

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 21 May 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 the London Borough of Barnet. The public authority refused to disclose the information, relying upon 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 majority of the information was exempt from disclosure. However the Commissioner has found that the public authority breached section 1 of the Act because section 32(2) of the Local Government Act did not apply to all of the information it held.

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. The complainant had previously made a complaint to the public authority regarding the London Borough of Barnet. On 19 January 2006 the complainant wrote to the public authority to request "a copy of my file". The complainant explained that his request was being made under both the Act and the Data Protection Act 1998.

3. The public authority responded to the request on 14 February 2006 by explaining that the information requested formed the contents of a complaints file. The public authority said that this information was exempt from disclosure under section 44 of the Act by virtue of section 32(2) Local Government Act 1974.
4. On 29 March 2006 the complainant wrote to the public authority to request an internal review of its handling of his request.
5. The public authority wrote to the complainant on 4 April 2006 with the outcome of its internal review. The public authority upheld its earlier decision to refuse the request, relying upon section 44 of the Act. The public authority explained to the complainant that the only relevant purpose for which information held on a complaints file may be disclosed is for the purpose of the investigation of the complaint which was the subject of the investigation. The public authority said that the complainant was seeking information in respect of a previous complaint for the purposes of submitting a new complaint, and that this was not permitted under the statutory prohibition.

The Investigation

Scope of the case

6. On 29 April 2006 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 his request under section 44 of the Act.
7. The complainant also asked the Commissioner to consider the public authority's failure to consider the request as a request for information under the Data Protection Act 1998. However, this decision is solely concerned with the public authority's response under the Freedom of Information Act. The Commissioner will consider whether the complainant has the right to access any of his personal information which may be contained within the complaints file as part of a separate investigation.

Chronology

8. On 29 August 2006 the Commissioner wrote to the public authority to request copies of the information that had been withheld under section 44 of the Act.
9. On 20 September 2006 the public authority provided the Commissioner with copies of all of the withheld information.

Findings of fact

10. The information requested by the complainant constitutes the contents of a complaint file regarding a complaint against the London Borough of Barnet

which the complainant had previously submitted to the public authority. The complaint was concerned with housing provision.

11. The complaint was submitted to the public authority on 11 March 2002. The public authority made a final decision on the complaint on 12 May 2003 and the complainant exhausted the public authority's internal review procedure, in respect of his complaint against the London Borough of Barnet, on 10 March 2004.
12. During the course of the public authority's investigation of the complaint against the London Borough of Barnet the complainant made a further complaint about the manner in which the public authority conducted its investigation.

Analysis

13. Section 44(1) of the Act provides that –

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.

14. 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 of 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

15. The Commissioner recognises 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 of the London Borough of Barnet.
16. 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 is information that was obtained in the course of or for the purposes of an investigation. This is because most of the information is information which was either received from the complainant, the London Borough of Barnet or other third parties during the public authority's investigation of the said council. Therefore this information would be covered by the statutory prohibition on disclosure. The Commissioner has found that a great deal of the information contained within the complaints file is information which was submitted by the complainant himself. Clearly this is information which the public authority only received for the purposes of investigating his complaint and would be covered by the statutory prohibition.
 17. The Commissioner also recognises that a certain amount of the information contained within the complaints file is information that was generated by the public authority and its officers in the course of investigating the complaint against the London Borough of Barnet. This type of information is typically comprised of telephone transcripts, correspondence from the public authority to the London Borough of Barnet, internal memos and emails. It is the Commissioner's view that where such information draws upon or makes reference to the complaint against the London Borough of Barnet, 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 been physically 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.
 18. However, the complaint file also includes information that was generated by the public authority itself and which does not draw upon or make reference to the details or nature of the complaint against the London Borough of Barnet. It is the Commissioner's view that this information is not covered by the statutory prohibition.
 19. It is the Commissioner's opinion that section 32(2) LGA does not act as a blanket exemption to all of the information it holds in its complaint file. Having said this, the Commissioner recognises that any information which is not exempt constitutes only a fraction of the information held by the public authority.
 20. In this case there is a further point to consider because the complainant also made a complaint about the manner in which the public authority investigated his original complaint. On reviewing the complaint file it is clear that some of the information deals with the complaint against the public authority, rather than the complainant's substantive complaint against the London Borough of Barnet. It is the Commissioner's opinion that where such information makes reference to the nature or details of the corresponding investigation into the complaint against the London Borough of Barnet then this information would be covered by the statutory bar. However where the information is concerned solely with the

complaint regarding the manner in which the public authority carried out its investigation then such information would **not** be covered by the statutory bar. This could include generic information about how the public authority carries out its investigations. The Commissioner also notes that some of the information dealing with the complaint regarding the public authority's handling of the investigation was generated by the public authority after its investigation into the complaint against the London Borough of Barnet was concluded. It is the Commissioner's opinion that this information was not obtained in the course of, or for the purposes of the investigation and would not be covered by the statutory prohibition.

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 breached section 1 of the Act by incorrectly applying section 44 to all of the information it held which fell within the scope of the complainant's request.

Steps Required

24. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Disclose any information, falling within the scope of the request, which was not obtained in the course of, or for the purposes of the public authority's investigation into the complaint against the London Borough of Barnet.

25. The Commissioner has provided the public authority with a list of documents which should be disclosed to the complainant in order to meet the requirements of this decision notice.

Failure to comply

25. 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

26. 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 21st day of May 2007

Signed

**Richard Thomas
Information Commissioner**

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