

Freedom of Information Act 2000 (FOIA)

Decision notice

Date:

Public Authority: Newcastle City Council
Address: Civic Centre
Barras Bridge
Newcastle upon Tyne
NE99 2BN

Decision (including any steps ordered)

1. The complainant has requested information relating to an investigation being carried out by the council into activities at a property, near to where he lives, which he considers are breaching licencing requirements. The council refused the request on the basis that section 30(1)(b) of the Act applied (Investigations and proceedings conducted by public authorities).
2. The Commissioner's decision is that the council was correct to apply section 30(1)(b) to withhold the requested information. She has however decided that the council did not comply with the requirements of section 10(1) in that it did not respond to the request within 20 working days.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 27 February 2019 the complainant wrote to the council and requested information in the following terms:

"Newcastle City council has a licensing policy which, inter alia demarcates the city centre into a wider cumulative impact area

[CIA] and two special stress areas [Special Stress areas 1 and 2]. For each year from 2013 please confirm in each of these three areas and specified by year and by area:

- a. The number of applications for premises licenses for the sale of alcohol by retail*
- b. The number of licences issued*
- c. The number of applications refused*
- d. The number of applications withdrawn*

In respect of premises at [address redacted] please confirm whether:

- e. Any application has been received in respect of provision of late night refreshment and the details of same*
- f. Any correspondence records etc related to the provision of late night refreshment at the above premises.¹*

5. The council responded on 11 April 2019 and disclosed the information falling within the parts a – e of the request, however it withheld information relating to the specific property named by the complainant in respect of part f of the request on the basis that section 30(1) applied.
6. On 11 April 2019 the complainant requested that the council carry out an internal review.
7. Following an internal review, the council wrote to the complainant on 24 June 2019. The complainant however states that he did not receive a copy of this review.
8. During the Commissioner's investigation the council sent a copy of the internal review to the Commissioner. The council's decision was to uphold its initial position and to maintain reliance upon section 30(1) for the information it was withholding.

¹ Listing added by the Commissioner for the purposes of clarity

Scope of the case

9. The complainant contacted the Commissioner 10 April 2019 to complain about the way his request for information had been handled. His initial complaint was that the council had not provided him with the information, however the Commissioner informed him that he needed to ask the council to carry out a review. Although he then did so, as noted above he said that he did not then receive the council's response to this, although the council argues that it did send it to him on 24 June 2019.
10. The Commissioner considers therefore that the complaint relates to the application of section 31 to withhold information from disclosure, and to the time which the council took to respond to the complainant's request and to send him its response to his request for review.

Reasons for decision

Section 30(1)

11. The council clarified that it is relying upon Section 30(1)(b) to withhold the information. Section 31(1)(b) states:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of –

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, ..."
12. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1)(b) if it relates to a specific ongoing, closed or abandoned investigation.
13. Consideration of section 30(1)(b) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Is the exemption engaged?

14. The first step is to address whether the requested information falls within the class specified in section 30(1)(b).

15. The Commissioner has issued guidance on section 30(1)(b) which clarifies that the exemption:

"... applies to investigations but the public authority only needs to have the power to conduct those investigations rather than a duty. Importantly, the public authority must also have the power to institute and conduct any criminal proceedings that result from its investigation."

16. In its internal review, the council clarified to the complainant that it was carrying out an investigation under the provisions of section 136(1)(b) and (4) of The Licensing Act 2003. It also clarified that, at the time that the request was received the investigation was ongoing.

17. Section 136(1)(b) of the Licencing Act 2003 provides that:

"A person commits an offence if—

(a) he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or

(b) he knowingly allows a licensable activity to be so carried on."

18. Section 4 of the Licencing Act 2003 provides a duty for licensing authorities:

General duties of licensing authorities

(1) A licensing authority must carry out its functions under this Act ("licensing functions") with a view to promoting the licensing objectives.

(2) The licensing objectives are—

- (a) the prevention of crime and disorder;*
- (b) public safety;*
- (c) the prevention of public nuisance; and*
- (d) the protection of children from harm."*

19. The council therefore has the power to issue licences and to investigate issues surrounding activities carried out in contravention of, or without a valid licence under section 2 of Licencing Act 2003. It has the power to carry out these functions under the Act with a view to preventing crime and disorder and to prevent public nuisance.
20. The council clarified that the investigation it was carrying out related to the unlicensed sale of late-night refreshments. A contravention of section 136(1)(b) is a criminal offence and the council has the power to prosecute a party which contravenes this section.
21. Having considered the councils submission, the Commissioner is satisfied that the exemption in section 30(1)(b) is therefore engaged.

The public interest test

22. Section 30(1)(b) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
23. In accordance with her guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what the specific exemptions are designed to protect.
24. The purpose of section 30 is to preserve the ability of the police and other applicable public authorities to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the disclosure of the requested information could have a harmful impact on the ability of the authority to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of authorities to investigate crime effectively.

Public interest in disclosing the information

25. The public interest in the disclosure of the information rests in allowing members of the public to ascertain whether the council is carrying out its duties under the Licencing Act appropriately, and to create greater transparency on its decision making in respect of potential criminal offences which are being carried out in the areas it regulates.
26. The effects of unlicensed activities such as those in question can include unwanted late-night noise, increased litter and a heightening of the risk criminal activity around the premises concerned due to the congregation of individuals late at night. Premises which provide late night refreshments draw individuals to obtain services, which can lead to

increased noise levels and the heightened potential for affrays to occur between members of the public. Such activities can have a negative impact upon neighbours to the property, including annoyance, and irritation. There is also the potential for property values to depreciate given the affects these activities can have on nearby properties.

27. There is therefore clearly a public interest in allowing access to information demonstrating that the licencing authorities are carrying out their duties appropriately and effectively under the Act. The council also highlighted that there is a public interest in knowing that licenced premises are acting in accordance with the law.

The public interest in the exemption being maintained

28. The council argued that a "*release of the information would prejudice the investigatory and prosecution processes and that any such prejudice would not be in the public interest*".
29. The council said that it is in the public interest to ensure that the carrying out of licensable activities at the premises in question were being carried out in the public interest.
30. The Commissioner notes that the council told the complainant that the investigation process was ongoing. Having considered the withheld information the Commissioner is satisfied that a disclosure of the information requested by the complainant would be likely to affect the probability of a successful investigation, and, if required, prosecution.
31. She considers that it would put into the public domain the evidence it has obtained, and details of the council's legal case for prosecution prior to it being required to present its case to the courts. This would be likely to undermine its investigations and prejudice its ability to prosecute any offence successfully.

Balance of the public interest

32. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in the council disclosing the requested information. She has also considered whether disclosure would be likely to harm the investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.
33. The council stated to the complainant that that its investigation was ongoing. It highlighted that, although no action had occurred up until the point of the request, section 186 of the licensing Act 2003 permits the submission of information up to 12 months after the date of the alleged offence.

34. The provision of the requested information at the time of the request would therefore have provided information on, and potentially prejudiced, an ongoing investigation where there remained the possibility that a prosecution would ultimately occur against any offences its investigation uncovered.
35. As set out above, the purpose of section 30 is to protect the effective investigation and prosecution of offences. It is in the public interest to protect the ability of the council to investigate potential offences, to gather evidence, and to successfully prosecute offences effectively. A disclosure of information such as witness statements etc., to the whole world prior to an offence being prosecuted risks undermining the possibility of a successful prosecution being taken forward. This is therefore clearly not in the public interest.
36. The Civil Procedure Rules outline when, and where a disclosure of evidence should take place between parties should a prosecution of an offence take place. The courts manage this limited disclosure of information.
37. Set against this, the Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in particular cases.
38. The Commissioner notes that that a lot of relevant information on the council's effectiveness as regards its licencing activities has already been put into the public domain. The majority of the complainant's request has been responded to by the council. It has provided statistical details of its actions in relation to the initial questions asked by the complainant, and only withheld information relating to investigations regarding the specific premises he identified in the latter part of his request. As regards the named property, it has told him that an investigation is ongoing and sought to provide information which would reassure him that it is taking the appropriate actions insofar as it was able to without affecting its ability to continue with its investigation and evidence gathering.
39. She also notes that public order issues surrounding unlicensed premises continues to be an issue of concern for the authority, and that the further release of information in connection with ongoing investigations could impact on any future investigations or prosecutions in relation to the same property. The Commissioner considers this to be a public interest argument of considerable weight.
40. Having given due consideration to the arguments put forward by both parties, the Commissioner has decided that section 30(1)(b) of the FOIA

has been applied appropriately and that the public interest in maintaining the exemption outweighs the public interest in disclosure in this case.

Section 10(1)

41. Section 10(1) of the Act provides that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

42. The complainant made his request for information on 27 February 2019, the council provided its response on 11 April 2019. This falls outside of the period of 20 working days required by section 10(1).

43. The Commissioner's decision is therefore that the council did not comply with the requirements of section 10(1).

Other matters

- a) There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one the section 45 code of practice sets out, in general terms, the procedure that should be followed.
- b) The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
- c) The complainant requested an internal review on 11 April 2019 however the council did not provide its internal review response until 24 June 2019. This is a period of 48 working days from the date that the complainant's request for an internal review was received. As stated, the complainant also argues that he did not receive this response.
- d) If the council finds that the internal review process for a particular request is particularly complex, it should inform the complainant and *"provide a reasonable target date by which they will be able to respond to the internal review. It is best practice for this to be no more than an additional 20 working days, although there will sometimes be legitimate reasons why a longer extension is needed."*

- e) Based on the response it gave to the internal review, The Commissioner does not consider that this would be a complex issue and the council should have provided its internal review response sooner than it did.

Right of appeal

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@justice.gov.uk

Website: 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
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