Reference: FS50534933

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 October 2014

Public Authority: Swindon Borough Council
Address: Civic Offices
Euclid Street
Swindon
Wiltshire

Decision (including any steps ordered)

1. The complainant has requested the food safety reports for two particular restaurants in Swindon.

2. Swindon Borough Council relies on the exemptions provided by sections 43 (commercial interests), 30(1) (investigations) and 40(2) (personal data) to withhold the requested information.

3. The Commissioner's decision is that Swindon Borough Council correctly relied on the section 30(1)(b) exemption to withhold the requested information from the complainant.

4. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

Background

5. Swindon Borough Council ("SBC") is a Food Authority as defined by section 5(1A) of the Food Safety Act 19901 and has responsibility for enforcing the Food Hygiene (England) Regulations 2006. As such it has responsibility for enforcing the provisions of that legislation and may instigate proceedings where it finds breaches.

6. The Food Hygiene Rating Scheme (FHRS) in England, Wales and Northern Ireland Scotland stated aim is to help consumers choose where to eat out or shop for food by giving them information about the hygiene standards in restaurants, takeaways and food shops.

Request and response

7. On 22 November 2013, the complainant wrote to SBC and requested information in the following terms:

    - The full food safety inspection reports which are used for the food hygiene rating scheme for two particular restaurants in Swindon

8. On 20 December 2013, SBC responded. It refused to provide the requested information. It cited the following exemption as its reason for doing so;

    - Section 30(1)(b) (Investigations)

9. Following an internal review SBC wrote to the complainant on 30 January 2014. It stated that it upheld its original decision.

Scope of the case

10. The complainant contacted the Commissioner 17 March 2014 to complain about the way his request for information had been handled.

11. In a letter to the Commissioner dated 15 July 2014, SBC stated that the exemption provided by sections 43(2) (commercial interest) and 40(2) (personal data) also permitted withholding some or all of the requested information from the complainant.

12. In correspondence to the Commissioner the complainant made, amongst others, the following comment.

    - Other councils release this type of information

Reasons for decision

13. Section 1(1) of FOIA provides that:

    Any person making a request for information to a public authority is entitled:

    (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

    (b) if that is the case, to have that information communicated to him.

14. SBC has informed the complainant that it holds the requested information but relies on sections 30(1), 43 and 40(2) to withhold the requested information from him.

Section 30(1)(b)

15. Section 30(1) provides 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 –

(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…"

16. Having viewed the withheld information the Commissioner is satisfied that it was gathered by SBC's Enforcement Officers during the course of their investigations in accordance with, amongst others, the Health and Safety at work Act 1974, the Food Safety Act 1990, the Food Hygiene (England) Regulations 2006. The Commissioner is further satisfied that the withheld information could lead to a decision by SBC to institute criminal proceedings under, for example, the Food Hygiene (England) Regulations 2006. The Commissioner for these reasons finds that the exemption is engaged.

17. Though the exemption is engaged it can only be maintained if the public interest in doing so outweighs the public interest in disclosure.

18. In considering public interest factors, the Commissioner agrees with the approach set out by the Information Tribunal in England & London Borough of Bexley v Information Commissioner EA/2006/0060 & 0066, at paragraph 65 which provides:

"(f) In considering public interest factors in favour of maintaining the exemption, they relate to the particular interest which the exemption is protecting...

(g) The public interest factors in favour of disclosure are not so restricted and can take into account the general public interests in the promotion of transparency, accountability, public understanding and involvement in the democratic process."

19. Public interest arguments in favour of disclosing the requested information

- Facilitating the public's ability to evaluate the effectiveness of the public authority's investigation.

- Provide the public with an insight into the hygiene standards at the establishments at the point at which the inspections were undertaken.

- Releasing the information would add to the public's knowledge and understanding of the investigatory process.

- The investigation is publically funded and disclosing the information will aid the public's evaluation as to whether the money has been well spent.

- Facilitating the public's ability to evaluate the effectiveness of the public authority's investigation and its regulatory obligations.

20. Public interest arguments in favour of maintaining the exemption

    - The purpose of the exemption is to protect information that will allow the effective investigation and prosecution of crime.

    - Releasing the information may inhibit the co-operation of food outlets in the investigation process.

21. In carrying out the public interest test the Commissioner considers the circumstances prevailing at the time of the request.

22. The Commissioner recognises there is a general public interest in promoting transparency, accountability, public understanding and involvement in the democratic process. The FOIA is a means of helping to meet that public interest, so it must always be given some weight in the public interest test and it is clearly relevant here.

23. More specifically the Commissioner notes that it is very much in the public interest that they know the state and safety of food establishments that they use. This will help them to determine whether they should eat there. However, on this point, he notes that a local authority can take immediate steps to ensure public safety.

24. Additionally the Commissioner is of the view that releasing this type of information provides further impetus for food establishment to increase their compliance with legislation that seeks to protect the public.

25. At the time of the request the Council had yet to re-visit the businesses in question and its investigation process was therefore ongoing. The Commissioner considers this to be a significant factor in favour of maintaining the exemption. That is he considers that there is a significant public interest in protecting the integrity of ongoing investigations so as not to compromise them or any future legal proceedings.

26. Similarly it cannot be persuasively argued that the passage of time has lessened the likelihood that the investigation or legal proceedings would be prejudiced, as the investigation was still ongoing. 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.

27. In summary, the Commissioner acknowledges the significant public interest in the disclosure of food hygiene inspection reports but the Commissioner considers that at the time of the request the public interest favoured protecting the Council's ongoing investigations. As such he agrees that, at the time of the request, the public interest favoured maintaining the exemption.

28. The Commissioner notes the complainant's comment as laid out above. Whilst other councils have released similar information the Commissioner notes that he (or SBC) is not bound by those decisions. In any event the Commissioner does not know whether legal proceedings were contemplated, instituted or pursued in those instances.

29. Having found that SBC were entitled to withhold the requested information by virtue of section 30(1)(b) he did not go on to consider the other exemptions it had cited.

Right of appeal

30. 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: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.

32. 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 .....

Gerrard Tracey
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Water Lane
Wilmslow
Cheshire
SK9 5AF