

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

### **Decision notice**

**Date:** 23 May 2016

**Public Authority:** Central Bedfordshire Council  
**Address:** Priory House  
Monks Walk  
Chicksands  
Shefford  
Bedfordshire  
SG17 5TQ

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

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1. The complainant requested information from the council relating to an incident at Whipsnade Zoo. The council confirmed that the information was held but said that it was exempt under section 30(1) of the Freedom of Information Act 2000 ("the FOIA"). The Commissioner's decision is that the council was correct to apply section 30(1) to some information, however other information should have been disclosed in response to the request.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To disclose the information outlined in the confidential annex to this decision notice.
3. 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**

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4. On 15 July 2015, the complainant requested information from the council in the following terms:

*"I am writing under the Freedom of Information Act to ask for the following information:*

- *The details of the events on 19 November 2014 which led to a rhino keeper at Whipsnade Zoo being seriously injured in the rhino enclosure?*
  - *What advice about improving policies and procedures has the council offered to Whipsnade Zoo in the light of this incident?*
  - *What changes have Whipsnade Zoo agreed to make to their policies and procedures?*
  - *Is the rhino keeper involved still in hospital?"*
5. The council responded on 30 July 2015. It supplied information in relation to the first request. However, in relation to the second and third request, the council said that the information was exempt under section 30(1) of the FOIA. In relation to the final request, the council said that this information was exempt under section 40(2).
6. The complainant asked for an internal review on 31 July 2015 in relation to the refusal to respond to the second and third requests.
7. The council completed its internal review on 13 August 2015. It said that it wished to maintain its decision.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 14 September 2015 to complain about the way her request for information had been handled. She asked the Commissioner to consider whether the council had correctly relied on the exemption under section 30(1) in relation to the second and third part of the request, as follows:

*"What advice about improving policies and procedures has the council offered to Whipsnade Zoo in the light of this incident?"*

*What changes have Whipsnade Zoo agreed to make to their policies and procedures?"*

9. The Commissioner has therefore limited his investigation to information falling within the scope of these two parts of the request.

10. The Commissioner notes that some parts of the withheld information fall outside of the scope of the above requests. Where this is the case the Commissioner has identified this within a confidential annex as discussed below.

## Reasons for decision

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### Section 30(1)(a)

11. In its refusal, the council said that the information was obtained during an investigation which it has a duty to conduct. This relates to the exemption under section 30(1)(a) which provides that:

*“Information held by a public authority is exempt 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 –*

*(i) whether a person should be charged with an offence, or*

*(ii) whether a person charged with an offence is guilty of it”.*

12. The Commissioner has published guidance relating to this exemption on the website which for ease of reference can be accessed at:

<https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

13. As explained in the guidance, section 30(1)(a) can only be claimed by a public authority that has a *duty* to investigate offences. A duty imposes an obligation to carry out the investigations as opposed to a discretionary power to do so. The council will need to demonstrate how the duty relevant to this case has arisen. This will usually be by statute. The council will also need to explain not only how the duty to investigate arises but also which offence or offences, usually defined in common law or statute, are relevant in the particular circumstances. The council must be able to demonstrate that the investigation has been conducted with a view to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it.
14. The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged.

15. The council claimed that the relevant duty in this case arises under section 18(4) of the Health and Safety at Work Act 1974. It is the primary piece of legislation covering occupational health and safety in Great Britain. The Health and Safety Executive (the 'HSE'), with local authorities (and other enforcing authorities) is responsible for enforcing the Act.
16. Section 18(4) provides that the duty must be performed in accordance with guidance from the HSE. That guidance provides as follows:

*"7 Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, enforcing authorities should have regard to the principles of enforcement set out in this statement and the objectives published in HSE's Business Plan. In particular, in allocating resources, enforcing authorities must strike a balance between investigations and mainly preventive activity.*

*9 HSE expects enforcing authorities to use discretion in deciding when to investigate or what enforcement action may be appropriate. Enforcing authorities should set down in writing the decision-making process which inspectors will follow when deciding on enforcement action, and make this publicly available. HSE expects that such judgements will be made in accordance with the following principles. These are in accordance with the Regulators' Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006.*

*The principles of enforcement*

*10 HSE believes in firm but fair enforcement of health and safety law. This should be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the regulator operates and what those regulated may expect; and accountability for the regulator's actions. These principles should apply both to enforcement in particular cases and to the health and safety enforcing authorities' management of enforcement activities as a whole....*

*34 In selecting which complaints or reports of incidents, injury or occupational ill health to investigate and in deciding the level of resources to be used, the enforcing authorities should take account of the following factors:*

- *the severity and scale of potential or actual harm;*

- *the seriousness of any potential breach of the law;*
  - *knowledge of the dutyholder's past health and safety performance;*
  - *the enforcement priorities;*
  - *the practicality of achieving results;*
  - *the wider relevance of the event, including serious public concern.*
17. The council said that it has a duty to investigate accidents of this nature to determine whether there is a need for formal action, (including any potential a criminal prosecution) to be taken against an individual or organisation. In effect, initially the council will investigate to determine what the circumstances of an accident were, and from this point to determine whether any formal action is required, recommendations should be provided or whether the circumstances of an accident warranted no action being taken.
  18. The council said that it does have a degree of discretion as to whether to carry out an investigation, however pursuant to s18(4) of the Health and Safety at Work etc Act 1974, there is a duty of every local authority to make "adequate arrangements for the enforcement within their area" and these arrangements would be contained within its Enforcement Policy.
  19. The Enforcement Policy at 11.1(c) states that a prosecution will be considered where there is evidence of "actions that may endanger the health, safety or well-being of people, animals or the environment".
  20. The council says that given the circumstances of the case (i.e. the fact that a serious injury had occurred under unclear circumstances), there was a potential for this to be the case and so there was a duty on it to carry out an initial investigation to identify the cause of the incident and from there to decide whether any prosecution or enforcement was appropriate.
  21. The council therefore considers that it was under a duty to carry out an investigation in this case and the information it holds formed part of the information obtained as part of that investigation.
  22. The Commissioner has considered the above arguments and is satisfied that section 30(1)(a) is engaged under the circumstances of the case. Given that an accident had occurred which had led to a serious injury, and the causes of that accident were unclear there was a duty on the council to carry out preliminary investigations to determine whether any offence may have been committed which led to the accident.
  23. Section 30 is a class based exemption. Information simply has to fit the description contained in section 30 to engage the exemption. There is no

need for a public authority to highlight what prejudice would occur if the information were to be disclosed.

24. As the Commissioner is satisfied that the information is held as a result of an investigation which the council has a duty to carry out he has therefore gone on to consider the public interest test required by section 2 of the Act.
25. The test is whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. If the public interest in maintaining the exemption does not outweigh that in withholding the information then the information should be disclosed.

### The public interest

#### The public interest in the information being disclosed

26. The central public interest in the information being disclosed concerns creating greater transparency on the actions of the council as regards an incident at a public zoo which led to one of its members of staff being seriously injured. As a body responsible for ensuring that health and safety laws are adhered to there is a duty on the authority to conduct investigations to determine whether there were any deficiencies in the systems in place within an organisation which potentially led, or may lead to an accident occurring. This is particularly relevant in situations where members of the public may be present, (although it should be stressed that there has been no suggestion that there was any danger to the public from this incident at any point whatsoever).
27. The council has a duty to investigate issues which might lead to public safety hazards, including health and safety at work issues. A serious incident had occurred in this case which had been widely reported upon the media due to the unusual circumstances in which the accident occurred. A failure to provide the results of its initial investigations, and to explain in detail what recommendations were made or even the manner in which the investigation was carried out has left the public unable to scrutinise whether the council carried out an appropriate investigation of the incident (and therefore whether it had undertaken its functions adequately). The BBC did report however at <http://www.bbc.co.uk/news/uk-england-beds-bucks-herts-33539137> that:

*"A council spokesman said its public protection officers had conducted a "lengthy investigation and review" which considered evidence from "all key parties and witnesses" and concluded no further action was necessary."*

*"[We have] offered advice and recommendations around improving policies and procedures," he said.*

*The authority said it would not be releasing more details as much of the information obtained was "subject to strict disclosure rules".*

28. The Commissioner notes that the council has not put forward any arguments that a statutory prohibition on the disclosure of the information is applicable.

The public interest in the exemption being maintained

29. Paragraph 53 of the Commissioner's guidance on section 30 states:

*53. When considering the public interest in maintaining the exemptions it is necessary to be clear what they are designed to protect. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings.*

*54. A vital element of many investigations and proceedings is the intelligence supplied by confidential sources and it is important that section 30 serves to protect these sources so that they are not deterred from cooperating with public authorities.*

30. In *Alan Digby-Cameron v the Information Commissioner and Bedfordshire Police and Hertfordshire Police (EA/2008/0023 and 0025 26 January 2009)* the Information Tribunal summed up the factors relevant to maintaining the exemption as follows,

*"in assessing where the public interest balance lies in section 30(1) case relevant matters are therefore likely to include (a) the stage a particular investigation or prosecution has reached, (b) whether and to what extent the information is already in the public domain, (c) the significance or sensitivity of the information requested and (d) whether there is any evidence that an investigation or prosecution has not been carried out properly which may be disclosed by the information."*

31. The council did not provide strong public interest arguments for maintaining the exemption in this case. Very broadly, the public interest arguments in maintaining this exemption generally relate to protecting the sources of information to ensure that witnesses and whistle-blowers are not dissuaded from providing evidence to such investigations in the future. It also relates to protecting evidence obtained in the event that an investigation is reopened or a similar situation occurs.

32. Inevitably there are some areas where such matters are discussed within the information falling within the scope of the request. The Commissioner notes however that the narrowed request was for any recommendations or the response to these and not for any evidence from which the recommendations might have derived. There are therefore some areas within the withheld information which the Commissioner considers falls outside of the scope of the request (such as the name of the individual who was injured). The Commissioner has therefore excluded these from the information which he considers in the confidential annex he which has attached to this decision notice
33. The majority of the remaining information which falls within the scope of the narrowed request would not encroach upon future investigations and does not request any evidence obtained as part of the investigation. It does not therefore generally require information of the sort which would raise the public interest factors identified by the Tribunal above.
34. The fact that an unusual accident occurred in a public zoo and that the council provided recommendations as a result of its investigations is already within the public domain. A disclosure of these recommendations demonstrates that the council's investigation resulted in an adequate and proportionate response to the accident. The Commissioner therefore considers that the public interest in the disclosure of this information is not outweighed by the public interest in maintaining the exemption.
35. The Commissioner is satisfied however that the public interest in maintaining the exemption for a few small sections of the information does outweigh that in the information being disclosed. Some sections of the information relates to the evidence obtained by the council when carrying out its investigation. The Commissioner considers that a disclosure of these sections of information would have a detrimental effect upon the council's ability to obtain information from organisations and individuals in the future. This would be likely to affect its ability to carry out investigations in the future as highlighted by the Tribunal above –witnesses would have concerns that their submissions could not be retained in confidence in the future. It would also impinge upon the evidence collected by the council during the investigation.
36. The Commissioner has therefore decided that the public interest in maintaining the exemption for this information outweighs the public interest in the information being disclosed for these specific sections.
37. The Commissioner therefore considers that the sections of information outlined in confidential annex to this decision notice should be redacted from the documents and the remainder disclosed to the complainant.



38. As regards Whipsnade Zoo's response to the recommendations, the Commissioner considers that there is a public interest in demonstrating that the council's recommendations were acted upon by Whipsnade given the seriousness of the accident which occurred.
39. On the counter side, as recommendations were made rather than formal requirements, Whipsnade would not have been under any duty to confirm the actions it took to the council in response to their recommendations. The Commissioner therefore recognises that a disclosure of information of this type may result in organisations deciding not to confirm the actions they took following an investigation to the council due to concerns that these would subsequently be disclosed in response to an information request.
40. Having said this, the Commissioner considers it would generally benefit an organisation to confirm it had taken steps following an investigation of this sort, and that a disclosure of such information would reassure the public that best practice is being followed. The Commissioner therefore considers that any potential for a chilling effect in the future which might occur as a result of a disclosure of the information in this case would be limited.
41. The Commissioner therefore considers that some sections of the withheld information should be disclosed which would demonstrate how Whipsnade responded to the recommendations. The Commissioner therefore considers that the public interest lies in the disclosure of this information, after appropriate redactions have taken place.
42. For the sake of clarity the Commissioner has outlined to the council which sections he has decided should have been disclosed or redacted from this document as part of the separate (confidential) annex to this decision notice. The annex will only be supplied to the council in order for it to establish the information which the Commissioner finds should have been disclosed.
43. The Commissioner's decision is therefore that the council was correct to apply section 30(1) to sections of the information it has withheld as the public interest in maintaining the exemption does not outweigh the public interest some sections of the information being disclosed.
44. However he considers that some information should be disclosed as the public interest in maintaining the exemption does not outweigh the public interest in this information being disclosed.

## Right of appeal

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45. 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)

46. 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.
47. 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**