

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 7 August 2007

**Public Authority:** Doncaster Metropolitan Borough Council  
**Address:** 2 Priory Place  
Doncaster  
DN1 1BN

### Summary

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The complainant requested information held by the authority on the result of any legal action it took against a third party. The authority confirmed that it held information relevant to the request but refused to disclose this on the basis that the exemptions under section 32 (court records) and 41 (information provided in confidence) of the Act applied. The Commissioner's decision is that the exemption in section 32 is not engaged by the majority of this information. He has also decided that section 41 is not engaged. The majority of the information should therefore be disclosed.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This notice sets out his decision.

### The Request

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2. The complainant requested the following information from the council on 2 March 2005:

"Under the terms of the FOI Act:

I would be grateful if you would tell me whether Doncaster Council has recovered the £60 000 grant paid to the Yorkshire Compensation Recovery Service."

3. The complainant wrote to the council again on 16 March 2005 clarifying his request.

“Just a quick note to clarify the request below. Naturally I wouldn't want Doncaster Council to simply provide a 'yes' or 'no' response and would ask that details of any settlement are provided.”

4. The council responded to the complainant's request of 2 March and his clarification email of 16 March on 31 March 2005. In that response it stated that it did hold the information but that this was exempt from disclosure under sections 32 and 41 of the Act as it is held within court records and is subject to confidentiality provisions.
5. The complainant wrote back to the council on the same day asking for further reasons why the information was exempt from disclosure. He also pointed out to the council that although the information may be held as a court record it may also be held in other forms than a court record. His suggestion was that it may also be held as part of the council's record of its accounts.
6. The council responded on 15 April 2005. In that response it stated that the primary way in which the information came to be held was by virtue of the court record, and it therefore considered that the exemption in section 32 applied. It also clarified that in its view disclosure would lead to an actionable breach of a duty of confidence if it disclosed this information. It did however state that the information would form part of the authority's accounts which will be published at a future date.
7. On the same day the complainant wrote back asking for further clarification of the council's position. He pointed out that the information could hardly be confidential if it was the intention of the council to publish it in its annual accounts, and that it was reasonable to disclose it as the financial year to which the transaction referred had ended.
8. On 29 April the complainant wrote back to the council formally invoking their complaint review process. The council responded on 1 June 2005. In that letter it stated that the review decision was that both sections 32 and 41 applied to the information and that it was therefore appropriate for the council to refuse the request

## **The Investigation**

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### **Scope of the case**

9. On 21 June 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the information he requested should have been disclosed to him.

## Chronology

10. The Commissioner wrote to the council on 24 July 2006 explaining that a complaint had been received and that they would be contacted again once the case had been allocated to a complaints officer.
11. On 22 January 2007 a complaints officer wrote to the council requesting a copy of the information together with any submission the council wished to make in support of its arguments that the exemptions applied.
12. The complaints officer then spoke to the council on 19 February 2007 to explain that the information was needed in order to facilitate making a decision. The council then agreed to send the information to the Commissioner.
13. The council again spoke to the complaints officer on 21 February 2007. The council stated that they would send in argument counsels opinions on the status of the documents. The officer agreed that this may be suitable as a submission against disclosure. The council supplied the information to the Commissioner on the same day.
14. On 18 May the complaints officer telephoned the council and explained that his preliminary view was that this information should be disclosed. The council explained that they wished to have a decision notice to this effect if this was the Commissioner's final decision.
15. On 22 May the complaints officer wrote to the council asking for a clarification of events leading to the information being held. He followed this up with an email on the 13 June 2007 asking for a response from the council.
16. The council responded on 19 June 2007 providing clarification of the events which had led to the information being held.

## Analysis

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### Exemption

17. The council claimed that the information it holds is exempt from disclosure under sections 32(2) (court records) and 41 (confidentiality). These are absolute exemptions. There is however a public interest test inherent within the law of confidence which can provide a defence to disclosure of the information where such a disclosure is in the greater public interest.
18. The information in question relates to civil proceedings brought against the Yorkshire Compensation Recovery Service (the 'YCRS'), a private company set up to aid miners with compensation claims in line with government guidelines. The council provided a grant of £60 000 to the company, together with premises, rent free, for the company to base itself. This was on the mistaken basis that the company was a not-for-profit organisation. YCRS was not a not-for-profit

organisation and the Commissioner is aware of suggestions in the press that the claim to be “not-for-profit” was in fact a misleading claim made by the YCRS.

19. An external inquiry into the matter was initiated by the council. the resulting “Jeffries Report “ found potential maladministration in the council’s procedures for providing the grant to the YCRS and concluded that there were a number of flaws in the council’s handling of the grant. It also made a recommendation that the council should seek recovery of the money paid to the company. That recommendation was duly agreed by the council. These facts are recorded in council minutes dated 10 February 2003 which are available from the council’s website. The complainant has requested details of the outcome of any action taken by the council in response to this.
20. The complainant has requested information which has been refused under an absolute exemption – section 32(2). If the information which is held is subject to the exemption then the information need not be disclosed. Section 41 of the Act has also been claimed. Because of the potential application of section 41, and the council’s right of appeal, the Commissioner is unable to record the full details of the arguments being put forward on the face of this Decision Notice without disclosing information which is itself potentially subject to the exemption in section 41 of the Act. Accordingly he has only included partial arguments within the central part of this decision notice, and provided a fuller explanation of his decision within an Annexe which will initially be only provided to the council.

## Section 32

21. Section 32(2) of the Act provides an exemption to information where it is held “only by virtue” of being contained in a court record or a document produced by a court. Section 32 is reproduced in full in the legal annexe to this decision notice. Section 32 is an absolute exemption which is not subject to a qualifying public interest test. If the exemption is engaged by the information then it need not be disclosed by the authority.
22. The Commissioner has read the information in question and is satisfied that the information which has been provided to him by the council is contained within a court record.
23. The Commissioner has considered how the council came to hold the information in question. Although he is not able to spell out the reason for his decision in this decision notice, it is his decision that the majority of the information in question was held by the council before it was held as a court record. Accordingly it is his view that that information is not held *only* by virtue of it being held within a court record.
24. He has also considered the possibility that accounts records held by the council may include information which relates to this matter. Again where information is held in this manner it will not therefore be held *only* by virtue of it being within a court record.

25. The Commissioner has considered the argument put forward by the council that the *primary reason* the information was held was that it is contained within a court record. Although it may be the case that the information is held in this way at this point in time, the council has confirmed that it was first obtained by it for other purposes, albeit relevant to ongoing court proceedings.
26. In any event the Commissioner does not accept that section 32(2) should be interpreted as requiring only that the *primary reason* for holding the information is due to it being held as a court record.
27. The Commissioner does not accept that the Act requires him to consider what the primary purpose for holding the information is, and it is his view that section 32(2) specifically precludes this interpretation. However, in passing, it is his view that the primary purpose for holding the information would not, in any event be because it is held in a court record in this instance. It would be held for the purposes of establishing and exercising legal rights, and the requirement to record information relating to the accounts of the council.
28. In conclusion the Commissioner finds that information which is also held within the accounts of the council is not held *only* by virtue of it being contained within a court record but is also held for other reasons. He has also decided that the majority of the information is not held only by virtue of it being held within a court record as the council initially obtained the information by other means and subsequently lodged this with the court. The Commissioner is therefore satisfied that section 32(2) does not apply to the information, with the exception of one minor item of information which is identified in the Annexe.

## Section 41

29. The council claimed that any information it holds falls within a duty of confidentiality it owes to another party under section 41 of the Act.
30. Section 41 of the Act states that information will be exempt from disclosure where it is obtained "from any other person" under a duty of confidence, and disclosure would constitute an actionable breach of that confidence. Section 41 is produced in full in the legal annexe to this decision notice.
31. The Commissioner has considered in the first instance whether the information which is held would satisfy the initial criterion provided in section 41 of the Act. For the reasons stated above, he is unable to elaborate fully upon his reasoning on the face of this Decision Notice. However his conclusion is that the exemption in section 41 of the Act would not be engaged as this information was not obtained "from another person". He has drawn upon the Information Tribunal's decision in *Derry City Council v Information Commissioner* (case EA/2006/0014), when reaching this conclusion.
32. Accordingly the Commissioner's decision is that the information should be disclosed to the complainant.

## Section 40

33. The information includes the addresses of parties concerned with the YCRS. The Commissioner has considered this information and it is his view that the addresses are the personal data of identifiable individuals. Section 40 of the Act allows public authorities to exempt information where disclosure would amount to a breach of one of the data protection principles of the Data Protection Act 1998.
34. The Commissioner has considered whether a disclosure of the addresses would breach the first data protection principle. It is his view that a disclosure of the addresses concerned would not be within the expectations of the individuals given the expectation that the information was confidential. Accordingly the Commissioner's view is that a disclosure of the addresses would not be 'fair' under the first data protection principle and that disclosure would therefore breach this principle.
35. The Commissioner's decision is therefore that the council should redact the addresses from the information to be disclosed on the basis that it is exempt from disclosure under section 40 of the Act.

## The Decision

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36. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - The council was able to apply section 32(2) to the limited sections of the information requested which are solely held as a result of it being within a court record.
  - The council was able to apply section 40(2) to addresses contained within the information. The addresses are personal data and disclosure would breach the first data protection principle.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The exemptions in sections 32(2) and 41 of the Act are not engaged in respect of the majority of the information requested. The Commissioner's decision is therefore that this should be disclosed to the complainant.

## Steps Required

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37. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

to disclose to the complainant all the requested information with the exception of the items identified in paragraph 35 above and the one item of information identified in the Annexe to this notice.

35. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

### **Failure to comply**

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38. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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39. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 7<sup>th</sup> day of August 2007**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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



## Legal Annexe

### Court Records

32. - (1) Information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
- (c) any document created by-
  - (i) a court, or
  - (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.

(2) Information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or
- (b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section.

(4) In this section-

- (a) "court" includes any tribunal or body exercising the judicial power of the State,
- (b) "proceedings in a particular cause or matter" includes any inquest or post-mortem examination,
- (c) "inquiry" means any inquiry or hearing held under any provision contained in, or made under, an enactment, and
- (d) except in relation to Scotland, "arbitration" means any arbitration to which Part I of the Arbitration Act 1996 applies.

### Information provided in confidence

41. - (1) Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.