

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 2011

Public Authority: Pembrokeshire County Council

Address: County Hall
Haverfordwest
Pembrokeshire
SA61 1TP

Decision (including any steps ordered)

1. The complainant requested a number of food hygiene inspection reports from Pembrokeshire County Council (the "Council"). One report was withheld on the basis that the information was part of an ongoing investigation by the Council. It therefore applied section 30 of the Freedom of Information Act 2000 (the "Act") and confirmed during the Commissioner's investigation that it was relying on section 30(1)(a)(i). During the course of the Commissioner's investigation the withheld information was disclosed but the complainant asked the Commissioner to determine whether the exemption had been correctly applied by the Council. The Commissioner has investigated and found that, at the time of the request, section 30(1)(a)(i) of the Act is engaged and that the public interest favoured maintaining the exemption.
2. The Commissioner's decision is that Pembrokeshire County Council:
 - Correctly determined that the withheld information was exempt under section 30(1)(a)(i) of the Act.
 - Breached section 17(1)(b) and (c) by failing to state the specific exemption on which it was relying (down to the subsection) and failing to state the reasons that the exemption applied.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 5 January 2011 the complainant wrote to the Council with the following request for information:

"Hello,

I'd like to make a request under the Freedom of Information Act 2000 for the latest food hygiene inspection reports for the following six businesses in Pembrokeshire:

[list of names and addresses of six businesses]."

5. The Council responded on 10 January 2011. It disclosed the requested information apart from one report, which it said was exempt under section 30 of the Act.
6. On 7 March 2011 the complainant wrote to the Council to ask for further detail of its application of section 30 of the Act and the Council responded on 29 March 2011. It maintained its position that section 30 was engaged and that the public interest favoured maintaining the exemption but did not clarify the specific subsection on which it was relying or the reason the exemption was engaged.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way her request for information had been handled. The Commissioner noted that the Council disputed that it had been afforded the opportunity to conduct an internal review of its decision. The Commissioner considers that the complainant's email of 7 March 2011 was an expression of dissatisfaction with the way the request had been handled and should have been treated as a request for an internal review. The Commissioner considers that the Council's response of 29 March 2011 can reasonably be considered a response to the request for an internal review.
8. During the Commissioner's investigation it became clear that the complainant was seeking the Commissioner's view on the following issues:
 - The relevant legislation; the complainant made several requests for food hygiene inspection reports to local authorities, some of which were handled under the provisions of the Act and some under the provisions of the Environmental Information Regulations 2004 (the "EIR"). The Commissioner has therefore set out his view on this matter.
 - The application of section 30 of the Act; although in this case the withheld information has now been disclosed the complainant asked

the Commissioner to determine whether the exemption had been correctly applied at the time of the request.

Reasons for decision

The relevant legislation

9. The Commissioner's view is that the Act is the relevant legislation rather than the EIR. In order for the EIR to apply, the requested information would need to fall under the definition of environmental information set out in regulation 2(1) of that legislation.
10. The key point is that for information to be environmental there must be a link back to the elements of the environment. Even under regulation 2(1)(f) of the EIR which says that environmental information is information on "the state of human health and safety, including the contamination of the food chain" those factors must be affected by the state of the elements of the environment referred to in regulation 2(1)(a) or by any of the matters referred to in regulation 2(1)(b) and 2(1)(c).
11. The Commissioner's position is that no such link can be made in relation to the withheld information in this case.

Information held for the purposes of investigations

12. The Act states that information is exempt if at any time it has been held for the purposes of any investigation which the public authority has a duty to conduct with a view to it being ascertained whether any person should be charged with an offence (section 30(1)(a)(i)). During the Commissioner's investigation the Council confirmed that it was relying on this exemption.
13. The exemption is classed based, meaning that the Council did not have to demonstrate that disclosure would cause prejudice or harm to any interest. If the information falls within the class or category of information set out in the legislation, the exemption is engaged. However, the exemption is subject to the public interest test, which means if the exemption is engaged a public authority can only withhold information if the public interest favours maintaining the exemption.
14. In this case section 30(1)(a)(i) was applied to a specified food hygiene inspection report that was prepared following the Council's inspection of a particular premises. The Commissioner is satisfied that the exemption

was engaged at the time of the request. The Council is a Food Authority as defined by section 5(1A) of the Food Safety Act 1990¹ and has responsibility for enforcing the Food Hygiene (Wales) Regulations 2006². As such it has responsibility for enforcing the provisions of that legislation and may instigate proceedings where it finds breaches.

15. In this case the Council took legal action against the business in question that resulted in a fine being issued by magistrates for breaches of food hygiene requirements. The Commissioner is therefore satisfied that the information falls into the class of information set out in section 30(1)(a)(i) of the Act.

The public interest test

16. There is clearly a strong public interest in the disclosure of food hygiene inspection reports, which would promote transparency and accountability in this area. It could be argued that such transparency could ultimately drive up food hygiene standards by both promoting good practice and highlighting businesses that need to make improvements. It might also be argued that such transparency could also drive up the standards of inspections and decisions taken by Food Authorities, such as the Council.
17. However, the Commissioner notes that five of the six inspections reports requested by the complainant were disclosed. Only one was withheld on the basis that further legal action was possible. It could therefore be argued that there is already transparency in this area.
18. In arriving at a decision on where the balance lies in this case, the Commissioner referred his specialist guidance on the public interest test in relation to section 30 of the Act³. He has been mindful of the purpose of the exemption which is to protect information that will allow the effective investigation and prosecution of crime.
19. In this case, at the time of the request the Council had yet to issue proceedings against the business in question and the investigation could therefore be considered to have been open. The Commissioner considers this to be a significant factor in favour of maintaining the exemption; ie he considers that there is a significant public interest in protecting the

¹ <http://www.legislation.gov.uk/ukpga/1990/16/section/5>

² <http://www.legislation.gov.uk/wsi/2006/31/contents/made>

³ <http://icoportal/foikb/PolicyLines/FOIPolicyPublicinterestins30.htm> and <http://icoportal/foikb/PolicyLines/FOIPolicyPublicinterestfactorsfors30.htm>

integrity of ongoing investigations so as not to compromise them or any future legal proceedings.

20. The information in this case is also significant, as it details the findings of the Council's inspection and sets out the alleged breaches of food hygiene. This clearly therefore forms the basis of the further legal action taken by the Council and is not trivial or insignificant information.
21. Neither can it be argued that the passage of time has lessened the likelihood that the investigation or legal proceedings would be prejudiced. While the counter argument is that there is a public interest in accountability and transparency and that the disclosure of 'current' information would assist in this regard, his view is that this is outweighed by the public interest in maintaining the integrity of the ongoing investigation.
22. In summary, the Commissioner acknowledges the significant public interest in the disclosure of food hygiene inspection reports but considers that at the time of the request the public interest favoured protecting the Council's ongoing investigation. As such he agrees that, at the time of the request, the public interest favoured maintaining the exemption.

Right of appeal

23. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. 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

Anne Jones
Assistant Commissioner
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