

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2019

Public Authority: London Borough of Redbridge
Address: Lynton House
255 - 259 High Road
Ilford
IG1 1NY

Decision (including any steps ordered)

1. The complainant has requested information in connection with a newspaper article reporting a child having being questioned about 'radicalisation'.
2. The Commissioner's decision is that that London Borough of Redbridge (LBR) was entitled to rely on section 31(1)(a) of the FOIA to withhold the information.
3. The Commissioner does not require LBR to take any steps as a result of this decision notice.

Request and response

4. On 8 January 2019, the applicant wrote to LBR and requested information in the following terms:

"I read with some concern the article in yesterdays Independent and now covered by the Ilford Recorder.

<https://www.independent.co.uk/news/education/education-news/prevent-radicalisation-extremism-counter-terrorism-police-london-ilford-school-a8696226.html>

<https://www.ilfordrecorder.co.uk/news/ilford-counter-terrorism-eight-year-old-1-5843004>

Can you please confirm the name of the school in question, the Mosque in question and if any after school religious lessons had been provided, and if so, the name and location of the premises."

5. LBR responded on 18 January 2019 and refused to provide the requested information citing section 31(1) of the FOIA as its reason for doing so.
6. Following an internal review LBR wrote to the complainant on 19 February 2019 and maintained its position.

Scope of the case

7. The applicant contacted the Commissioner on 12 March 2019 to complain about the way his request for information had been handled.

8. In his correspondence with the Commissioner he stated:

"Redbridge has seen a particular problem with Islamic radicaliation [sic] in some Schools, After School Education, Mosques and Community Centres, with the latest article showing the headteacher of Eton Community School banned from management positions within the teaching profession for allowing a known Islamic Terrorist, to radicalise young impressionable children.

<https://www.ilfordrecorder.co.uk/news/crime-court/ilford-headteacher-banned-from-management-1-5919003>

Redbridge Council appear to know where such radicalisation is taking place in our community, yet refuse to disclose to the public where such radicaliation is taking place, choosing to not disclose the information due to "safeguarding issues".

I feel that it is important for the local community to be aware of the premises and organisations that are attempting to radicalise young impressionable minds in the borough, and that such premises/organisations are exposed, and shut down."

9. The Commissioner began her investigation on 24 July 2019 and contacted LBR accordingly. It provided its initial response on 2 October 2019 in which it sought to claim late reliance on section 40(2) – personal data. The Commissioner sought further clarification the same day and concluded her enquiries on 22 October 2019.
10. LBR confirmed that it does not hold all the requested information, and only holds the name of the school concerned. It further revised its position withdrawing reliance on section 40(2) and instead claiming reliance on sections 31(1)(a), and section 38.

11. The Commissioner would normally expect a public authority to advise the applicant of any change in its position. However, due to the delays in progressing the case she contacted the applicant herself. The Commissioner advised the applicant that LBR only held the name of the school in question and that she was minded to uphold the application of section 31(1)(a). The Commissioner invited the applicant to withdraw his complaint.

12. The applicant responded in the following terms:

"It is of concern to note that LBR insisted upon using section 40(2) under my initial FOI request, and continued to rely on section 40(2) during the LBR internal review process, and would appear to have only changed their reasons to 31(1)(a) for withholding the information when the Information Commissioner's Office took up the case.

With LBR now changing reasons for withholding the information under a different section 31(1)(a), after no doubt consulting with expert FOI lawyers and realising that attempting to rely on section 40(2) to withhold the information would not be sufficient in law, and that were LBR to continue to use 40(2), that the information would legally be required to be put into the public domain.

I am surprised [sic] the Information Commissioner's Office is minded to allow LBR to change their reasoning after the LBR internal review process has been completed, given that LBR had previously solely relied upon 40(2) during the initial FOI, and subsequent internal LBR review for withholding the legally releasable information, as required by the law."

13. With regard to the above, the Commissioner will accept changes to a public authority's position as long as this is communicated to the applicant. As mentioned previously, the Commissioner has done this herself.

14. In addition, as the only information LBR holds is the name of the school, it is clear that this could not be personal data and it would be nonsensical to continue to claim it as a relevant exemption.

15. The Commissioner therefore considers the scope of this case to be to determine if LBR has correctly applied section 31(1)(a) to the information it holds, that is, the name of the school. In the event that she finds this does not apply she will go on to consider the application of section 38.

Reasons for decision

Section 31 - law enforcement

16. The relevant parts of section 31 in this case state:

(1) *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,

17. Section 31(1)(a) can be claimed by any public authority, not just those with law enforcement functions.

18. In order to engage a prejudice based exemption such as section 31(1)(a) there must be likelihood that disclosure would cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:

- first, the actual harm which the public authority alleges would, or would be likely to, occur if the disputed 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 disputed information and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance;
- 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 (would be likely), 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.

19. With regard to the first criterion, the Commissioner accepts that the potential prejudice described by LBR relates to the interests which the exemption contained at section 31(1)(a) is designed to protect, that is, the prevention of crime.

20. LBR considers that prejudice would be likely to occur. While this limb places a weaker evidential burden on LBR to discharge, it still requires it to be able to demonstrate that there is a real and significant risk of the prejudice occurring.
21. LBR argued that disclosing the name of the school of the child who was mentioned in the article would release the information into the public domain. While the applicant himself may have requested the information for entirely innocuous reasons, allowing the public access to the name of the school would cause prejudice as it would be likely that individuals from a right-wing background (and not necessarily from just within Redbridge) use the information to approach the school in person in an attempt to exert pressure on parents, staff and/or children to identify the child in question.
22. It also considered it would further be likely that the school might become a target of extremist activity against Muslims in general. Children, their parents and school staff deserve to be protected, both from physical harm as well as from the potential harm to their mental health should the school be the target of undue negative and/or aggressive attention.
23. With regard to the second criterion, the Commissioner accepts that the threat from far right anti Islamic groups are clearly real in the current political climate. She also accepts that any action directed at the school, students, teachers and parents by such groups could have a detrimental impact on the local community and residents. For example, if there were to be a demonstration outside the school it is plausible that this could escalate to a confrontation and public order issues.
24. The Commissioner considers that disclosure could lead to an increase in, minimally, public order offences and at the other end of the spectrum, physical assaults based on racial or religious differences.
25. Consequently, the Commissioner accepts that any such resultant prejudice if the information were to be disclosed is real, actual and of substance. The Commissioner accepts the argument that there is a causal link between disclosure of the information and prejudice occurring.
26. With regard to the third criterion, the Commissioner is satisfied that if the withheld information was disclosed there is a more than a hypothetical possibility that prejudice of the nature envisaged by LBR would be likely to occur. The Commissioner has reached this decision given the particular political issues at the time of the request, including the reported increase in hate crimes since the EU Referendum in 2016. Section 31(1)(a) is therefore engaged.

27. In relation to Section 31(1)(a) LBR explained that local authorities have a specific and explicit duty under Prevent which is 1 of the 4 elements of CONTEST, the Government's counter-terrorism strategy. The Counter-Terrorism and Security Act 2015 specifies local authorities' duties as follows:

"With their wide-ranging responsibilities, and democratic accountability to their electorate, local authorities are vital to Prevent work. Effective local authorities will be working with their local partners to protect the public, prevent crime and to promote strong, integrated communities."

28. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
29. Therefore the next step is for the Commissioner to consider whether in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.
30. In his correspondence to the Commissioner the applicant stated:

"For LBR to change their reasoning for withholding the information, and attempting to use unfounded, unproven speculation and conjecture as to what releasing the information into the public domain may or may not do, and attempting to provide a whole host of speculative reasons is unacceptable, as the law is clear, that information that is legally releasable, should, when requested, be released into the public domain. This is the reason the Freedom of Information Act 2000 exists."

The public interest

31. To carry out the public interest test it is necessary to understand what 'the public interest' means in the context of FOIA.

In the public interest

32. The public interest can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. Thus, for example, there is a public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes. There is a public interest in good decision-making by public bodies, in upholding standards of integrity, in ensuring justice and fair treatment for all, in securing the best use of public resources and in ensuring fair commercial competition in a mixed economy. This is not a complete list; the public interest can take many forms.
33. However, these examples of the public interest do not in themselves automatically mean that information should be disclosed or withheld. For

example, an informed and involved public helps to promote good decision making by public bodies, but those bodies may also need space and time in which to fully consider their policy options, to enable them to reach an impartial and appropriate decision, away from public interference. Revealing information about wrongdoing may help the course of justice, but investigations into wrongdoing may need confidentiality to be effective. This suggests that in each case, the public interest test involves identifying the appropriate public interests and assessing the extent to which they are served by disclosure or by maintaining an exemption.

Of interest to the public

34. The public interest is not necessarily the same as what interests the public. The fact that a topic is discussed in the media does not automatically mean that there is a public interest in disclosing the information that has been requested about it.
35. A public authority can only withhold the information if the public interest in maintaining the exemption outweighs the public interest in disclosure.
36. The public interest here means the public good, not what is of interest to the public, and not the private interests of the requester. In carrying out the public interest test the authority should consider the circumstances at the time at which it deals with the request. If carrying out an internal review, it may consider the circumstances up to the point that review is completed

Arguments in favour of maintaining the exemption

37. LBR argued that disclosing the name of the school of the child would heighten the risk of it being targeted by extremists against Muslims in general. Children, their parents and school staff deserve to be protected.
38. It also considered that it is likely that individuals from a right-wing background use the information to approach the school in person in an attempt to exert pressure on parents, staff and/or children to identify the child in question.
39. Any such activity at a school would create an atmosphere of unrest and/or fear which is clearly detrimental to citizens feeling safe and protected in their home borough. Public authorities act on behalf of the public as a whole and not in the name of, or on behalf of, individuals or private interests.
40. The Commissioner further notes LBR's responsibilities under Prevent to promote strong, integrated communities. Should the school be the target of undue negative and/or aggressive attention it would be likely to create an atmosphere of unrest and/or fear. Clearly this would be

detrimental not only to staff and students, but also to local residents. This is further likely to have lasting consequences for community cohesion.

41. The Commissioner acknowledges the applicant's arguments that premises and organisations that are attempting to radicalise children and young people are exposed and shut down. However it is the responsibility of the appropriate authorities to take this action rather than for members of the public.
42. There will always be a general public interest in transparency. However, it is clear to the Commissioner that disclosure of the information would be likely to prejudice the prevention and detection of crime. Having considered the arguments presented by both parties she has determined that LBR has correctly withheld the information that it holds by virtue of section 31(1)(a) and has not therefore gone on to consider section 38.

Other matters

43. The Commissioner notes that LBR provided limited responses to the applicant. For example, the initial response did not specify which part of section 31(1) it was relying on, and there were also very limited public interest arguments provided.
44. Furthermore, its internal review response merely stated:

"We remain of the view that for reasons of confidentiality and safeguarding this will not be released."
45. In addition, its submission to the Commissioner also lacked detailed explanations of the reasons for exemptions cited and provided minimal information in support of those exemptions.
46. The Commissioner would therefore like to highlight that if this was repeated in any future complaint it may affect her decision. In the particular circumstances of this case the Commissioner could not justify further delay in obtaining additional arguments from LBR, as she was satisfied that the information should not be disclosed.

Right of appeal

47. 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

48. 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.
49. 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

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