

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2023

Public Authority: Tameside Metropolitan Borough Council
Address: Tameside One, Market Place
Ashton-under-Lyne, Tameside

Decision (including any steps ordered)

1. The complainant has requested a copy of an informal warning issued to Tameside Storage of Denton by Tameside Trading Standards. Tameside Metropolitan Borough Council ("The Council") withheld the requested information citing Section 30(1)(b) of FOIA.
2. The Commissioner's decision is that the exemption is engaged and the public interest lies in maintaining the exemption.
3. The Commissioner does not require further steps.

Request and response

4. On 7 June 2022, the complainant wrote to the Council and requested information in the following terms:

"I am writing with regards to the fire at Tameside Storage of Denton on 21 February 2021. I believe as a result of the investigation by Tameside Trading Standards with regards to Tameside Storage's potentially misleading advertising surrounding "Free Insurance", an informal warning was issued to Tameside Storage by Tameside Trading Standards.

As Tameside Storage have abrogated any responsibility for the loss of hundreds of thousands of pounds worth of treasured possessions

entrusted to their care and are currently relying on their small print in relation to insurance (many of those suffering losses believe they were grossly misled by Tameside Storage with regards to their "Free Insurance" claim), it would be much appreciated if you would please release to me the 'informal warning' issued to Tameside Storage by Tameside Trading Standards."

5. The Council responded on 6 July 2022. It confirmed it held the information requested and stated it was being withheld under Section 30(1) of FOIA.
6. Following an internal review, the Council wrote to the complainant on 11 August 2022 and upheld its original response.

Reasons for decision

7. Section 30(1) of the FOIA states that:

'Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—

(b) 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 power to conduct.'

8. The Commissioner considers that the phrase 'at any time' means that information can be exempt under section 30(1)(b) if it relates to a specific ongoing, abandoned or even closed investigation.
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 Council confirmed to the Commissioner that it is empowered to conduct the relevant investigation under the Consumer Protection from Unfair Trading Regulations 2008 and the Fraud Act 2006.
12. The Commissioner is therefore satisfied that the Council had the authority to conduct this investigation and the exemption is engaged. He has now gone on to consider the public interest in disclosure against the public interest in maintaining the exemption.

Public interest test

Factors in favour of disclosure

13. The Council recognised that disclosure of the information would further the understanding of, and participation in public debate, and potentially increase confidence in law enforcement.
14. The Council also acknowledged the public interest in promoting transparency and increasing the awareness in its decision making processes.
15. The complainant considers that Tameside Storage of Denton misled its customers and failed to properly maintain its electrical equipment, and the release of the warning will prevent this from happening again.

Factors in favour of maintaining the exemption

16. The Council made the following arguments:
 - the investigatory process is a safe space which does not come to an end once the investigation has concluded.
 - The Council may take further action regarding this matter in the future.
 - The informal warning letter is confidential, and disclosure would be unfair.
 - Disclosure would affect the procedures the Council has in place regarding the disclosure of evidence gathered as part of criminal investigations.
 - There is an inherent public interest in maintaining a process, which is fair to individuals who have been investigated but not prosecuted.

The Commissioner's view

17. The Commissioner accepts that there is a strong public interest in the Council demonstrating transparency in its decision-making processes and increasing confidence in law enforcement. There is also a strong public interest in demonstrating that its enforcement and prosecution actions have been carried out fairly and appropriately. That is, however, also a function of the Courts.
18. Disclosing details of actions such as this raises confidence in the Council's handling of laws which it is designated to enforce and informs the public as to how it goes about that function.

19. However, key to the consideration of any section 30 case is to determine whether disclosure could in some way compromise a public authority's ability to carry out its investigative work effectively. Clearly it is not in the public interest to jeopardise the Council's ability to regulate and enforce compliance with the law.
20. The Commissioner accepts that organisations with functions to investigate and prosecute rely on the voluntary co-operation of victims and witnesses – as well as those under investigation. Whilst those bodies usually have enforcement powers to require information to be provided, these are most effective when used sparingly and it is important not to obstruct the voluntary flow of information.
21. Although the investigation was complete at the time of the request, disclosure under FOIA is disclosure into the public domain and effectively 'the whole world'. The Commissioner acknowledges the complainant's concerns, however no enforcement action was taken against the company in question. The Commissioner has viewed the withheld information and considers that its contents are not of such significance as to override the public interest lies in maintaining the exemption.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
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Wilmslow
Cheshire
SK9 5AF