

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2022

Public Authority: Exeter City Council

Address: Civic Centre
Paris Street
Exeter
EX1 1JN

Decision (including any steps ordered)

1. The complainant requested from Exeter City Council ('the council'), a copy of legal advice relating to a report to council about its parking enforcement provisions. The council refused the request on the basis that section 42(1) of FOIA applied (legal professional privilege).
2. The Commissioner's decision is that the council was correct to apply section 42(1) to withhold the information. He has, however, decided that the council did not comply with the requirements of section 10(1) of FOIA in that the council did not initially respond to the complainant's request for information within 20 working days.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 1 September 2021, the complainant wrote to the council and requested information in the following terms:

"The document at <https://committees.exeter.gov.uk/documents/s13610/Parking%20Enforcement%20at%20the%20Royal%20Devon%20and%20Exeter%20Hospital.pdf> states at para 2.2 that "The Council has taken external legal advice".

I now request a copy of this legal advice."

5. The council responded on 2 November 2021. It applied section 42(1) of FOIA and refused to disclose the requested information.
6. Following an internal review, the council wrote to the complainant on 13 December 2021. It upheld its initial decision.

Reasons for decision

7. The following analysis sets out why the Commissioner has decided that the council was correct to withhold the requested information under section 42(1) of FOIA in this case.
8. Section 42(1) of FOIA provides an exemption for information which is subject to legal professional privilege ('LPP').
9. The council demonstrated that the legal advice in question is advice provided by a qualified barrister, in his professional capacity, for the dominant purpose of advising the council on its legal position as regards parking enforcement at the Royal Devon and Exeter Hospital.
10. The advice was raised in a report by the Director of Economy and Development at the council in a report presented to the Council's "Scrutiny Committee – Economy" and to the Cabinet in March 2010. The legal advice itself has not been made publicly available.
11. The Commissioner is satisfied, therefore, that the information is subject to LPP and that section 42 of FOIA is engaged. He has therefore gone on to consider the public interest test required by section 2(2)(b) of FOIA.

The public interest test

12. 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.

The public interest in disclosure

13. There is a general public interest in the disclosure of information held by public authorities. This creates greater transparency on the actions and decisions of public authorities, and also creates greater accountability for those actions. The Commissioner has taken this into account.
14. There is a specific public interest in disclosure in this case because the council admitted that errors in its parking enforcement policy at the hospital had occurred, and offered compensation to individuals who had been incorrectly fined for parking violations as a result. This would have resulted in compensation being paid out of the public purse.
15. There is also a public interest in a disclosure of information which demonstrates that the council sought legal advice to ensure that its actions were legally robust and appropriate.
16. The complainant argues that a similar system of enforcement is still in place at another council, Oxford City Council, under similar circumstances. He said that Oxford City Council argues that its enforcement policy is legally correct. He argues that a disclosure of the requested advice will allow interested parties to compare the situation with that in Oxford.
17. He contends that whilst the advice is no longer 'live advice' as regards the situation in Exeter, Oxford City Council is still applying its parking enforcement measures. He argues that a large amount of people, and a large amount of money are involved as regards the enforcement situation in Oxford.

The public interest in the exception being maintained

18. There is a strong public interest inherent in the important principle behind LPP: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice.
19. To equal or outweigh the strong public interest in protecting the principle of LPP, the Commissioner would expect there to be strong opposing factors, such as circumstances where a substantial amount of public money is involved, where a decision will affect a substantial amount of people, or where there is evidence of misrepresentation, unlawful activity, or a significant lack of appropriate transparency.

20. The Commissioner is not satisfied that any of these factors are present to the extent that they outweigh the strong public interest in protecting the principle of LPP in this case.
21. The council said that it had been open about the fact that there had been an issue with its parking enforcement policy in the hospital. It was transparent about the fact that its policy had been legally incorrect, and why, and that this is why it took action to ensure that anyone who had been wrongly fined could apply for compensation.
22. Whilst the Commissioner notes the complainant's arguments as regards the situation with Oxford City Council, interested parties who wish to challenge its enforcement policy are able to seek their own legal advice over the issue, and to question the council's reliance upon it directly before the courts should they consider that Oxford City Council's application of the law is incorrect.

The conclusion of the public interest

23. The Commissioner considers that the public interest arguments in favour of the information being disclosed are limited in this case. On the counter side, although the legal advice is no longer 'live' as regards Exeter City Council, the Commissioner is satisfied that the public interest in maintaining the exemption still remains strong due to the inherent public interest in protecting information of this nature.
24. The Commissioner's decision is that the public interest in the exemption being maintained outweighs that in the information being disclosed in this case. The Commissioner has therefore decided that the council was correct to withhold the information under section 42(1) of FOIA.

Section 10 – Timeliness

25. Section 10 of the FOIA states that a public authority must comply with its duty under section 1(1) of FOIA and communicate all non-exempt information "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
26. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the council has breached section 10 of the FOIA.

Right of appeal

27. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

Ian Walley
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Wycliffe House
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