

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 June 2007

Public Authority: Commission for Local Administration in England
(Local Government Ombudsman)

Address: 10th Floor
Millbank Tower
Millbank
London
SW1P 4QP

Summary

The complainant made a request to the Local Government Ombudsman for information related to its investigation of a complaint he had previously made against Doncaster Metropolitan Borough Council. The public authority refused to disclose the information under section 44 of the Act which provides an exemption from the right to know where disclosure is prohibited under any other enactment. It explained that the relevant statutory prohibition is section 32(2) of the Local Government Act 1974. The Commissioner has considered the complaint and has found that the public authority correctly applied the statutory prohibition and that the information requested was exempt from disclosure.

The Commissioner's Role

1. 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

2. On 30 September 2005 the complainant wrote to the public authority to request:
"all information that you hold in regard to my complaint against Doncaster MBC under the provisions of the Freedom of Information Act 2000 or if not covered by this Act under the Data Protection Act 1998".

3. The public authority responded to the request on 17 October 2005. The public authority explained that the information requested by the complainant formed the contents of a complaints file and that this information is exempt from disclosure under section 44 of the Act. It explained that the relevant statutory prohibition is section 32(2) of the Local Government Act 1974 ("section 32(2) LGA").
4. The public authority said that the Data Protection Act 1998 entitled him to see any personal data which the public authority held about him and said that it was still working on this request. The public authority informed the complainant that personal data "is confined to any significant biographical information about you, such as family status, financial affairs, mental state, medical condition or business prospects". The public authority said that the complainant was only entitled to personal data about himself and not the personal data of any other individual who had been considered as part of his complaint. The public authority informed the complainant that the deadline for responding to requests under the data protection Act 1998 was 40 calendar days.
5. On 25 October 2005 the complainant wrote to the public authority to request that it carry out an internal review of its handling of his request.
6. On 4 November 2005 the public authority contacted the complainant with the outcome of the internal review. The public authority informed the complainant that it upheld its earlier decision to refuse the request under section 44 of the Act.

The Investigation

Scope of the case

7. On 19 November 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the public authority's decision to refuse the request under section 44 of the Act.
8. This decision notice is focused on the public authority's response to the complainant's request under the Freedom of Information Act. The Commissioner has not pursued the public authority's response to the request under the Data Protection Act.

Chronology

9. On 7 December 2005 the Commissioner contacted the public authority to request copies of the information it was withholding from the complainant under section 44 of the Act.
10. On 7 July 2006 the public authority provided the Commissioner with copies of the information it had withheld.

11. The Commissioner asked the public authority to clarify what information had not previously been disclosed to the complainant or which he had not otherwise had access to. On 25 July 2006 the public authority provided the Commissioner with a list of 22 pieces of information which had not previously been disclosed to the complainant and which it was refusing to disclose under section 44 of the Act. It also provided a list of information already disclosed to the complainant; information provided to the Ombudsman by the complainant; and information provided by Doncaster Metropolitan Borough Council which the complainant had already seen.
12. In responding to the Commissioner's enquiries the public authority said that Doncaster Metropolitan Borough Council had supplied it with some information under a notice issued under section 32(3) of the Local Government Act 1974 which prohibits further disclosure. The public authority said that unless that notice is withdrawn, modified or discharged any further disclosure would be unlawful.

Findings of fact

13. The information requested by the complainant constitutes the contents of a complaint file regarding a complaint against Doncaster Metropolitan Borough Council which the complainant had previously submitted to the public authority.
14. The Commissioner established that the complainant made his complaint regarding Doncaster Metropolitan Borough Council on 2 November 2004 and that the public authority concluded its investigation into the complaint on 21 September 2005.

Analysis

Exemption

15. Section 44 of the Act provides that the –

Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –
 - (a) is prohibited by or under any enactment
 - (b) is incompatible with any community obligation, or
 - (c) would constitute or be punishable as a contempt of court.
16. Section 32(2) of the LGA provides that –

Information obtained by a local Commissioner, or any officer of either Commission, in the course of or for the purposes an investigation under this part of the Act shall not be disclosed except –

- a) for the purposes of the investigation and any report to be made under section 30 or 31 above; or
 - b) for the purposes of any proceedings for an offence under the Official Secrets Act 1911 to 1939 alleged to have been committed in respect of information obtained, by virtue of this part of this Act, by a local Commissioner or by an officer of either Commission or for an offence of perjury alleged to have been committed in the course of an investigation under this part of this Act or for the purposes of an enquiry with a view to the taking of such proceedings, or
 - c) for the purposes of any proceedings under section 29(9) above
16. The Commissioner accepts that section 32(2) LGA acts as a statutory prohibition on the disclosure of information obtained in the course of or for the purposes of an investigation and is satisfied that responding to a freedom of information request is not one of the reasons for disclosure provided for in sub-sections a) – c) of section 32(2). The main issue to be considered in this decision is whether the information requested by the complainant was obtained in the course of, or for the purposes of the public authority's investigation into Doncaster Metropolitan Borough Council.
17. The Commissioner has reviewed the contents of the public authority's complaints file and has found that most of the information contained within the file which has been withheld from the complainant is information that was obtained in the course of or for the purposes of an investigation. This is because most of the information was either received from the complainant or Doncaster Metropolitan Borough Council during the public authority's investigation of the said council. Therefore this information would be covered by the statutory prohibition on disclosure.
18. The Commissioner also recognises that a certain amount of the information which has been withheld from the complainant is information that was generated by the public authority and its officers in the course of investigating the complaint against Doncaster Metropolitan Borough Council. This type of information is typically comprised of telephone transcripts, correspondence from the public authority to Doncaster Metropolitan Borough Council, notes made by the public authority's investigator, internal memo's and emails. It is the Commissioner's view that where such information draws upon or makes reference to the complaint against Doncaster Metropolitan Borough Council, or the public authority's investigation of this complaint, then such information constitutes information obtained in the course of, or for the purposes of, an investigation. Whilst these documents may have been generated by the public authority itself, and have therefore not physically been obtained, it is clear that the information contained within the documents will have been obtained in the course of, or for the purposes of, the investigation.
19. The public authority informed the Commissioner that it had received some information from Doncaster Metropolitan Borough Council which was covered by a notice issued under section 32(3) of the Local Government Act 1974. The

Commissioner is satisfied that any information provided under such a notice would be covered by the statutory prohibition in section 32(2) LGA since the information was obtained by the public authority in the course of, or for the purposes of its investigation into the complaint against Doncaster Metropolitan Borough Council.

20. For the avoidance of any doubt paragraphs 17, 18 and 19 above cover all of the withheld information.
21. Section 44 is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.
22. The Commissioner recognises that the public authority has discretion to disclose information obtained in the course of, or for the purposes of, an investigation where it believes that it would be beneficial for the purposes of that investigation. In reaching his decision the commissioner has not sought to question the public authority's use of its discretion in this regard.

The Decision

23. The Commissioner's decision is that the public authority applied section 44 of the Act correctly and did not breach the Act through its handling of the complainant's request.

Steps Required

24. The Commissioner requires no steps to be taken.

Right of Appeal

25. 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

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 7th day of June 2007

Signed

**Gerrard Tracey
Assistant Commissioner**

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