

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

### **Decision notice**

**Date:** 13 June 2016

**Public Authority:** Wirral Metropolitan Borough Council

**Address:** Wallasey Town Hall

Wallasey

Wirral

CH44 8ED

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

---

1. The complainant has requested information relating to a complaint he made about a specific restaurant to Wirral Metropolitan Borough Council's ("the Council") Trading Standards department. The Council refused the request on the basis of section 30(1) of the FOIA as the information was part of an investigatory process.
2. The Commissioner's decision is that the Council has correctly applied the provisions of section 30(1)(b) of the FOIA and the public interest favours maintaining the exemption. He requires no steps to be taken.

### **Request and response**

---

3. On 8 December 2014 the complainant wrote to the Council and requested information on a complaint he had made to the Council's Trading Standards department about a restaurant. The Council refused this request on the basis of section 30 of the FOIA as the information formed part of an ongoing investigation.
4. The complainant wrote to the Council again on 19 September 2015 and reiterated his previous request now that further time had passed. His request was in the following terms:

*"please provide information relating to the my complaint re. [name redacted] restaurant. Please include any letters, emails, warnings, notices or any other correspondence and information relating to [restaurant]."*

5. The Council responded on 16 October 2015 stating that the earlier request was refused on the basis of section 30(1) and that it would still consider this exemption to provide a basis for refusing the request now.
6. Following an internal review the Council wrote to the complainant on 30 October 2015. It stated that it upheld its position that any information it held was exempt under section 30(1) of the FOIA.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 7 January 2016 to complain about the way his request for information had been handled. In particular he was concerned that no information at all had been made available and considered there was a public interest in it being known that a complaint had been made against this restaurant and the reasons for this.
8. The Commissioner considers the scope of his investigation to be to determine if the Council has correctly applied the provisions of section 30(1) to withhold information within the scope of the request.

### **Reasons for decision**

---

#### **Section 30 – investigations and proceedings**

9. 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 –

  - (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,
  - (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...”
10. The phrase ‘at any time’ means the investigation the information relates to can be ongoing, closed or abandoned; it does not need to be live.
11. The withheld information in this case is correspondence, notes and reports relating to the complaint about the named restaurant. The

Council considers subsections (a), (b) and (c) of section 30(1) are all engaged in this case.

12. The Council has explained that the Food Safety Act 1990<sup>1</sup> ("FSA") contains specific provisions relevant to this complaint. Sections 14 and 15 discuss consumer protection – specifically selling food not of the nature or quality demanded and falsely describing or presenting food. The complaint related to the false labelling and descriptions of salmon at a restaurant. The Council has explained that it was under these sections of the FSA that it investigated the complaint made by the requester about the restaurant.
13. Section 14(1) of the FSA states that *"any person who sells to the purchaser's prejudice any food which is not of the nature of or substance or quality demanded by the purchaser shall be guilty of an offence."* Section 15 relates to offences arising from displaying food with labels which falsely describe it and subsection (3) contains offence for persons selling any food that's presentation would mislead a purchaser as to the nature or substance or quality of the food.
14. The Council has indicated that all of the information it holds within the scope of the request was specifically created in the course of an investigation into possible offences under sections 14 and 15 of the FSA which was initiated out of a complaint that the restaurant was selling and misleading customers about the nature and quality of its salmon. The information therefore only exists as a result of the complaint and the subsequent investigation into the concerns that were raised.
15. The Council has argued that section 30(1)(b) is engaged. Section 6 of the FSA covers enforcement and 6(1) refers to the enforcement authority being the authority that is enforcing and executing the provisions of the FSA. Section 6(2) states that:  
  
*"Every food authority shall enforce and execute within their area the provisions of this Act with respect to which the duty is not imposed expressly or by necessary implication on some other authority."*
16. The Commissioner has also considered the Food Standards Agency list of food law prosecutions<sup>2</sup> which demonstrates that Councils have the power to initiate criminal proceedings leading to prosecutions. The

---

<sup>1</sup> <http://www.legislation.gov.uk/ukpga/1990/16/contents>

<sup>2</sup> <http://www.food.gov.uk/enforcement/prosecutions>

Commissioner therefore accepts the Council has the duty to conduct investigations with a view to making a decision to institute criminal proceedings as set out in section 30(1)(b).

17. The Commissioner understands that the investigation was complete at the time the request in this case was made. However, due to the phrase 'at any time', the Commissioner considers that it is irrelevant for the application of section 30(1)(b) that the investigation was complete at the time of the request. What is relevant is whether the information was held at some point for the purposes of the investigations.
18. As section 30(1)(b) is a class-based exemption it is not necessary for the council to demonstrate that disclosure would prejudice any particular interest in order to engage the exemption.
19. Taking the above into consideration, the Commissioner is satisfied that that the information requested was held as part of an investigation being conducted by the Council, with the potential for criminal proceedings to be instituted which the Council has to the power to conduct. He therefore considers the section 30(1)(b) exemption to be engaged in respect of the withheld information.

### **The public interest test**

20. As section 30(1)(b) is a qualified exemption it is subject to a public interest test under section (2)(2)(b) of the FOIA. This favours disclosure unless;

"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information".

21. The starting point is to focus on the purpose of the relevant exemption. With section 30(1)(b) this involves weighing the prejudice that may be caused to an investigation or prosecution, or more generally to the investigatory and prosecution processes of the public authority, against the public interest in disclosure. There is general recognition that it is in the public interest to safeguard the investigatory process. The right of access should not undermine the investigation and prosecution of criminal matters.

### **Public interest arguments in favour of disclosure**

22. The Commissioner is mindful of the public interest in promoting openness and transparency in the discharge of a public authority's statutory functions. For example, disclosure of the requested information may enable the public to understand why a particular investigation reached a particular conclusion, or in seeing that the

investigation had been properly carried out. In this case, disclosure would ensure that the Council is held to account for this particular investigation into labelling and descriptions of food at this restaurant.

23. The Council said that in favour of disclosing the information it took account of the general public interest in accountability and the public interest in being transparent about how the Council conducts investigations and uses public money to fulfil its duties.

### **Public interest arguments in favour of maintaining the exemption**

24. The council submitted the following arguments in favour of maintaining the exemption:

- The public interest in not adversely affecting the business in question - although the information was now historic the Council considered it was still commercially sensitive and disclosure would be unfair.
- The public interest in maintaining the integrity of the information as evidence of prior history in the event of future enforcement action. It explained that the Council's Trading Standards had carried out new investigations where advice letters and information from previous complaints were used as evidence in the new investigation.
- The public interest in there being a safe space in which the investigatory process can take place, which does not automatically come to an end once an investigation is concluded or abandoned. Disclosure would provide detail about the method of investigation and techniques used (or not used) which could be used by those trying to avoid detection or prosecution.
- The public interest in maintaining a process which is fair to individuals who have been investigated but not prosecuted. Disclosure would be likely to undermine the preserve of the criminal courts in being the only forum for determining guilt in relation to allegations of criminal offences. Trail by press or social media is not the appropriate way to deal with alleged wrongdoing.
- The public interest in not deterring individuals and organisations from providing information in confidence.

### **Balance of the public interest arguments**

25. The Commissioner notes that section 30 is concerned primarily with preserving the integrity of certain proceedings and investigations which public authorities have the power or duty to conduct and therefore

recognises that there is an inherent public interest in ensuring the ability of public authorities to carry out investigations.

26. In relation to the Council's arguments regarding the integrity of the information in this case, the Commissioner considers that the information does not lose its relevance even though the investigation was concluded at the time of the request and did not result in a prosecution being brought due to the potential for the information to be used in future proceedings. He does not believe that in all circumstances the older the information is the less risk of prejudice there is. There is always the possibility that the status of an investigation can change over time and that information has the potential of becoming relevant again.
27. The Commissioner has considered the complainant's assertions on this point and his view that refusing to disclose information once an investigation has concluded is "a slap in the face of Freedom of Information and the public's right to know". The complainant considers that in the absence of any prosecution or ongoing investigation the public has a right to view the information and judge for themselves. However, the Commissioner would argue that just because a prosecution hasn't taken place in the past does not mean that one will not occur in the future.
28. The Council has informed the complainant that the investigation did not result in a criminal prosecution but other than this was not provided with any significant information to assure him his complaint was thoroughly investigated. The Commissioner is also not aware that any information about the specific investigation has been made publicly available.
29. Therefore, he considers that the withheld information would provide the public with knowledge of the Council's actions and ensure that the Council is held to account for this particular investigation. In view of this the Commissioner considers that the arguments in favour of releasing the withheld information deserve some weight.
30. The Commissioner considers that, on the one hand, due to the fact that the Council did not deem criminal proceedings appropriate, there is less public interest in release of the information as compared to a situation where the investigation has found evidence of serious wrong doing. On the other hand, the Commissioner believes that the fact the information does not contain anything which would lead to the institution of criminal proceedings reduces the likelihood of harm occurring to the investigatory process through its disclosure. He considers that if the information was of greater significance to the institution of criminal proceedings, the greater the likelihood of harm to the investigatory process, should it be disclosed.

31. However, as stated above, the Council has submitted arguments in favour of maintaining the exemption which focus on the protection of the investigatory and prosecution processes of the council rather than the protection of a specific investigation or prosecution. There is public interest in a matter such as contravention of food standards being investigated as thoroughly and efficiently as possible and in prosecutions not being prejudiced by the premature disclosure of information under the FOIA. It is important for public confidence in the activities of the Council that its ability to discharge its statutory functions should be effective and unimpeded.
32. The Council has indicated that disclosure could result in a trial by media situation which could undermine the whole investigations process. Although the Commissioner considers that trial by media is not in the public interest, he notes that in this case the investigation was closed at the time of the request and therefore there was no requirement for a safe space for the Council to operate in, in relation to this specific investigation, and no situation where media pressure could present problems for a specific judicial process.
33. In relation to the Council's argument regarding not deterring individuals and organisations from providing information in confidence, the Commissioner considers that divulging information collected in the course of an investigation is likely to degrade trust between the Council and the organisations it has the power to investigate which would prejudice the Council's ability to conduct investigations. He considers that it is in the public interest to safeguard a co-operative investigatory process. He is also aware that whilst Councils have enforcement powers, much investigatory and enforcement work is more successfully completed with the co-operation of the organisations involved and considers that the disclosure of the requested information could erode working relationships.
34. The Commissioner is aware the complainant has a personal interest in the outcome of the investigation and may be disappointed that further action was not taken. He considers that when determining whether a public authority should disclose information in response to a request, the issue is whether it is in the public interest to disclose that information to the public at large. It should be made clear that the Commissioner's concern is not with the private interest of individuals. Whilst the requested information is clearly of interest to the complainant, this does not necessarily mean that there is a wider public interest that would be served by its release.
35. Having taken all of the above into consideration, the Commissioner considers that there is considerable public interest in matters such as contravention of food standard requirements being investigated

thoroughly and efficiently ensuring that the best evidence is available to the Council to inform its decisions. It is important for public confidence in the activities of the Council that its ability to discharge its functions should be effective and unimpeded. There will be cases where the balance of public interest will run in favour of disclosure but the Commissioner is not satisfied that this is such a case. In all the circumstances of this case the Commissioner is of the view that the public interest in maintaining the exemption outweighs the public interest in disclosing the information requested. The Commissioner therefore finds that the Council was entitled to withhold the requested information under section 30(1)(b).



## Right of appeal

---

36. 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)

37. 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.
38. 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 .....**

**Jill Hulley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**