

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2024

Public Authority: Gedling Borough Council

Address: Civic Centre
Arnot Hill Park
Arnold
Nottingham NG5 6LU

Decision (including any steps ordered)

1. The complainant requested information relating to an entry on a Councillor's Register of Interests. Gedling Borough Council (the "Council") refused the request under section 44(1)(a) (statutory prohibition).
2. The Commissioner's decision is that the Council correctly withheld the requested information under section 44(1)(a).
3. The Commissioner does not require further steps.

Request and response

4. On 17 December 2023, the complainant wrote to Gedling Borough Council (the "Council") and requested the following information:

"Please send me all the information that Gedling Borough Council holds in relation to the interest at paragraph four, of the following link:

<https://democracy.gedling.gov.uk/mgDeclarationSubmission.aspx?UID=153&HID=1236&FID=0&HPID=563101791>

This includes, but is not limited to, the reasons given as to why the Monitoring Officer and member, believe that Section 32(1)(b) of the Localism Act 2011 applies."

5. The Council responded on 18 January 2024 and confirmed that the information was being withheld under section 44(1)(a) (statutory prohibition) of the FOIA by virtue of section 32 of the Localism Act 2011.
6. Following an internal review the Council wrote to the complainant on 1 February 2024. It confirmed that it was maintaining its reliance on section 44(1)(a) to withhold the requested information.

Scope of the case

7. On 25 February 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The complainant has asked the Commissioner to consider whether information about the reasons for the Council's application of the prohibition in section 32 of the Localism Act 2011 should be disclosed.

Reasons for decision

Section 44 – prohibitions on disclosure

9. Section 44 of the FOIA states that:
 - (1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –
 - (a) is prohibited by or under any enactment,

10. The task for the Commissioner here is, therefore, to consider whether the disclosure of the information requested by the complainant is prohibited by law; if this is the case, this exemption will apply.
11. Section 44 is a class based exemption which means if the requested information falls within the class of information described in section 44(1)(a), the exemption is engaged. As section 44(1)(a) is also an absolute exemption, it is not subject to any public interest considerations.

Is disclosure prohibited by or under any enactment?

12. Information is exempt under section 44(1)(a) if its disclosure would breach any of the following:
 - primary legislation (an Act of Parliament); or
 - secondary legislation (a Statutory Instrument)
13. The Council's position is that disclosure of the requested information is prohibited by section 32(2) of the Localism Act 2011¹.

14. Section 32 of the Localism Act 2011 states:

“(1)Subsections (2) and (3) apply where—

(a)a member or co-opted member of a relevant authority has an interest (whether or not a disclosable pecuniary interest), and

(b)the nature of the interest is such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

(2)If the interest is entered in the authority's register, copies of the register that are made available for inspection, and any published version of the register, must not include details of the interest (but may state that the member or co-opted member has an interest the details of which are withheld under this subsection).

(3)If section 31(2) applies in relation to the interest, that provision is to be read as requiring the member or co-opted member to disclose not

¹ <https://www.legislation.gov.uk/ukpga/2011/20/section/32/enacted>

the interest but merely the fact that the member or co-opted member has a disclosable pecuniary interest in the matter concerned.”

15. The withheld information relates to a Councillor’s Register of Interests (published on the Council website), specifically part 4, which relates to “Any beneficial interest in land which is within the Council’s area.” The published entry under this category states “ Details of this interest are withheld under section 32(2) of the Localism Act 2011”.²
16. The complainant has asked the Council to provide the reasons for withholding details of the interest in this specific instance. In the complainant’s view this reasoning would fall outside of the prohibition on disclosure provided by section 32(2) of the Localism Act 2011 (the “2011 Act”) and the exemption under section 44(1)(a) of the FOIA would not, therefore, apply.
17. In considering this matter the Commissioner has referred to the First-tier Tribunal (Information Rights) (the “Tribunal”) decision in EA/2023/0153, which relates to a similar application of the prohibition in section 32(2) of the 2011 Act³.
18. The Tribunal decision confirms that the inclusion of sensitive information in a Register of Interests is subject, under section 32(2) of the 2011 Act, to the discretion of the monitoring officer, and that the legislation, therefore, operates as a statutory bar to disclosure under section 44(1)(a) of the FOIA.
19. The Tribunal decision acknowledges that the 2011 Act requires that the relevant Councillor and monitoring officer have to make a decision about details that should be excluded from inspection. It further clarifies that, where a statute gives a public authority a discretion to disclose information, the Commissioner is not obliged to examine the reasonableness or otherwise of the exercise of that discretion.
20. In the case considered by the Tribunal and in the case which is the subject of this notice, a decision was made that the interest satisfied the definition provided by section 32(1)(b) of the 2011 Act and that section 32(2) of the 2011 Act is engaged, prohibiting the publishing of the details of the interest on the public version of the register.

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<https://democracy.gedling.gov.uk/mgDeclarationSubmission.aspx?UID=153&HID=1439&FI D=0&HPID=578286046>

³ <http://www2.bailii.org/uk/cases/UKFTT/GRC/2023/878.pdf>

21. In the Tribunal case and here, it also follows that, once the discretion not to publish has been exercised and the disclosure of the withheld information is prohibited by section 32(2) of the 2011 Act, the exemption in section 44(1)(a) of the FOIA is necessarily engaged.
22. It is clear to the Commissioner that the intention of section 32(2) of the 2011 Act is to allow for information to be withheld from the public domain where disclosure could lead to relevant parties being subject to violence or intimidation. In a sense, this provides the broad reason for the application of the prohibition without providing the specific details for it being invoked in a given instance.
23. The prohibition in this case was applied to the section of the Register of Interests which relates to details of any beneficial interest in land which is within the Council's area, including the address of the interest and the nature of the interest.
24. The complainant has argued that the requested reasons why the discretion not to publish has been exercised in this case do not fall within the scope of the prohibition provided by the 2011 Act. It follows that, in their view, the exemption in section 44(1)(a) does not apply to the information.
25. In considering this the Commissioner has considered how the wording of the prohibition operates, specifically the use of "details".
26. One of the conditions which needs to be met for the application of the prohibition is confirmed in section 32(1)(b) of the 2011 Act, which states (the Commissioner's highlighting):

"(subsections (2) and (3) apply where—

(b)the nature of the interest is such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the **details** of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation."
27. Section 32(2) of the 2011 Act confirms (the Commissioner's highlighting):

"If the interest is entered in the authority's register, copies of the register that are made available for inspection, and any published version of the register, **must not include details** of the interest (but may state that the member or co-opted member has an interest the details of which are withheld under this subsection)."

28. The Commissioner considers that "details" in this context are not confined to information about a property location or its function but can also include other factors, such as the reasons for the prohibition being invoked in a specific instance. "Details" would also, therefore, include confirmation that the information has been withheld because, for example, it identifies security fears around an individual's residential address.
29. Having considered the points above and also referred to submissions provided by the Council, the Commissioner's view is that disclosing the specific reasons why the prohibition applies would equate to disclosure of details of the interest and involve the disclosure of information beyond what is required to be made public, as confirmed in section 32(3) of the 2011 Act. Disclosure of the reasons, therefore, would be unreasonable in going against the decision made to apply section 32(2) of the 2011 Act and would undermine its purpose. It follows that the prohibition on disclosure also applies to this information and that section 44(1)(a) of the FOIA applies.

Right of appeal

30. 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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Christopher Williams
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Wycliffe House
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