

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2025

Public Authority: London Borough of Haringey
Address: 108C Gloucester Road
London
N17 6RA

Decision (including any steps ordered)

1. The complainant has requested information regarding an Information Governance Improvement Plan from the London Borough of Haringey (LBH).
2. The Commissioner's decision is that LBH was not entitled to rely on section 36(2)(c) (prejudice to the effective conduct of public affairs) to refuse the requested information.
3. The Commissioner therefore requires LBH to disclose the requested information, i.e. the Information Governance Improvement Plan. To the extent that LBH wishes to withhold any personal data, it should issue a refusal notice explaining this and citing the relevant exemption.
4. The public authority must take these steps within 30 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 9 April 2024 the complainant made a request for information under the FOIA asking for the 'Data Protection in Children's Services - action plan'.

6. LBH responded on 1 May 2024 and denied holding the requested information (Data Protection in Children's Services - action plan). However, it advised that the document referred to in previous communication with the complainant is a council-wide 'Information Governance Improvement Plan' (the Improvement Plan). LBH refused to provide this information citing section 36(2)(c) (Prejudice to the effective conduct of public affairs).
7. In their response on 7 May 2024 the complainant narrowed the request for information asking for the following:

*"...I am requesting the action plan relating to internal threats, which are likely to be enduring rather than dynamic.
Please therefore supply the 'Internal threats' section of your action plan. This does not have to be divided by directorates, but should cover issues such as:*

Governance:

Designate a lead officer responsible for compliance with data protection law in Children's Services.

An action plan be put in place to redress organisational and technical shortcomings.

Policies to be established to enforce standards for the electronic sharing of child and other personal data with external organisations.

Information sharing protocols and compliance checks to be established for all personal information sharing with external partners.

Update the Corporate risk register to include Haringey Children's Services data protection failings as high risk / high impact.

Training:

All children's services staff to be trained and given appropriate software to include data minimisation, anonymisation and encryption.

Compliance:

Disciplinary action be undertaken for the staff repeatedly breaching the Data Protection Act.

A programme be put in place to secure future compliance.

An early warning system to review issues raised by reported data protection breaches and take disciplinary action."

8. Following no response by 5 June 2024 (the time for expected response indicated by LBH in its acknowledgement), the complainant requested an internal review on 10 June 2024.
9. LBH provided an internal review response on 11 June 2024 in which it maintained its original position withholding the requested information in

its entirety within the scope of the request citing section 36(2)(c). It explained:

"As previously advised, this information is exempt. You have requested a subset of the information which was previously refused under Section 36(2)(c) of the Freedom of Information Act. The exemption covered the whole of the information requested and plies to any individual elements of it."

Scope of the case

10. The complainant contacted the Commissioner on 13 June 2024 to complain about the way their request for information had been handled.
11. Specifically, the complainant disagreed with LBH's decision to withhold the information on grounds of transparency and accountability.
12. The Commissioner considers that the scope of his investigation is to determine whether LBH was correct to rely on section 36(2)(c) to withhold the requested information.

Reasons for decision

Section 36 - prejudice to effective conduct of public affairs

13. Section 36(2)(c) of FOIA states that:

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of this information under this Act –

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

14. Section 36 differs from all other prejudice exemptions, as for it to be engaged a qualified person (QP) must give their reasonable opinion about likelihood of prejudice or inhibition.
15. Section 36(5) sets out who may act as the QP in relation to a public authority. In the case of local government, the council's monitoring officer or the chief executive may be designated as the appropriate person.

16. In this case LBH provided the Commissioner with evidence that it sought the opinion of the QP. In this case this was the Assistant Director, Legal and Governance, who was also the Monitoring Officer for LBH.
17. Therefore, the Commissioner is satisfied that the opinion was provided by the designated QP at LBH. The next question for the Commissioner to consider is whether the QP's opinion is reasonable.
18. When determining whether the QP's opinion is a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable.
19. It is not necessary for the Commissioner to agree with the opinion of the QP for the exemption to apply. Furthermore, the opinion does not have to be the only reasonable opinion that could be held or the 'most' reasonable opinion. The Commissioner only needs to satisfy himself that the opinion is reasonable or, in other words, it is an opinion that a reasonable person could hold.
20. LBH provided evidence that the opinion of the QP was sought specifically on section 36(2)(c) on 22 April 2024 and was given on 23 April 2024. The response was issued to the complainant on 1 May 2024. LBH also confirmed that the requested information was shown and described to the QP when seeking their opinion with submissions as for the subsection on which the opinion was sought and arguments as to why the prejudice would or would be likely to occur.
21. The Commissioner is therefore satisfied that the QP's opinion was based upon a full understanding of the facts and the nature of the information requested. Next he has considered whether the opinion of the QP is a reasonable one.
22. In order to be engaged, section 36(2)(c) must demonstrate an 'otherwise' prejudice. This means that the prejudice must be different to those prejudices covered by section 36(2)(b).¹ The opinion of the QP is that if the information requested, i.e. the Improvement Plan, were disclosed, the prejudice specified in section 36(2)(c) would occur for the following reasons:

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-36-prejudice-to-the-effective-conduct-of-public-affairs/>

- The disclosure would be likely to lead to further questions and commentary on the action plan, thus diverting LBH's resources away from the delivery of the plan.
 - The plan contains information about arrangements which are not fully implemented or are fully effective, which would present a risk to data security.
 - As a working document, the document needs to be flexible to enable for example incorporate learning points from data breaches and complaints. It also needs to reflect available resources and other demands on the services. Publication of the document could have an inhibiting effect on making changes therefore reducing the effectiveness of the plan.
23. Having considered the QP's opinion, the Commissioner is satisfied that it addresses the issues falling within the scope of the exemption cited and that it was made with all of the necessary background information.
24. The Commissioner is not persuaded that the QP's opinion that the higher likelihood of prejudice applies is a reasonable one. However he is prepared to accept as reasonable the opinion in so far as it applies to the lower level, i.e. that disclosure would be likely to result in the prejudice identified.
25. The Commissioner has therefore decided that section 36(2)(c) is engaged and he must therefore carry out a public interest test as required by section 2(2)(b) of FOIA.

Public interest test

26. In considering a complaint regarding section 36, if the Commissioner finds that the opinion of the QP was reasonable, the weight of that opinion in the public interest test will then be considered. This means that the Commissioner accepts that a reasonable opinion has been expressed that prejudice (or inhibition) would or would be likely to occur but he will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming his own assessment of whether the public interest test favours disclosure.

The public interest arguments in favour of disclosure of the requested information

27. There is always a general public interest in authorities being transparent and accountable for their processes, policies, actions and decision making.
28. Indeed LBH recognises that the disclosure of the requested information would be in accordance with the general principles of FOIA to encourage

accountability and transparency in how resident and service user data is managed and protected.

29. It has been also the view of the complainant that sharing the Improvement Plan would provide reassurance that the issue is treated seriously and would also hold the public authority accountable.

The public interest arguments in favour of maintaining the exemption

30. In response to the Commissioner's investigation, LBH said that the disclosure of the Improvement Plan would prejudice the effective conduct of public affairs. This is based on the three main factors alluded to in paragraph 22 of this decision notice.

31. Expanding on those points, LBH explained that the Improvement Plan is a working document and that the disclosure would have an inhibiting effect on making changes resulting in a less than effective plan. LBH said:

"Disclosing a plan that is a working document could have a dampening effect on us ceasing or amending actions or adjusting timescales in response to changing priorities and resources, as officers might feel compelled to stick to the published plan."

32. LBH told the Commissioner that the disclosure of the Improvement Plan would likely lead to further questions and commentary. LBH explained that this view is based on previous FOI requests made by the complainant, including recommendations made to the Head of Service and request to be updated about the process. This, in the opinion of LBH, would divert resources from making improvements to the plan.

33. LBH further explained that the plan focuses on arrangements which are not fully implemented and fully effective. It added that the disclosure could enable threat actors to exploit vulnerabilities in LBH's information governance and security controls. It said:

"The improvement plan by its nature sets out how we will address the gap between current arrangements and a standard that we are required to meet or want to meet. In relation to information governance some items in the plan relate to our arrangements to keep data secure and prevent data breaches."

34. In its submission to the Commissioner LBH provided an example of such an arrangement in support of its argument that the disclosure could expose vulnerabilities in the information governance and security controls.

35. Finally, LBH explained that the Improvement Plan is a dynamic tool and that the usefulness of a published version at a point in time will diminish very quickly. To support this, LBH said:

"...the factors that we considered in favour of maintaining the exemption was the diminishing usefulness of the information to the public interest over time. This is supported by the fact that the Action Plan agreed with the ICO following our data protection audit in May 2024 has now had to be prioritised over our original plan."

The Commissioner's findings

36. The Commissioner has given careful consideration to the arguments of the complainant and those provided by LBH. He has also had sight of the withheld information which in this case consists of a single spreadsheet document.
37. The Commissioner's guidance explains that the QP's opinion will affect the consideration of the arguments for withholding the information, and appropriate weight should be given to their opinion that the prejudice or inhibition would, or would be likely to, occur. The weight attached to the QP's opinion will be greater if they have decided that disclosure 'would' prejudice or inhibit, rather than if they have concluded that disclosure 'would be likely' to prejudice or inhibit.
38. In this case the opinion of the QP was that the prejudice or inhibition would occur and therefore attract greater weight.
39. However, as explained previously, the Commissioner is not persuaded that the opinion as to the higher level of prejudice is reasonable in this case and he can only accept the lower level, which is that it is reasonable for the QP to hold the opinion that the prejudice would be likely to occur if the information were disclosed.
40. The Commissioner appreciates the arguments of the complainant, particularly those related to the transparency of LBH planned actions to appropriately govern and protect personal information of the service users. He accepts that possessing such knowledge would potentially reassure the service users about actions planned or undertaken by the public authority towards improving the governance and protection of personal data thus helping to hold LBH to account.
41. The Commissioner then considered the arguments of LBH in support of maintaining the exemption.

42. He notes that the public interest arguments effectively reflect those used by the QP and related to prejudice that would occur. However, in the Commissioner's opinion the mere anticipation of prejudice is insufficient to determine the balance of the public interest. The fact that the exemption is qualified means that in some cases it will be appropriate to disclose the requested information even though disclosure would, or would be likely to cause the prejudice or harm identified. Therefore the Commissioner is mindful that the public authority must demonstrate why maintaining the exemption is more important, or of value, to the public interest, than that served by disclosure of the information in question.
43. Having seen the withheld information, the Commissioner accepts that as a working document by its nature it is used as a point of reference and a tool to monitor and review the development of the processes. It could be said that the document is more akin to a draft rather than a final version.
44. The Commissioner recognises that each case has to be considered individually and disclosing drafts can be time consuming for a public authority as each draft can generate further requests and questions from the public. In this case, as pointed out by LBH, following an audit the original plan now has to be replaced.
45. The Commissioner accepts that as a result of frequent updates and amendments in response to changing priorities and available resources, the information contained within the document would lose its relevance relatively quickly and therefore lessen the benefit to the public. Consequently, further requests and questions, following each new version of the plan, would inevitably also divert resources and inhibit LBH's conduct of public affairs.
46. However, having considered these arguments, the Commissioner is not persuaded by LBH that dealing with possible questions and further requests following each publication would be so burdensome that could not be alleviated for example by proactive publication of explanatory information.
47. Similarly, he is not persuaded that the loss of relevance or usefulness of the information carry enough weight to overbalance the argument for transparency.
48. The Commissioner observes that disclosure of the withheld information would inform the public as to how LBH had approached its responsibilities at the time of the request.

49. Further, the Commissioner is not persuaded by the argument that the publication of the document would hinder LBH officers from adhering to any changes to the plan that needed to be made, following publication. He considers that the public should be able to rely on LBH and its officers to be robust in fulfilling their duties and not be deterred by concerns about scrutiny.
50. As mentioned previously, the Commissioner also considered the arguments related to data security. However, although he accepts that the disclosure of the document could expose some vulnerabilities in the information governance systems in place, LBH failed to demonstrate compelling arguments in support of the exemption. LBH provided only one example related to the information governance and security control supported by general argument.
51. When the Commissioner receives a complaint under section 50 of FOIA, he informs the public authority that it is for that authority to satisfy the Commissioner, and consequently the Tribunal, that it has handled a request properly. The Commissioner considers that experienced public authorities, should be familiar with the standard of supporting information required. It is not sufficient to state that compliance with a request would be problematic, without providing detailed and specific arguments to explain why this is the case. If the public authority fails to provide such arguments, it is more likely that the Commissioner will uphold the complaint.
52. Based on the explanation by LBH, the Commissioner considers that the extent of the information in question forms merely a small part of the whole document falling within the scope of the request. If LBH's arguments had been sufficiently detailed and robust then the Commissioner would accept that information could simply be redacted before disclosure, in order to mitigate the possible harm that could be caused. However the arguments put forward by LBH do not persuade the Commissioner that such redaction is in fact necessary in this case.
53. Having considered all the evidence in this case, particularly in relation to the document in scope of the request, the Commissioner finds that although there is some weight in the LBH arguments in favour of maintaining the exemption, it is not sufficient as to outweigh the arguments in favour of disclosure.
54. Consequently, the Commissioner finds that, although the exemption was engaged, LBH was not entitled to rely on section 36(2)(c) to withhold the requested information.

55. The Commissioner therefore requires LBH to disclose the requested information, i.e. the Information Governance Improvement Plan. The Commissioner notes that the withheld information includes some third party personal data. Specifically, it includes names of employees assigned to specific items listed in the document. If LBH considers that the disclosure of any of this personal data would contravene the data protection (DP) principles as set out in Article 5 of the UK General Data Protection Regulation (the UK GDPR), then it should issue a refusal notice citing the relevant exemption (section 40 of FOIA) and explaining why this data is excluded from disclosure.

Right of appeal

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

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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