

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 June 2024

Public Authority: London Borough of Brent
Address: Brent Civic Centre
Engineers Way
Wembley
HA9 0FJ

Decision (including any steps ordered)

1. The complainant has requested information relating to schools in Brent that have had a rapid improvement group (RIG) put in place as an improvement intervention. The London Borough of Brent (the council) provided a partial disclosure of information but withheld the remainder of the information on the basis of section 31(1)(g) by virtue of section 31(2)(c) of FOIA.
2. The Commissioner's decision is that section 31 of FOIA is engaged, and the balance of the public interest favours withholding the information.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 22 September 2023 the complainant wrote to the council and requested information in the following terms:

"Please can you advise which schools in Brent have had a rapid improvement group (RIG) put in place as an improvement intervention. Please provide names of schools, start date, end date (or that it's still active). Please provide this data for the last two years."

5. The council responded on 2 November 2023 and refused to provide the requested information citing section 31(1)(g) of FOIA as the basis for doing so. Following an internal review, the council wrote to the complainant on 2 November 2023 and maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 8 January 2024 to complain about the way their request for information had been handled.
7. On 5 April 2024 the Commissioner wrote to the council requesting for submissions in support of its position to withhold the information.
8. During the Commissioner's investigation the council provided a revised internal review response to the complainant. In its response, it disclosed information relating to Byron Court Primary School. It also confirmed that eight schools were subject to RIG in the last two years from September 2023 and the average start and end time was 18 months. The Council refused to provide the names of seven schools together with the RIG start and end dates or confirmation of its status. It relied on section 31(1)(g) by virtue of 31(2)(c) of FOIA to withhold the information.
9. The Commissioner considers that the scope of his investigation is to determine whether the council was correct to rely on section 31(1)(g) by virtue of 31(2)(c) of FOIA to withhold the remainder of the information.

Reasons for decision

Section 31-law enforcement

10. Section 31 FOIA provides a prejudice-based exemption which protects a variety of law enforcement interests. The following sets out why the Commissioner has concluded that the council was entitled to rely on section 31(1)(g) by virtue of section 31(2)(c). The relevant parts of section 31 FOIA provide that:

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(g) the exercise of any public authority of its functions for any of the purposes specified in subsection (2),

(2) The purposes referred to in subsection (1)(g) to (i) are -

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

11. Section 31 is also subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but it can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.
12. To engage the exemption at 31(1)(g), a public authority must:
 - identify the public authority that has been entrusted with a function to fulfil one of the purposes listed in subsection (2);
 - confirm that the function has been specifically designed to fulfil that purpose; and
 - explain how disclosure would prejudice that function.
13. The Council has informed the Commissioner that it has the power of intervention in schools requiring significant improvement pursuant to the Education Inspection Act 2006. This allows it to work in partnership with the school in accordance with the RIG protocol to support leaders. It explained that to ensure its statutory obligations are fulfilled, the Strategic Framework for School Effectiveness provides the structure by which the council handles the RIG process.
14. It added that where a RIG is unsuccessful, the next stage is a statutory intervention which requires the local authority to intervene with regulatory action to take control of the school and replace its governing body amongst other things.
15. The Commissioner must next consider how disclosure would prejudice that function. The prejudice test involves three steps:
 - the actual harm alleged which would or would be likely to occur if the withheld information was disclosed, has to relate to the applicable interests within the exemption (in this case the purpose of protecting persons other than persons at work against risk to health and safety arising out of or in connection with the actions of persons at work).
 - there must be some causal relationship between the disclosure of the withheld information and the prejudice which the exemption is designed to protect against. Furthermore, the alleged resultant prejudice must be real, actual or of substance; and
 - it is necessary to establish whether the level of likelihood of prejudice being relied on is met – 'would' or 'would be likely to'.

16. The Commissioner has considered whether the harm/prejudice under consideration relates to the applicable interests and notes that the council has argued that the disclosure of the information would be likely to prejudice the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may exist.
17. The council argued that RIGs are premised on confidential discussions and improvement plans regarding areas of concern and are discussed with a limited number of senior school leaders and officers within the council who can implement the action based on joint partnership, cooperation and trust.
18. It explained that it is necessary to maintain confidentiality and discretion in order to achieve the rapid improvements necessary for schools. It says that without this, schools would not voluntarily engage in the first stage of intervention due to the value and importance placed upon a school's reputation, especially in Brent where majority of schools are Ofsted reported as outstanding.
19. The council have stated that to be identified in the public domain as a school with concerns, negatively impacts on teaching staff, pupils and the local community in relation to the parents. It says that this could lead to unwarranted reputational damage which is prejudicial to what it seeks to achieve via a RIG.
20. The council have emphasized that it takes seriously, where schools fail to demonstrate improvement during their participation in the RIG. It says it has regulatory power to replace the governing board and to ensure accountability and effective management of educational standards.
21. The council have argued that if it were to disclose the schools which are subject to a RIG it would be likely to have the effect of discouraging schools from cooperating and openly volunteering information which could hinder its ability to effectively challenge and support the areas of concern and undertake its statutory duties appropriately.
22. It says that it will also discourage schools from reaching out when they become aware of concerns and require support to address it. It added that, unlike Ofsted reports, a RIG is not an assessment of the entire school and focuses on key issues of concern. Therefore, disclosing the name of the school would not provide the full picture of a school's performance and without disclosure of a contextual information or evidence, the information is likely to be misleading, thereby undermining trust and confidence in the school.
23. The Commissioner has considered the information before him, and it is his view that disclosure of the information would be likely to impact the

council's statutory obligations to intervene in key issues that affect the performance of schools. He accepts that the disclosure of such information, where discussions have been conducted confidentially would be likely to discourage schools from engaging with it, which could impede its statutory obligations.

24. The Commissioner considers that there is a real and significant risk that disclosure would have a negative impact on the schools involved in RIGs and inhibit the free flow of information from those schools. The Commissioner believes that disclosure would be likely to prejudice the council's ability to ascertain whether circumstances which would justify regulatory action exist. Therefore, he has determined that section 31(1)(g) by virtue of section 31(2)(c) is engaged.

Public interest test

25. Section 31 is subject to the public interest test as set out in section 2 FOIA. This means that although section 31 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 disclosure.

The complainant's argument

26. Following the revised internal review response, the complainant informed the Commissioner that they believe that it is in the public interest, especially for the parents whose children attend those schools to know which schools are in or have been in a RIG.

The council's argument

27. The council recognises an inherent public interest in being open and transparent in the way it conducts public business, operate with schools and undertake its statutory functions. It also admits that there is public interest in the quality and performance of schools.
28. In its arguments in support of the position to withhold the information, the council argued that its statutory duty would be significantly impaired if schools are unwilling to come forward and engage on a partnership basis. It says that the cooperation of schools and early disclosure of information to support improvement plan recommendations is crucial to the success of the plan. For this reason, it is imperative that such participation is premised on the confidentiality of the arrangement.
29. It stated that the principle of confidentiality is embedded in its Strategic Framework for School Effectiveness (the framework) and therefore undermining it would not be in the public interest. It says that the

framework is a mutual agreement that underscores the sensitive nature of the information and the need to maintain confidentiality in order to foster conducive environment of improvement efforts within those schools.

30. The council argued that it holds a genuine concern that if individual school names are disclosed, it would be likely to lead to unwarranted reputational damage. It says that naming schools subject to a RIG, with the exception of Byron Court Primary School, would not only be contrary to the framework but also set a precedent which would have a prejudicial effect on RIG cases. It adds that naming schools which are subject to a RIG would cause unnecessary alarm and distress to the schools, parents, and pupils especially where the school received a positive Ofsted report.
31. The council stated that the public interest in openness and transparency and proactively publishing the performance and quality of schools is served by Ofsted which produces a detailed report, categorising them as either outstanding, good, satisfactory, or inadequate. The council says this reinforces public confidence in schools rather than the unnecessary public alarm and potential mixed messages about the quality of a school's provision that is likely to be caused when the names of schools subject to a RIG are disclosed.
32. The council concluded that based on the arguments presented, it considered the balance of the public interest to lie in favour of withholding the requested information.

Commissioner's view

33. He has considered the reasons provided by the council why it disclosed information relating to Byron Court Primary School. The Commissioner understands why in those circumstances it was important to disclose the information given the outcome of the Ofsted inspection.
34. The Commissioner also understands how the disclosure of the information relating to the seven remaining schools would cause unnecessary public alarm to the schools' communities or have a reputational damage on those schools.
35. He also accepts that this would likely impact engagement with the schools, although he is of the view that as the council has formal powers, it is therefore a requirement on those schools to engage with it.
36. Having said this the Commissioner has given consideration to the impact on the council when exercising its statutory obligations and accepts that it needs a safe space in order to conduct its affairs, particularly when obtaining information from those schools who have identified an improvement need.

37. Taking into account the information before the Commissioner he considers that in all the circumstances of the case, the balance of the public interest is weighted in favour of maintaining the exemption. The council was therefore not obliged to disclose the withheld information.

Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF