

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 September 2015

Public Authority: Harlow District Council
Address: Market House
Harlow
Essex
CM20 1BL

Decision (including any steps ordered)

1. The complainant has requested information on a decision by the council to terminate its contract with the Harlow Welfare Rights and Advice Centre, thereby resulting in the closure of the centre and the closure of the charity which ran it. The council provided some information but withheld other information on the basis that sections 41 and 43 applied (confidentiality and commercial interests).
2. The Commissioner's decision is that the council has incorrectly stated that it has responded to all parts of the request. He has decided that the council has not complied with the requirements of section 1(1) as regards question 2 and the complainant's follow up question to question 9.
3. The Commissioner has also decided that the council was not correct to apply sections 41 and 43(2) to information it received from third parties.
4. The Commissioner has also decided that the council breached section 10 in respect of its response question 17 as it failed to respond, providing the relevant information within 20 working days.
5. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To issue a fresh response to the questions outlined below as required by section 1(1) of the Act.
 - To respond to the complainant as regards question 2 as outlined in para 24 below.

- To respond to the complainant as regards question 9 as outlined in para 36 below
 - To disclose information which was withheld under section 41 and section 43.
6. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

7. On 18 June 2014 the complainant wrote to the council and requested information in the following terms:
1. *Was the cabinet informed about the full cost of terminating the contract with Harlow Welfare Rights & Advice (HWRA) when the decision was taken on 11/10/12? Examples of costs include redundancy, pensions, the business rate and other costs associated with evicting HWRA from the Advice Centre etc.*
 2. *If yes, please provide details of the full cost presented to the Cabinet together with a breakdown of each element and the actual cost.*
 3. *Was the Cabinet or another Council Committee presented with full costs and benefits analysis when the decision was taken to terminate HWRA's contract?*
 4. *If yes, please provide details of the costs and benefits analysis presented.*
 5. *Was the Cabinet presented with full details of the impact on vulnerable groups of the termination of HWRA's contract in accordance with the statutory equalities duties?*
 6. *If yes, please provide details of the assessment presented to the Cabinet when the decision to terminate HWRA's contract was taken on 11/10/12.*
 7. *Was the Cabinet presented with a report setting out the transitional arrangements to protect vulnerable groups when the decision was taken on officer advice to terminate HWRA's contact with a few days notice?*

8. *If yes, please provide details of the transitional arrangements presented to the Cabinet.*
 9. *Did officers advise the Cabinet to review the decision to terminate when HWRA requested this a few days after the decision was taken and in subsequent correspondence?*
 10. *If yes, please provide details of when this advice was presented to the Cabinet.*
 11. *Did officers advise the Cabinet that legal fees would be incurred and how much those fees might be when HWRA submitted pre-action judicial review and private law correspondence in November and December 2012?*
 12. *If yes, please provide details of when this report was presented to the Cabinet and the estimate of legal fees.*
 13. *Please provide details of the legal fees and incidental costs incurred to respond to HWRA's judicial review application and pre-action private law correspondence up to and including up to the mediation in July 2013. The timing of the mediation was reported in Harlow Star before it took place.*
 14. *Please provide an estimate of the cost of the management and officer time incurred from the date officer's advised the Cabinet to terminate HWRA's contract on Thursday 11/10/12 to the mediation July 2013.*
 15. *Did officers advise the Cabinet to wind HWRA up and provide details of the full costs of this procedure?*
 16. *If yes, when was this advice presented to the Cabinet?*
 17. *If no, who took the decision to wind HWRA up and on what basis? Please provide full details of the delegated powers, if any.*
 18. *Please provide details of the total internal and external costs and the management and petition advertising costs of the wind-up proceedings. Please include relevant dates including the dates of the further hearings ordered by the Court when the Council's application was not approved at the first hearing.*
6. The council responded on 25 June 2014. It provided some information and answered the questions asked by the complainant.
 7. On 16 August 2014, having received the response from the council, the complainant then made the following further requests for information:

1&2: If the full costs were not presented to the Cabinet please provide details of the costs that were set out in the relevant Cabinet report of 11/10/12.

What was the actual cost including but not limited to redundancy, notice, total pension payments to the relevant pension fund, business rates and other costs associated with evicting HWRA from the Advice Centre etc?

... please provide evidence to support the statement that there was "...no prospect of repayment of the money owed...".

3: For clarification, is the answer to this question NO, i.e. that there was no costs and benefits analysis presented to the Cabinet when the decision to terminate was taken?

5 – 8: Were the two equalities impact documents attached to the reply presented to the Cabinet of 11/10/12?

9: Please provide the date of the meeting between senior officers and HWRA to discuss the termination decision and the date the notice of termination was served.

13&14: The total external legal fees and separate incidental costs in reply to questions 13, 14 & 18 are listed in the reply as £104.256. Please confirm if this is the total spent on these items of expenditure. If it is not please confirm what the total is.

For the avoidance of doubt the question is requesting the total legal and other costs including Court fees etc, expended on responding to HWRA's legal action.

17: This question requests details of the delegated powers used by officers. The answer does not supply this information. Please supply full details of the delegated powers used to take the decision to wind HWRA up including references to the appropriate scheme or delegation or other official document that confirms that officers had the power to wind HWRA up without a cabinet or other Committee decision."

8. The council responded on 25 September 2014 and provided further information in response to the request. Again the responses were in the form of direct answers to questions rather than by disclosing documents for the most part.

9. The complainant wrote to the council again on 18 November 2014 confirming that the response was not adequate and left a number of questions unanswered. She also said that she believed some of the responses were misleading or inaccurate.
10. The council responded again on 12 February 2015. The complainant argues that its response appears to have thrown some of its previous responses into doubt.

Scope of the case

11. The complainant initially contacted the Commissioner on 18 December 2015 to complain about the way her request for information had been handled.
12. The complainant believes that the council holds information which it has not provided in response to her request. She also believes that the information which has been withheld under section 41 and 43 should have been disclosed.
13. The complainant also raised concerns that the council chose to apply section 41 and 43 only during the course of the Commissioner's investigation. The Commissioner has however accepted the late application of the exemption in this instance. He would point out however that it is good practice to apply exemptions at the initial time of refusing the request or at the latest, once the information is reviewed again during the internal review of the initial decision.
14. The complainant also has concerns about the procedures which the council has used however the Commissioner is not able to consider these as they fall outside of his powers under section 50 of the Act.
15. The Commissioner recognises that some of the questions which the complainant made are not requests for recorded information. They are direct questions. The Act provides the right for individuals to make requests for recorded information. It does not provide the right to ask any questions and require a public authority to respond to those questions. However where recorded information is held which can answer the questions then the authority should consider that information for disclosure. It is still not required to answer the question directly however. Therefore some of the questions which the complainant has asked (outlined below) have been responded to by the council through the provision of information of recorded information only. Where this has occurred the Commissioner notes that the council has responded to the request as required by the Act where it has

provided the recorded information it holds in response, but failed to answer the question directly as the complainant may have wished.

Reasons for decision

Has all of the relevant information been disclosed?

16. The Commissioner has first addressed the parts of the complainant's request where she has indicated that she does not believe all of the information has been disclosed to her, or where she believes that the response she has been provided with does not answer the request that she made.
17. 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."*
18. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"
19. The Commissioner notes that some of the complainant's requests are in fact simply direct questions rather than requests for information. The Act provides a right to recorded information held by a public authority. It does not provide a right to ask any question and receive an answer. However where an authority holds recorded information which can answer a direct question then it should consider that information for disclosure to the requestor in response to the question.
20. For the sake of clarity, the Commissioner has gone through the questions of the complainant in the numerical order set out above. The

complainant only has issues with some of the council's responses and these are highlighted below.

21. As regards part 1 of the request, the complainants request was a straight question – was the cabinet informed of the full costs of terminating the contract when the decision was taken on 11 October 2012.... The council provided the complainant with the information which the cabinet had before it when the decision was taken on 11 October 2012. From this she has drawn her conclusion that the cabinet was not provided with the full details of the costs.
22. Although the council did not answer the question directly its response matches the requirement of the Act. It was not under a duty to respond to the question directly, but it has considered the recorded information which it holds which could answer the question for disclosure. It has disclosed the relevant information to the complainant. This takes into account the exempted information. The Commissioner therefore considers that the council has complied with this part of the request.
23. As regards question 2 however the complainant argues that her request is for details of the costs which were presented to cabinet together with information on the actual costs which were incurred. She believes that she was not provided with information on the actual costs, other than information on the redundancy, pension strain and payment in lieu of notice [PILON] costs. She states that the council has not provided details of the business rates, the actual pension deficit and scheme cessation and other costs.
24. Business rates are charges on property used for business purposes. Effectively the building in which the HWRA was situated became empty for a period of time, but was council owned. The loss of dispensation on business rates because of the charitable status of the HWRA is likely to have cost the council over the period of time during which it was empty. No figures about this were included within the costs of the termination to the complainant, and the council did not clarify whether it had quantified any loss regarding this. For the purposes of section 1(1)(a) it did not clarify whether relevant information was held or not.
25. The Commissioner therefore considers that in order to comply with the requirements of section 1(1) the council needs to respond to the complainant as regards the part of her complaint relating to the actual costs, outlining whether any of the information falling within the follow up part of her request is held, and if so it needs to consider this information for disclosure.
26. As regards question 3 the council provided the complainant with the documents which the cabinet had before it. The disclosure of this

information answered the question of the complainant insofar as it was under a duty to do so under the Act and therefore the council complied with this part of the request.

27. The complainant has not outlined any issues with the council's response to question 4 and so the Commissioner has not considered this point further.
28. The council responded to question 5 by disclosing a copy of the Environmental Impact assessment (the EIA) which specifically includes a section on interim measures. The complainant suggests that that assessment which was disclosed related to earlier meetings rather than the meeting which she has requested. She says that she understands that the EIA assessment was not presented to the Scrutiny Overview Working Group or the Cabinet. The council did not include the date on which it was presented to the cabinet in its response to the complainant or to the Commissioner in its response to him, however the request specifically asked for the document presented to cabinet on 11 October 2012.
29. Tied in with this part of the request is Question 6. This request details the EIA assessment presented to the cabinet when the decision to terminate HWRA's contract was taken on 11 October 2012. The complainant says that the answer provided by the council relates to earlier meetings where the assessment was provided. She argues that there is no evidence to show that the information was presented to the earlier meetings. She believes therefore that the council has not answered the question put to it.
30. The council has provided the Commissioner with part of its working party overview scrutiny committee minutes which are dated 21 August and 21 September 2012 which specifically relate to HWRA and which state that confidential reports are attached. Whilst there is no direct evidence that this included the EIA the complainant has provided no evidence which suggests that it was not.
31. The date of completion of the draft assessment was 21 August 2012 and the evidence provided by the council suggests that it was put before the scrutiny committee on 21 September 2015 if not for the meeting of August 2012. The council described the course of the assessment through the route it took before being 'reported' to cabinet.
32. There is no evidence therefore to contradict the council argument that this was EIA document which was presented to scrutiny committee and then reported to cabinet on or before 11 October 2012 as background information to the decision to be taken. Although the report itself may not have been presented the results of the draft EIA has been put before

the scrutiny committee prior to that point and therefore already been taken into consideration.

33. The Commissioner considers that it would seem highly unlikely for the council to create the EIA in time for the above meetings but not make them available to feed into the decisions to be taken. The Commissioner therefore considers that on a balance of probabilities the information is the information falling within the scope of the requests and the council has therefore complied with these parts of the request.
34. Question 7 was again responded to by the council. It explained that the confidential reports above contained details of the interim transitional arrangements. The complainant has however taken out of that response that the answer to her question was 'no'. The complainant argues that the information which was provided to the cabinet did set out alternative provision options and the need to tender, but did not specifically address transitional arrangements with a view of protecting vulnerable groups during the shift in service provision. The Commissioner considers that whilst the complainant may not like the response which was provided the council has nevertheless addressed this part of the request by providing her with the recorded information it holds which was provided to cabinet on 11 November 2012 which detailed the transitional arrangements.
35. The complainant did not raise an issue with the council's response to question 8 and so the Commissioner has not considered this further within the decision notice.
36. The Commissioner considers that question 9 was responded to by the council. It confirmed that officers did not advise the cabinet to review its decision. It said that senior officers met with the HWRA and members of the council's cabinet in order to discuss the termination. In question 10 the complainant asked for further details such as the date that the officers advised the cabinet. The council had confirmed that no meeting took place however and so this question is effectively redundant. The Commissioner has not considered this part of the request further.
37. However in her follow up request of 16 August 2015 the complainant asked further information regarding the council's response to question 9. She asked the council to confirm the date of the meeting between senior officers and the HWRA took place. The council did not respond to this part of the request. The Commissioner therefore considers that the council has failed to comply with the requirements of section 1(1) as regards this follow up question. The council needs to confirm whether it holds information relevant to this part of the request and to consider the information for disclosure if it does hold it.

38. Question 11 asked a direct question as to whether the cabinet had been informed of the likely legal costs. The council answered specifically and stated that it was not necessary to inform the cabinet. It stipulated which officers were made aware of them as part of the procedures it undertook. The complainant wrote to the Commissioner stating that no evidence of this was provided. The Commissioner however considers that the initial request was in the form of a direct question, and the council has specifically answered that question – the cabinet was not informed. The Commissioner therefore considers that the council has complied with this part of the request.
39. The complainant has also suggested that if this was correct it may not have followed council procedures. The Commissioner has no legal powers under the Act to investigate or consider whether that is the case or not. The council has responded appropriately under the Act to the question put to it by the complainant.
40. The complainant also asked a follow up question on 23 February 2015 which she argues has not been responded to. She asked the council how the actions that were taken were in the best interests of the council. The Commissioner is satisfied however that this is a request for an explanation from the council rather than a request for recorded information. The Commissioner has no powers to consider the councils failure to respond to this follow up question as it falls outside of the remit of the Act.
41. The complainant did not specifically question the council's response to questions 12 – 14 further and so the Commissioner has not considered these further within this decision notice. However the matters within it also relate to the response to question 18 below. The council's has specifically stated that it does not record internal legal time or costs in respect of the work carried out, and therefore that it is unable to provide details of this to the complainant.
42. Questions 15 & 16 related to whether officers advised the Cabinet to wind HWRA up and explain whether they provided details of the full costs of this procedure. Following the council's response the complainant felt that the answer to the question she had asked was clearly no. The council's response was that legal costs could not be evaluated without knowing what actions might be taken by the HWRA to defend their positions and there was no anticipation that HWRA would seek to defend their position given that it had failed to appeal a previous statutory demand. In answering this question in the negative the council also negated the requirement to answer question 16, which simply asked when the advice was presented to cabinet. There was no advice presented to cabinet.

43. Question 17 asked who took the decision to wind up the HWRA and on what basis if the cabinet had not made that decision. The complainant pointed out that the initial response was that it was a cabinet decision to wind up the HWRA. In its later response of 28 February 2015 the council clarified that the decision was actually taken by an officer under the use of its delegation procedures. The council has therefore now complied with the request.
44. The Commissioner has considered the delay in providing the correct information to the complainant in response to her request. The request was initially made on the 18 June 2014 and its response to that was initially incorrect. It was only with its response to the complainant of 28 February 2015 that the council specifically confirmed its response that the decision was taken under delegated powers and explained how that was done. This response falls outside of the 20 days for responding to requests required by section 10(1) of the Act. The Commissioner therefore considers that the council failed to comply with section 10 in this respect.
45. The council provided information in response part 18 of the request stipulating the external legal costs incurred. As stated above however the council clarified however that internal management and legal costs cannot be calculated for this part of the request because it does not record this information. It did however state that the council's response to question 18 would be included as part of the figure quoted in response to question 14.
46. The complainant raised further concerns about the council's response. She considers that if the council can answer part 14 it should be able to provide her with the information in question 18. She also stated:

"Question 14 clearly relates to costs up to the mediation in July 2013. I do not believe that the figure quoted in response to this question (£66,985) would include costs that were incurred after the mediation in July 2013. It is common practice for local authority legal departments to time record the dates work is carried out and the detail of what was done. I do not believe that the internal legal costs associated with the wind-up cannot be extracted. Nor do I believe that the £66,985 includes the wind-up work. The Council should provide a breakdown of all the costs separating the work up to the mediation from the later wind-up work."
47. Whilst the complainant disputes that the council is not able to respond to this part of the request the Commissioner considers that whilst many councils may record the time spent by legal staff for different departments in order to manage the budget for legal services, the same would be unlikely to be said for managers.

48. As regards legal costs the Commissioner accepts that some legal services departments do record the time spent on cases for client departments within the same council in order to manage their overall budgets and to pay for the legal services work proportionate to the amount of work carried out for each department. There is however no evidence that the council manages its budget in this way.
49. In the face of the council's categorical assurances that this information cannot be extracted (which were voiced in a number of responses, including to the Commissioner) the Commissioner must accept the council's response on face value. There is also no evidence to contradict this. He therefore considers that the council has complied with this part of the request.
50. In any event, the complainant's statement above was only voiced to the Commissioner, not the council, following the council's response to him. The Commissioner considers that this essentially seeks to clarify the scope of the response whereas it was not raised as an issue with the council as part of the complainant's request for review. The Commissioner considers that the council has already made clear however that it does not record the information which the complainant is seeking in this respect. External legal costs were provided as per its initial response to the request.
51. The Commissioner therefore considers that the council's response complies with the requirements of the Act.

Section 41

52. The council also applied section 41 and section 43 to information provided by the HWRA to the council. The council argued that this information had been provided to it in confidence and that it was commercially sensitive information.
53. It argued that the information was provided to it in confidence when the council was initially undertaking a fact finding mission to determine whether the HWRA would be able to pay back the advanced salary payments which had been paid it to it for the relative period.
54. Section 41(1) of the FOIA states that:

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"

55. As section 41 is an absolute exemption, it is not subject to the public interest under the FOIA.

Was the information provided by a third party

56. The Commissioner is satisfied that the information was provided to the council by the HWRA and that this is a separate organisation. The information was therefore provided to the council by a third party.

Is the information held under an actionable duty of confidence?

57. In his analysis of whether disclosure of the information constitutes an actionable breach of confidence the Commissioner must consider:
- 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.

Does the information have the necessary quality of confidence?

58. The Commissioner considers that information will have the necessary quality of confidence if it is not otherwise accessible and if it is more than trivial. In this case the information relates to the financial history of the HWRA and its ability to pay back monies it owed to the council in response to the advance payment of salaries of its staff by the council.
59. The council admitted that some of the information would already be in the public domain. The council notes that the Trustee Accounts from March 2010 and March 2011 would already be available. It also noted that the fact that the HWRA became insolvent would also be in the public domain as the necessary advert was placed in the Gazette and the Court made the winding up order. The Commissioner is satisfied that his information would not have the necessary quality of confidence and that therefore the exemption in section 41 could not be applicable.
60. However the council argues that the remaining information was provided to it in confidence by the HWRA, purely with a view to seeking to persuade the council that the HWRA remained viable and that it simply needed time to repay the money it owed to the council. The statistical information which it provided was also to demonstrate the work which was being achieved was

worthwhile and to demonstrate the high rates of satisfaction from users for the services provided.

61. The Commissioner is satisfied that this information would not be in the public domain, and that it is not trivial. He has therefore decided that the information has the necessary quality of confidence.

Does the information have the necessary obligation of confidence?

62. As stated, the council argues that the information was provided in confidence with a view to persuading the council that the HWRA remained viable and that it needed time to repay the money it owed to the council for the advance salary payments. The statistical information was provided to demonstrate the work which was being achieved was worthwhile, and to demonstrate the high rates of satisfaction from users for the services provided. The HWRA would have expected the council to use the information for the purposes of evaluating its continued viability and for the purposes of establishing whether it was able to delay payments of the money it owed.
63. The Commissioner is satisfied that under these circumstances both the council and the HWRA would have expected the information to be held in confidence by the council. The information therefore has the necessary obligation of confidence.

Would a disclosure of the information be actionable?

64. The next question which the Commissioner must consider is whether a disclosure of the information would create an actionable duty of confidence. By this, the Commissioner considers that a confider would have cause to take the council to court and would be likely to win a legal action for breach of the duty of confidence.
65. The relevant consideration for this case is whether the public interest in the information being disclosed would act as a defence in law to any action for breach of the duty of confidence. There is generally a strong public interest in maintaining confidences. In order to provide a defence for a breach of for a duty of confidence the public interest in the information being disclosed needs to outweigh that in the duty being maintained. The weight of the public interest in maintaining a duty of confidence starts from a relatively strong position.
66. The information was provided to the council by the staff at the HWRA, on behalf of the HWRA as a charity. It provides a clear understanding of the issues which the HWRA had facing it at that time, and explains the actions which it was planning to take to address this.
67. The first thing to consider is that the HWRA no longer exists as a charitable organisation, and given the time which has passed there is no detriment

which could occur to the HWRA should the information be disclosed. The council argues however that a duty of confidence is also owed to managers who were working at the HWRA at that time. It states that a disclosure of the information may be detrimental to their current careers and says that it understands that they currently work in similar lines of work and so its disclosure might also affect the commercial interests of the charity they currently work in.

68. The first question is therefore whether the duty would be owed to the former employees and managers of the HWRA, or whether it was simply owed to the HWRA as an organisation in its own right. The Commissioner considers that the information relates to both the managers of the HWRA and the HWRA itself. It demonstrates the financial situation at the HWRA at the time of the decision, which would also give a strong indication of the financial management of the charity by the managers. The information also provides a statistical analysis of customer satisfaction levels on the service it provided, with a section of free text comments from members of the public. These have however been anonymised so there is no danger of personal data being disclosed in this respect. The council argues that in highlighting the financial management of the organisation this might cast a detrimental reflection upon those who were running the HWRA at that time. Its argument is therefore that if the information were to demonstrate that the financial management of the HWRA was lacking in some way then the public may infer from this that the managers were responsible. It argues that this could cast their ability to carry out their current role in a negative light.
69. The Commissioner has considered this argument but largely rejects it. The reasons for the financial issues at the HWRA may equally or solely have related to the drying up of previously received income streams and/or cuts in funding. Although it might be inferred that the financial management of the HWRA was lacking in some way, it might also be inferred that the HWRA simply did not receive the funding it had previously received and/or which it required in order to continue to provide the services it was set up to. For the public this is a significant and important difference and there is a strong public interest in the reasons for the failure of the HWRA to be made public.
70. At the time that the HWRA was closed there was clearly a public interest in the council demonstrating the reasons why it had withdrawn from the contract. The HWRA seems to have been providing a highly rated customer service to members of the community, and its loss would have been felt during the interim period before the alternative providers took over. There may therefore have been public anger from residents in the area that a service which was there to offer advice and aid was closed, seemingly due to council actions. This is further exacerbated by the fact that there was a break in the availability of the service during the interim period before another provider took over the service provision. The Commissioner does understand that given the time which has passed and the fact that there is

now an alternative provider providing much the same service this public interest may have diminished to an extent.

71. Whilst some of the background to that decision would have been disclosed via council minutes and other means, a disclosure of the information would have created much greater transparency on the reasoning behind the council's decision.
72. The complainant has also outlined how the decision to refuse to continue the contract would have created an ongoing financial cost to the council due to the payment of pensions, and due to the fact that the building which the HWRA was situated would no longer qualify for charitable relief once the HWRA was no longer based on the site. This is in addition to the costs initially spent in withdrawing from the contract and defending its legal position to do so.
73. There is a public interest in explaining how the council came to make its decision, both from the point of view of demonstrating the cause of the contract being terminated, how the council managed that situation and in what had occurred at the HWRA which left it with the difficulties it had. A disclosure of the information would give the public a much better understanding of the issues which faced the HWRA, and in its financial issues at the time that the contract was terminated. Its disclosure would provide the background necessary to understand why the situation occurred and create further transparency on why the council made the decisions it did. It will inform the public and allow them to take their own view as to whether the decision was the practical and right thing to do in the circumstances.
74. The Commissioner recognises the strong public interest in confidences being maintained. However, having considered the above the Commissioner considers that the public interest would serve to provide a defence to any action for a breach of a duty of confidence owed to the HWRA's representatives and any of its former staff.

Section 43

75. The council also sought to apply section 43 to the information. Section 43(2) provides that:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

76. The council argues that the commercial interest of the former employees and managers of the HWRA could be adversely affected by the disclosure of the information, and also that this could adversely affect the commercial interests of the phoenix charity which took over part of the HWRA's former role.

77. It argues that the information is commercially sensitive as it relates to the funding, accounts and forecast projections of the then charity HWRA. Having considered this part of the argument the Commissioner is satisfied that the council is not correct to apply section 43 to this information for this reason. The HWRA was not still in existence at the time that the request was made, and there could therefore be no prejudice to its commercial interests if the information was disclosed.
78. The council also argues that the disclosure of the information would prejudice the commercial interests of the former employees in that it understands that they have now set up another charity in Harlow to offer substantially the same services. The council did not however expand further on its views in this respect and the Commissioner is not able to speculate on its proposed arguments.
79. The Commissioner has therefore decided that the council was incorrect to apply section 43(2) to the information in this instance.

Right of appeal

80. 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

81. 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.
82. 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