

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2011

Public Authority: Coventry City Council

Address: The Council House
Earl Street
Coventry
CV1 5RR

Decision (including any steps ordered)

1. The complainant has requested details Coventry Trading Standards hold about complaints made against the company ICUT and its Director, Dr Vincent McKee.
2. Coventry City Council ("the Council") refused this request under section 44 of the FOIA in reliance on Part 9 of the Enterprise Act 2002 ("EA02").
3. The Commissioner's decision is that the Council has correctly applied section 44 of the FOIA as basis for withholding the requested the information.

Request and response

4. On 2 March 2011, the complainant wrote to the Council and requested information in the following terms:

"Please send me all the details Trading Standards have received regarding complaints made against the company Institute of Independent Colleges and Universities (ICUT) and their Director Dr Vincent McKee, whether these complaints have come direct to Trading Standards or via Consumer Direct who have passed the case onto yourselves".

5. The Council responded on 28 March 2011. It stated that the information was prohibited from disclosure by other legislation (section 44 of the FOIA). The legislation prohibiting disclosure was quoted as being the

EA02 and, in particular, Part 9 section 237 as the requested information was "specified information".

6. The Council also explained it had considered whether disclosure of this information could be made under section 242 of the EA02 which allows a public authority to disclose "specified information" for the purpose of investigating a criminal offence or deciding whether to start or end an investigation. The Council stated they would only disclose information under this section to the police or other enforcement agencies.
7. Following an internal review the Council wrote to the complainant on 13 May 2011. It clarified that the requested information would clearly be "specified information" under section 237 of the EA02 and therefore exempt from disclosure under section 44 of the FOIA.

Scope of the case

8. 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 following points:
 - Sections 241A and 242 of the EA02 can override section 237 of the EA02 and allow disclosure of "specified information".
 - ICUT have undergone a change of name and are now known as UAT therefore releasing the information will not affect the business of ICUT.
 - The Council state information can only be disclosed to enforcement agencies or the police but section 241A and 242 states "*may disclose that information to any person*".
9. The Commissioner considers the scope of the case to be the use of the exemption from disclosure where it is prohibited by other legislation (section 44), where the other legislation is Part 9 of the EA02.

Reasons for decision

10. Section 44(1)(a) of the FOIA states that information is exempt if its disclosure is prohibited by or under any enactment.
11. The Council states it is prohibited under Part 9 section 237 of the EA02 from disclosure of "specified information" as defined by section 238. In the case of *Dey v ICO and OFT (EA/2006/0057)* the Information Tribunal considered whether section 237 of the EA02 could act as a statutory

prohibition on disclosure for the purposes of section 44 of the FOIA. The Tribunal concluded that section 237 could act as a prohibition.

12. The Commissioner has therefore taken the Tribunal's ruling into account when considering this case but he must first establish whether the requested information would be "specified information" in order for section 237 to apply.

13. Section 237 of the EA02 states that "specified information" must not be disclosed unless the disclosure is permitted under Part 9. Section 238 defines "specified information" as information that:

"comes to a public authority in connection with the exercise of any function it has under or by virtue of –

(a) Part 1, 3, 4, 6, 7 or 8;

(b) An enactment specified in Schedule 14"

14. The Council has explained that any complaints they may be investigating would be under various pieces of consumer protection legislation which fall under Part 8 of the EA02.

15. The Commissioner therefore accepts that the information would be "specified information" and has gone on to consider section 237(2) of the EA02 which sets out that "specified information" cannot be disclosed during the lifetime of the individual or while the undertaking i.e. the business continues in existence.

16. The complainant has argued that the undertaking is no longer in existence as ICUT underwent a name change to UAT on 17 January 2011.

17. The Commissioner has considered this argument and in doing so has checked the status of both ICUT and UAT with Companies House. This confirms that although ICUT underwent a change of name the 'undertaking' does continue to exist under the same registration number with Companies House. The effect of a name change is detailed in section 81 of the Companies Act 2006 and is that any rights or obligations attached to the company under any of its former names continue to attach to it. The Commissioner has therefore concluded that it remains the same undertaking and section 237 of the EA02 applies.

18. The complainant specifically asked the Council to consider disclosure under section 242 of the EA02 and then subsequently raised section 241A as a potential gateway to disclose information. The Council stated they would only consider disclosure under this section where the request had been received from the police or relevant enforcement agencies.

19. Sections 239-243 of the EA02 provide 'gateways' for disclosure of specified information. Section 242 states that a public authority to which section 237 applies may disclose information to any person in connection with the investigation of any criminal offence or for the purposes of any decision whether to start or end such an investigation. Section 241A states that specified information may be disclosed to any person in connection with civil proceedings or obtaining legal advice in relation to civil proceedings.
20. The Council has maintained its position that specified information under these sections would only be disclosed to other Trading Standards departments, the Office of Fair Trading, the police or other professional bodies representing those taking civil action.
21. In considering this, the Commissioner has taken into account paragraph 19 of the *Dey* decision which relates to section 241 of the EA02 and states that "*the exercise of that power is a matter for the public authority to consider*". On the wider subject of the gateways in general the Tribunal stated "*it gives a power to disclose, not a duty*".
22. The Commissioner can see there may be an argument for stating that section 241A would have allowed disclosure of specified information to the complainant had the complainant been able to provide evidence that a civil claim or legal proceedings were underway. The Commissioner, following the Tribunal's approach, can only conclude that none of the gateways for disclosing information apply as the Council was under no obligation to consider them.
23. The Commissioner accepts therefore that the requested information is "specified information" and therefore prohibited from disclosure under section 237 of the EA02. The Commissioner also accepts that none of the gateways for disclosure under sections 239-242 would oblige the Council to disclose "specified information".
24. The Commissioner's decision is that the Council dealt with the request in accordance with the FOIA and was correct to apply section 44 by virtue of Part 9 of the EA02 to withhold the requested information.

Right of appeal

25. 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

26. 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.
27. 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

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF