has been correctly identified as the administration of justice.

The nature of the prejudice

14. When considering the second step as set-out in the Hogan case, the Commissioner must be persuaded that the nature of the prejudice is "real, actual or of substance" and not trivial or insignificant. He must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.
15. The council, in its submission to the Commissioner, has provided wider information about matter. This information is contained within a cabinet report and two emails providing specific answers to the four parts of the complainant's request. The council has explained that it considers that the disclosure of the requested information has the potential to prejudice the ongoing cases with the Housing Benefit Appeal Tribunal, as well as its current negotiations with the third party landlord.
16. The Commissioner has reviewed the council's submission, but does not consider that the council has provided any substantive details of the causal link between the disclosure of the information and the claimed prejudice, nor of the nature of the claimed prejudice.

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/law-enforcement-foi-section-31.ashx

17. It is not for the Commissioner to speculate as to how the prejudice may be caused, nor what its impact may be on the ongoing Tribunal cases or negotiations with the third party landlord. The council was informed by the Commissioner that it must justify its position and was provided with the Commissioner's guidance on how he deals with complaints². This guidance clearly states that it is the responsibility of the public authority to satisfy the Commissioner that an exemption has been correctly applied.
18. The Commissioner further considers that the council has since been provided with sufficient opportunity to provide its rationale for withholding the requested information.
19. The Commissioner has ultimately concluded that the council has not provided sufficient evidence of the claimed prejudice. On this basis, the Commissioner considers that the exemption provided by section 31(1)(c) has been incorrectly engaged.

Section 10(1) – Time for compliance

20. Section 10(1) requires that a public authority must issue a refusal notice within the time for compliance, which is 20 working days following the date of receipt.
21. In this case the Commissioner has identified that the council issued its refusal notice outside 20 working days, and therefore breached the requirement of section 10(1).

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Corporate/Practical_application/complaints_guide_for_public_authorities.ashx

Right of appeal

22. 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 7395836

Email: GRC@hmcts.gsi.gov.uk

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

23. 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.
24. 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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