

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 February 2015

**Public Authority:** Gateshead Metropolitan Borough Council

**Address:** Civic Centre  
Regent Street  
Gateshead  
Tyne and Wear  
NE8 1HH

#### **Decision (including any steps ordered)**

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1. The complainant has requested a copy of the Gateshead Jewish Community Household Survey 2010, together with any updates or subsequent versions of that survey.
2. The Commissioner's decision is that Gateshead Metropolitan Borough Council is entitled to rely on the exemption to disclosure provided by section 41(1) of the FOIA.
3. The Commissioner does not require the public authority to take any further action in this matter.

#### **Request and response**

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4. On 7 August 2014 the complainant wrote to the Council and asked for recorded information under the following terms:

"Please may I request the following:

- 1) A copy of the Gateshead Jewish Community Household Survey 2010, in whichever format is easiest to supply; and
  - 2) Any updates, amendments, additions or subsequent versions of the Gateshead Jewish Community Household Survey that have been published since 2010, in whichever format is easiest to supply."
5. On 3 September the Council wrote to the complainant and advised him that the information he seeks is exempt from disclosure of virtue of

section 41 of the FOIA – where the information is provided in confidence.

6. The complainant wrote to the Council again on 4 September and asked it to review its decision to withhold the information. In his email the complainant challenged the Council's application of section 41.
7. Having completed its internal review, the Council wrote to the complainant on 17 October to advise him of its final decision. The Council determined that it was correct in its decision to apply section 41 to the requested information and also that section 36(2) of the FOIA also applied.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 21 October 2014 to complain about the way his request for information had been handled. The complainant was particularly concerned about the Council's reliance on sections 41 and 36 of the FOIA as the grounds for refusing his request.
9. The complainant advanced three arguments to support his position that the Council's reasons for refusing his request are not valid: He considers the public interest lies in knowing the contents of the survey in order to hold the Council to account in respect of the provision of services to the Jewish community in Gateshead; He considers that there is inadequate evidence to support the Council's position that the information provided by the survey's respondents was given 'in strictest confidence'; and he considers that section 41 cannot be applied where the information is held to be trivial in nature.
10. This notice sets out the Commissioner's decision in respect of the complainant's complaint.

### **Reasons for decision**

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#### **Section 41 – information provided in confidence**

11. The Council has provided the Commissioner with a copy of the full report of the Gateshead Jewish Community Household Survey dated June 2011. This report constitutes the withheld recorded information and it is the subject of the Council's application of the section 41(1)(a) exemption.

12. Section 41 applies to information obtained from a third party whose disclosure would constitute an actionable breach of confidence. This exemption is absolute and therefore it is not subject to a public interest test.

13. Section 41(1) states:

*"Information is exempt information if –*

*(a) it was obtained by the public authority from any other person (including another public authority), and*

*(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."*

14. In considering whether disclosure of information constitutes an actionable breach of confidence the Commissioner will consider the following:

- Whether the information has the necessary quality of confidence;
- Whether the information was imparted in circumstances importing an obligation of confidence; and
- Whether disclosure would be an unauthorised use of the information and to the detriment of the confider.

15. The Commissioner will find that information has the necessary quality of confidence if it is not otherwise accessible and if it can be characterised as being more than trivial.

16. The Council has advised the Commissioner that the survey was carried out by the Jewish Community Council of Gateshead ("the JCCG") on its behalf.

17. To support its position that the report is confidential, the Council has provided the Commissioner with a letter circulated by the JCCG to members of the Jewish Community – 'the Kehillo'. This letter contains the following assurance:

*"All the information you give will be treated in the strictest confidence. The information received will be combined and collated so as to provide a reliable indication of needs. The individual responses will be destroyed."*

18. The Council advised the Commissioner that the survey collected information from a small number of households, representing an equally small number of individuals.

19. The purpose of the report is to develop the Council's policies on a range of issues including housing, health and special educational needs, so that the needs of the Jewish Community are properly taken into account.
20. The survey asked for detailed answers to questions about each individual household, including questions relating to income, educational attainment and household composition.
21. The Council asserts that disclosing this information would cause detriment to the Haredi Jewish Community and to the Council itself.
22. It points out that the Haredi Jewish Community is strictly orthodox and that it only agreed to participate in the survey on the guarantee that the information respondents supplied would be treated in the strictest confidence.
23. The Council has emphasised that it has taken more than 15 years to establish a good working relationship with this community and that community leaders have indicated its members would be reluctant to participate in future surveys should their trust be compromised.
24. The Council has assured the Commissioner that the information contained in the report is not otherwise available.
25. The Commissioner must acknowledge the assurance given by the JCCG to its members. He considers that this assurance establishes a clear expectation of confidentiality and also highlights the degree of sensitivity which surrounded the JCCG's participation in the survey.
26. It is clear to the Commissioner that the information contained in the report is of significant value to the Council in determining future service provision to the Jewish Community. He has no hesitation in finding that the information contained in the report is greater than trivial.
27. The Commissioner is mindful of the quality of the relationship which exists between the Council and the Jewish Community and of the time taken to establish this. He fully understands that the views of its leaders are highly respected and are taken into account by community members.
28. He also accepts the Council's assertion that the Haredi Community is a very private community and that it did not want to engage with the Council directly. The Community's participation in the survey was only agreed after lengthy meetings with its leaders in order to persuade them of the benefits of participating.

29. The survey was commissioned via the JCCG. Leaders of the JCCG have expressly stated that the community would not participate in future surveys if the report is released.
30. The Commissioner has therefore determined that disclosure of the final report would likely jeopardise the Council's relationship with the Jewish Community.
31. The Commissioner finds that the report contains information which has a necessary quality of confidence; that the information was provided in circumstances which import an obligation of confidence; and that disclosure would be detrimental to the providers of the information.
32. The Commissioner is satisfied that the exemption provided by section 41(1) is engaged.
33. The complainant has pointed to the importance placed on the report by the Council in terms of being able to identify and provide services to the Jewish Community. He argues that disclosure of the report would allow the public to hold the Council to account and ensure that it is effectively and adequately providing those services.
34. The complainant asserts that without knowing the targets the Council is setting itself, it is impossible to test whether it the Council is providing the Jewish community with the correct types and levels of services it needs.
35. The Council's arguments focus on the unique nature of the Jewish Community within Gateshead and the relationship it has built up over a period of 15 years. It stresses that this relationship is founded on mutual trust and understanding, and that for the Council to be able to work with the community and understand its needs, it is essential to maintain the confidentiality of the report.
36. The Council argues that it is necessary to identify the Jewish Community's needs. It strongly asserts that it could not effectively plan for the appropriate provision of services to the Jewish Community without garnering the information contained in the report.
37. The Council stresses that there are other means of accessing information regarding communities in Gateshead, including the Jewish Community via census data.
38. The Commissioner recognises that the Council has a responsibility to take confidentiality seriously and that it would be improper to disclose information unless there is a public interest defence for a breach of confidence.

39. In the Commissioner's view disclosure will not constitute an actionable breach of confidence if there is a public interest in disclosure which outweighs the public interest in keeping the information confidential.
40. The Commissioner is mindful that Courts have taken the view that to warrant breaching confidentiality there must be valid and very strong public interest considerations. The duty of confidence is not one which should be overridden lightly.
41. In the Commissioner's opinion the disclosure of confidential information requires there to be circumstances in which there are clear and serious public interest factors matters present. Such circumstances are likely to include where the information concerns misconduct or illegality.
42. The Commissioner has not found any evidence of misconduct or illegality in this case. The public interest arguments advanced by the complainant are not sufficient in the Commissioners opinion to provide the Council with a public interest defence and it is for this reason the Commissioner has decided that the Council is entitled to withhold the report in reliance on section 41(1) of the FOIA.
43. The Commissioner has not gone on to consider the Council's application of section 36(1)(c).

## Right of appeal

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44. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

45. 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.
46. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**