

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 20 February 2007

**Public Authority:** North Tyneside Council  
**Address:** Town Hall  
High Street East  
Wallsend  
Tyne & Wear  
NE28 7RR

### Summary

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1. The complainant asked the Council for information which it held about the British National Party ('the BNP') and the Tyne and Wear Anti-Fascist Association ('TWAFa'). In its response the Council said that it held no information about the BNP. It provided to the complainant limited information about one grant made to TWAFa and a summary of a letter from TWAFa in relation to its grant. The Council withheld copies of the minutes of meetings of the Racial Incidents Working Group ('the RIWG') and did not inform the complainant of its existence. The Council applied the exemptions contained in sections 31(1)(a), 38(1)(a) and (b) and 40(3)(a) of the Freedom of Information Act ('the Act') to the information withheld. Following the Commissioner's intervention the Council identified further relevant information (including a report by the RIWG), which it provided to the complainant after redacting information giving personal details about TWAFa staff. The Commissioner has decided that sections 38 and 40 are engaged, and that the public interest lay in favour of maintaining the section 38 exemption. However, he has decided that a copy of one of TWAFa's audited annual reports, and redacted extracts of the RIWG minutes should be released to the complainant.

### The Commissioner's Role

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2. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the 'Act'). This Notice sets out his decision.

## The Request

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3. On 19 January 2005 the complainant wrote to the Council requesting:
- ‘All information and Council documents concerning the British National Party.
- All correspondence between your Council and the Home Office, Office of the Deputy Prime Minister and any other Government Departments relating to the BNP.
- All information concerning Council policy, protocols and procedures when dealing with the BNP, including BNP members who work for the Council.
- All information, financial records and Council internal documents relating to the Tyne & Wear Anti-Fascist Association.’
4. The Council responded on 15 February 2005 stating that it held no documents or correspondence relating to the BNP, and had no policy, protocols or procedures in respect of that organisation. The Council provided the complainant with details of a grant from the Council to TWAFa, and with a summary of a letter from TWAFa dated 2 February 2004 relating to the grant allocation. The Council explained that the Act provided for access to information rather than actual documents, and that it was withholding access to the letter by virtue of the following exemptions:
- Section 31(1)(a): likely to prejudice the prevention or detection of crime
  - Section 38(1)(a): likely to endanger the physical or mental health of any individual
  - Section 38(1)(b): likely to endanger the safety of any individual
  - Section 40(3)(a)(i): personal information, the disclosure of which would contravene any of the data protection principles
5. On 19 February 2005 the complainant wrote to the Council stating that he considered its response in relation to the funding of TWAFa to be inadequate, and requesting copies of all relevant documents. On 23 March 2005 the Council replied to the complainant. The Council said that, following a review of the complainant’s information request, it had concluded that the exemptions had been correctly applied, and that its earlier response had provided an accurate reflection of the information held about TWAFa. The Council did not state whether it had applied the public interest test to any of the exemptions.

## The Investigation

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### Scope of the case

6. On 4 April 2005 the complainant contacted the Commissioner to complain about the way in which his request for information had been handled. The complainant

said that he believed that the names of TWAFAs officers were already in the public domain, as confirmed by another council, and that a body in receipt of public funding should be as transparent as possible in order to avoid any misuse of public funds.

7. The Commissioner understood the basis of the complaint to be that the Council had failed to provide all the appropriate information that it held about TWAFAs in response to the request, and in particular about the funding provided to TWAFAs together with the names of its representatives and associates. The Commissioner's investigation involved assessing the nature of the relevant information held by the Council and determining whether the Council had correctly applied the exemptions in sections 31, 38 and 40 to that information. Details of these exemptions are set out in the Legal Annex to this Decision Notice.

### Chronology

8. After an initial acknowledgement, the Commissioner contacted the Council seeking copies of the information in question together with the Council's comments on its reliance on the above exemptions in withholding certain information. Copies of all relevant information were later provided to the Commissioner by the Council together with a further explanation as to why it considered that the exemptions applied to the information withheld from the complainant.
9. The Council told the Commissioner that members of TWAFAs, and of organisations known to be working with it, had been subjected to physical attack by its opponents in the past. TWAFAs was therefore very concerned about information being released which could be used against it by others. On receipt of the request for information by the complainant, discussions took place between the Council and TWAFAs, which repeated its concerns, and as a result it was decided to withhold certain information. As it was not practical to redact information such as personal details and addresses from the letter of 2 February 2004, the main subject matter had been summarised rather than provided in a redacted form. The Council had also withheld copies of the minutes of meetings of the RIWG (which include information about TWAFAs and therefore fall within the scope of the request), and had not informed the complainant about that organisation's existence. This was to avoid the possibility of compromising the security of the members of the Group and of the venues involved.
10. The Council said that, shortly after the complainant's request for a review of its decision, correspondence was received from TWAFAs expressing its concerns that a number of Tyne and Wear authorities had received requests for information about its activities. TWAFAs also provided details of written, verbal and physical attacks that had been carried out on it in the past. One of the Council's senior managers was appointed Reviewing Officer to reconsider the complainant's request. Having reviewed all the material available to him, the Reviewing Officer concluded that the exemptions had been applied correctly to the requested information.

11. During the course of the investigation the Commissioner was contacted by TWAFa, which emphasised its serious concerns about the request for information. TWAFa explained that it was a voluntary body involved in campaigning against extremist organisations, and also carried out political work such as anti-racist education and combating hate crime. TWAFa provided evidence of harassment and intimidation and stated that it was fearful of the potential threat to its staff and contacts should their details be released. TWAFa also explained that it no longer published its office address as it had suffered harassment at its previous address. In addition, it had been targeted at venues of other organisations when meetings had been held. TWAFa added that, when information had previously been provided about its activities, details (together with inflammatory comments) had appeared on extremist websites.
12. Towards the end of the Commissioner's investigation the Council was asked to confirm that no further relevant information was held, as fewer financial records than those held by other authorities in a similar position had been identified. Having checked the position the Council said that, unlike other local authorities in Tyneside, it did not provide any direct grant or funding to TWAFa, which explained the lack of financial records. However, the Council said that it paid an ongoing grant to TWAFa on behalf of the Crime and Disorder Reduction and Misuse of Drugs Partnership, of which the Council was a member. The Partnership was a statutory body comprised of five 'responsible authorities': the police; the police authority; the local authority; the fire and rescue service; and a primary care trust.
13. Nevertheless the Council said that, as a result of a further search, it had located some additional information relating to TWAFa which had not been disclosed to the complainant. The information comprised a number of documents, spreadsheets and minutes of meetings in relation to funding provided to TWAFa dating from 2001 to 2005. The documents also included a report by the RIWG and a copy of TWAFa's audited accounts for the year to March 2003. On 2 January 2007 the Council provided to the complainant copies of all of the documents with the exception of TWAFa's audited accounts. The address of TWAFa and personal details of its staff had been redacted from the documents which were released. The Council considered that the section 38 and 40 exemptions applied to the withheld information.
14. In view of the fact that the Council had made the complainant aware of the RIWG by the inclusion of a report by that organisation in the documents provided on 2 January 2007, the Commissioner contacted the Council and TWAFa in relation to the RIWG minutes, which had previously been withheld and their existence undisclosed. In discussion with TWAFa, it was agreed that extracts relating to TWAFa could be released, subject to redactions to remove information subject to the exemptions in sections 38 and 40. The Commissioner also understands that the RIWG is no longer in existence.

## Analysis

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### Procedural matters

15. In its response to the complainant's request, the Council applied three exemptions to aspects of the information concerned. Two of those exemptions (sections 31 and 38) are qualified exemptions which are subject to a public interest test. However, neither in its responses to the complainant, nor in its comments to the Commissioner did the Council explain how the public interest in maintaining those exemptions outweighed that in disclosing the information. It therefore failed to comply with the requirements of section 17(3)(b) of the Act which states that a public authority must give the reasons for reaching a conclusion on the public interest test.

### Exemptions

#### Section 38(1)(a) and (b)

16. Section 38 provides an exemption in relation to information which, if disclosed, would, or would be likely to, endanger the health or safety of an individual. The Council has applied this exemption in redacting information initially released to the complainant, and to the information provided to him following a further search. The Council considered that individuals and organisations associated with TWAFa could be at risk of harassment or violence should their names and contact details be released. While this exemption can be applied to details of organisations associated with TWAFa, and to TWAFa's contact details, the Commissioner considers that the disclosure of information relating to living individuals is more appropriately dealt with under section 40 of the Act.
17. The Council was clearly concerned about releasing information about TWAFa given the history of attacks that it had suffered. The Council therefore met TWAFa representatives to discuss the position. As a result of representations from TWAFa, the Council decided to summarise a letter regarding funding rather than redact information that it considered to be exempt; and decided against confirming the existence of minutes of the RIWG. Following the complainant's request for a review TWAFa also wrote to the Council reinforcing its reservations and providing further evidence of harassment. In its response to the complainant's request the Council identified very little information, and only a one page extract from a spreadsheet and a summary of a request by TWAFa for funding dated February 2004 were provided. It later transpired that the lack of documentation held by the Council was due to the fact that it did not provide direct funding to TWAFa, although that was not made clear at the time. However, following the Commissioner's request for a further search, the Council identified a number of relevant documents all of which it has now provided to the complainant, with the exception of a copy of TWAFa's audited accounts
18. While there can be no absolute certainty that the release of the withheld information would put the individuals and organisations concerned at risk, there is sufficiently compelling evidence to lead the Commissioner to conclude that there

is a real likelihood that they would be targeted for harassment, intimidation and possibly violence by others. The Commissioner is therefore satisfied that section 38 is engaged in relation to the organisations whose details were included in the redacted information, as the release of the information could endanger the health and safety of those associated with those organisations. As stated above, the Commissioner considers that section 40 is the exemption which should be applied to information about individuals specifically named in the documents.

### **Public interest test**

19. Section 38 is a qualified exemption and is therefore subject to the public interest test. The complainant believes that an organisation such as TWAFa, which receives public funding, should be open to scrutiny so as to avoid any possibility of misuse of the funding. He also considers that the names of individuals associated with TWAFa should be made public, particularly as another council had already provided such details. The Council, however, has serious misgivings about details of TWAFa and other organisations which work with it being made public. Having consulted TWAFa the Council concluded that, in view of the concern about the safety of individuals and groups named in the documents, the public interest in maintaining the exemption outweighs the public interest in disclosure.
20. The Commissioner recognises that there is a considerable and legitimate public interest in the way that councils fund voluntary organisations such as TWAFa, and the way in which the money is utilised. However, the complainant has now been provided with all of the financial information held by the Council except for a copy of one of TWAFa's audited accounts. As the complainant's main concern was to confirm that TWAFa's funding was being used legitimately, the information disclosed to him satisfies that purpose. The Commissioner does not believe that disclosure of the names and contact details of TWAFa, its staff or details of other bodies included in the documents would add to the public understanding of TWAFa's activities in that regard. Therefore, in view of the potential risk to the health and safety of the staff of the organisations whose details have been withheld, the Commissioner does not believe that the public interest would be served by disclosure of those details.
21. The Commissioner considers, therefore, that, with one exception, the public interest in maintaining the exemption outweighs the public interest in disclosure. The exception is the copy of TWAFa's audited accounts, which the Commissioner has decided should be provided to the complainant. As stated above, the Commissioner considers that there is a strong public interest in the public funding of voluntary bodies, and he is aware that copies of several similar documents have already been provided by other councils in the North East. The accounts include little information of the type which would put at risk the staff or organisations associated with TWAFa and consequently the Commissioner believes that the public interest in maintaining the exemption in order to withhold the accounts does not outweigh the public interest in disclosing them.



### **Section 40(3)(a)**

22. The principal purpose of section 40 is to protect personal data relating to living individuals rather than organisations. The names and contact details of individuals included in the documents in question clearly represent personal data as they relate to personal information about third parties. The information will constitute exempt information if one of the two conditions referred to in section 40(2) are satisfied. In considering the first condition the Commissioner has had regard to whether any of the data protection principles would be breached by releasing the information. The first data protection principle requires that personal data should be processed fairly and lawfully and in particular should not be processed unless at least one of the conditions in schedule 2 of the Data Protection Act 1998 is met.
23. The information at issue relates to the names and contact details of TWAFAs officials. TWAFAs has expressed serious concerns about the information being released both in meetings with Council officials and in writing. Similar reservations have also been raised with the Commissioner. In view of those concerns, together with the history of attacks and incidents of harassment suffered by TWAFAs staff, the Council agreed that it was neither necessary nor appropriate to disclose the information. The Commissioner accepts that disclosure could cause distress to the staff concerned and that they have a legitimate expectation that their personal details should not be released into the public domain. Having concluded that none of the conditions in schedule 2 of the 1998 Act are met, and having regard to the concerns of TWAFAs and the Council, the Commissioner has decided that releasing the information in this case would not constitute fair and lawful processing and would breach the first data protection principle. It should therefore remain withheld.
24. Section 40 provides an absolute exemption where disclosure of personal data about someone other than the complainant would contravene any of the data protection principles. The exemption is not, therefore, subject to the public interest test.

### **Section 31(1)**

25. In view of the fact that the Commissioner agrees that the section 38 and 40 exemptions have been properly applied, he does not propose to examine the application of section 31(1) to the information requested.

### **The Decision**

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26. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

The exemptions under sections 38 (1) and 40(3)(a) were applied correctly to the information requested except in respect of TWAFAs's audited accounts.

27. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

The Council failed to comply with section 1(1) as the complainant was not informed of all the information held about TWAFa until a further search was carried out at the request of the Commissioner.

The Council failed to comply with the requirements of section 17(3)(b) of the Act (see paragraph 15 above).

### **Steps Required**

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28. The Commissioner requires the public authority to provide to the complainant TWAFa's audited accounts for the year to March 2003. The Commissioner also requires information contained in the minutes of the meetings of the RIWG to be provided insofar as it relates to TWAFa. The information should be redacted to remove exempt information as agreed with TWAFa and the Commissioner.
29. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

### **Failure to comply**

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30. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.



## Right of Appeal

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31. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 20<sup>th</sup> day of February 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Materials Annex

### Relevant sections of the Freedom of Information Act 2000

#### Section 1(1) states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request; and
- (b) if that is the case, to have that information communicated to him.

#### Section 2(2) states that:

In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### Section 31(1) states that:

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,
- ...

#### Section 38 states that:

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to -
  - (a) endanger the physical or mental health of any individual, or
  - (b) endanger the safety of any individual.

#### Section 40 states that:

- (1) Any information to which a request for information relates is exempt information if it is personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if –
  - (a) it constitutes personal data which do not fall within subsection (1), and
  - (b) either the first or second condition below is satisfied.

- (3) The first condition is –
  - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –
    - (i) any of the data protection principles, or
    - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
  - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.