

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 December 2012

Public Authority: London Borough of Waltham Forest Council
Address: Town Hall
Forest Road
London Road
E17 4JF

Decision (including any steps ordered)

1. The complainant has requested details of complaints made to the council about a specific car dealer. The council claimed the exemption in section 30(1)(a)(i) and 30 (1)(b) which refers to investigations and proceedings conducted by public authorities.
2. The Commissioner's decision is that Waltham Forest Council has correctly applied the exemptions in section 30(a)(i) and 30(1)(b).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 15 December 2011, the complainant wrote to Waltham Forest Council and requested information in the following terms:

"I am writing to request reported complaint(s) and concern(s) for the following company under the Freedom of Information Act 2000"

[The Commissioner has redacted the name of the company as this is not relevant to his findings in this instance.]

5. The council responded on 30 December 2011. It stated that information was held however it was exempt from disclosure under section 31(1)(a) (the prevention and detection of crime).

6. Following an internal review the council wrote to the complainant on 6 February 2012. It stated that its initial claim to the exemption was incorrect, however the information was exempt under section 30(1) (investigations and proceedings conducted by public authorities) and also section 31(2).

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He considers that the withheld information should have been disclosed.

Reasons for decision

8. Section 30(1) of FOIA states that:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-

1. *whether a person should be charged with an offence, or*
2. *whether a person charged with an offence is guilty of it,*

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct..."

9. The council provided further information to the Commissioner regarding the application of the exemption. However that information cannot be specifically analysed within this decision notice without considering and discussing the withheld information itself. The Commissioner has therefore provided a general consideration of the application of the exemption in this notice.
10. Information withheld under section 30(1)(a) or (b) is information which is information which has, at any time been held as part of an investigation which has been held to establish whether any criminal prosecutions should occur.
11. The fact the council has agreed that information is held, but that the council has applied section 30(1) provides a clear indication to the

complainant that there was, or has been an investigation of the nature described in the exemption into the company concerned.

12. The council provided details of the investigation to the Commissioner, and based upon that evidence he is satisfied that the exemption is engaged.
13. Section 30 is subject to a public interest test. The test is whether the public interest in the exemption being maintained outweighs the public interest in the information being disclosed.

The public interest

The public interest in the exemption being maintained

14. The central public interest in the exemption being maintained relates to an authority being able to conduct investigations of a potentially criminal nature without a disclosure of information prejudicing its ability to continue the investigation or its ability to obtain a prosecution in the future.
15. A disclosure of details of specific complaints received by an authority may dissuade individuals from making complaints in the future, or from providing information to authorities which allow it to identify potentially criminal activities. It may also dissuade individuals from providing further evidence should prosecutions take place.
16. A disclosure of information at too early a point during an investigation may also warn individuals that the investigation is on-going and lead to them taking steps to prevent their activities from being detected.
17. A disclosure of information held once an investigation is completed can still potentially affect future investigations. It may provide the companies or individuals with details of the intelligence held about it which may in turn allow it to avoid detection in its future activities.

The public interest in the information being disclosed

18. The public interest in the information being disclosed is to allow scrutiny and accountability of the council's actions in relation to complaints it has received about companies where potential criminal activity may have taken place.
19. Public money is spent by authorities investigating complaints, however if no obvious action is taken then complainants are often left not knowing whether their complaint, or the information they provided to the authority has been taken seriously and an investigation carried out. A disclosure of the information would highlight what actions the council

has taken as regards the complaints it has received. It would also potentially highlight decisions made by the authority and allow them to be held to account for these.

20. A disclosure of information relating to complaints received by an authority would also highlight companies which the public may wish to avoid using.
21. The complainant considers that it is unfair for authorities to be able to withhold information from victims of unscrupulous companies, especially when they have made specific complaints against those companies. However disclosures under the Act are applicant blind. The Commissioner cannot take into account the requestor, or the reasons why the person has made his request when reaching his decision.
22. The Commissioner recognises that there is a public interest in those who make complaints to a public authority to be able to see that action has been taken on their behalf, and, more widely, that the public in general has been protected for the future.

The balance of the public interest

23. The Commissioner has considered the above arguments. If information is disclosed which is held as part of on-going investigations this may highlight the investigation to a company and as a result it may take action to remove evidence to prevent the detection of its past activities.
24. If complaints which have been received are disclosed in response to a request and this becomes widely known then a company may argue that it is unable to obtain a fair trial if publicity highlights those complaints to the public generally. Prosecutions may then fail on this basis.
25. Finally investigations may not 'close' even where no active work is being carried out on the case at any particular time. A case file of allegations or complaints against a particular company may become relevant to an investigation in the future if further complaints of a similar nature are received. Hence, even where an investigation has effectively ceased, the section 30 allows for that information to be withheld. If that were not the case, a disclosure of information may undermine the intelligence the authority has acquired on a potentially unscrupulous company affecting its ability to detect crime or prosecute the company in the future. This would potentially leave the public at risk in the future.
26. The Commissioner's recognises the frustration which victims of unscrupulous companies have, and that a disclosure of similar complaints received by the authority and a description of the actions taken by the authority may either alleviate those concerns, or

alternatively allow the individuals to hold the investigating authority to account for its inaction.

27. However there are real concerns that doing so may in fact prevent authorities from carrying out successful investigations, ultimately achieving successful prosecutions and protecting the public.
28. The Commissioner's decision is that in this case the public interest in maintaining the exemption outweighs that of disclosing the information.
29. The Commissioner's decision is therefore that the council was correct to apply section 30(1) in this instance.
30. For this reason he has not considered the application of section 31(2) further.

Right of appeal

31. 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

32. 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.
33. 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

Andrew White
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