

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 3 April 2007

Public Authority: The Commission for Local Administration in England

Address: 10th Floor
Millbank Tower
Millbank
London
SW1 4QP

Summary

The complainant wrote to the Local Government Ombudsman to request any information it held related to her and her interests. In response the public authority provided the complainant with the majority of the information it held. However the public authority explained that the information formed part of a complaints file. It said that it was withholding some of this information under section 44 of the Act. The public authority explained that section 32(2) of the Local Government Act 1974 prevented it from disclosing information it had obtained in the course of, or for the purposes of, an investigation. The Commissioner investigated the complaint and is satisfied that section 32(2) of this Act prevents the public authority from disclosing the remaining withheld information. The Commissioner therefore accepts that this information is exempt under section 44 of the Act.

The Commissioner's Role

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

2. On 27 October 2005 the complainant made the following information request to the public authority:

Pursuant to the Data Protection Act 1998 and the Freedom of Information Act 2000. I request a copy of all data and information which you hold in respect of me

and my interests without exception, by return and within the statutory time limit of 40 working days.

3. The public authority responded to the request on 16 November 2006. The public authority explained that the information requested by the complainant formed part of a complaints file and that such information is exempt from disclosure under section 44 of the Act. The public authority explained that the relevant statutory prohibition is section 32(2) of the Local Government Act 1974 ("section 32(2) LGA"). However the public authority said that it had considered the complainant's request and that on this occasion it was prepared to release the following information. The response was as follows:-
 - i) Copies of documents provided by the Council in support of its letter dated 1 August 2005.
 - ii) Photocopies of the front covers of booklets issued with Council tax bills to the public by Lewisham Council between the years 2000/20001 and 2005/20006. We only hold single copies of these for reference purposes, so I am not releasing those. I have however enclosed a copy of pages 12 to 15 of the 2000/2001 booklet that deals with reference to valuation tribunals and exempt properties. Similar sections are included in all later editions of the booklet.
4. The public authority explained that it did hold further information, falling within the scope of the request, which was also exempt under section 44 of the Act and which it would not disclose. The public authority said that this information included, for example, copies of the investigator's handwritten notes.
5. The public authority conducted an internal review of its handling of the complainant's request and upheld its original response to the request.

The Investigation

Scope of the case

6. On 11 December 2005 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

The public authority's refusal to supply all the information it held in response to her information request.

7. In reaching his decision the Commissioner has only considered the information that has been withheld from the complainant under section 44 of the Act and that has also not already been disclosed to the complainant for the purposes of the public authority's investigation.

8. The Commissioner recognises that the complainant's request of 27 October 2005 was also a request for information under the Data Protection Act 1998. The Commissioner has considered, as part of a separate investigation, whether the complainant would be entitled to the withheld information under the Data Protection Act 1998. The Commissioner decided that the withheld information did not constitute personal information of which the complainant is the data subject and therefore the public authority was not obliged to disclose this information under the Data Protection Act. Consequently the Commissioner has considered the public authority's response to the complainant's request under the Freedom of Information Act and not the Data Protection Act.

Chronology

9. On 29 August 2006 the Commissioner wrote to the public authority to request copies of any information it had withheld from the complainant in response to her request of 27 October 2005.
10. The public authority provided the Commissioner with this information on 17 October 2006.

Findings of fact

11. The information held by the public authority relates to its investigation of a complaint, also made by this complainant, against the London Borough of Lewisham.
12. The withheld information constituted 4 pages of handwritten notes and a transcript of a telephone conversation, both of which had been made by one of the public authority's investigators in the course of investigating the complaint against the London Borough of Lewisham.

Analysis

Exemption

13. Section 44(1) provides that –

“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,
 - (b) is incompatible with any Community obligation, or
 - (c) would constitute or be punishable as a contempt of court.”
14. Section 32(2) of the LGA provides that:

Information obtained by a local Commissioner, or any officer of either Commission, in the course of or for the purposes of an investigation under this part of the Act shall not be disclosed except-

- a) for the purposes of the investigation and of any report to be made under section 30 or 31 above; or
- b) for the purposes of any proceedings for an offence under the Official secrets Acts 1911 to 1939 alleged to have been committed in respect of information obtained, by virtue of this part of this Act, by a local Commissioner or by an officer of either Commissioner or for an offence of perjury alleged to have been committed in the course of an investigation under this part of this Act or for the purposes of an enquiry with a view to the taking of such proceedings, or
- c) for the purposes of any proceedings under section 29(9) above

and the Local Commissioner and the officers of his Commission shall not be called upon to give evidence in any proceedings (other than proceedings within paragraph (b) or (c) above) of matters coming to his or their knowledge in the course of an investigation under this part of the Act.

15. The Commissioner recognises that the information the public authority has withheld from the complainant was generated by the public authority itself. However, it is the Commissioner's view that where such information draws upon or makes reference to the complaint against the London Borough of Lewisham, or the investigation into this complaint, then such information constitutes information obtained in the course of, or for the purposes of, an investigation. Whilst these documents may have been generated by the public authority itself, and have therefore not been physically obtained, it is clear that the information contained within the documents will have been obtained in the course of or for the purposes of the investigation. This is because the details of the complaint against the London borough of Lewisham is clearly information which was only received by the public authority for the purposes of carrying out an investigation.
16. The Commissioner recognises that the public authority provided the complainant with some information in response to the request of 27 October 2005. However the Commissioner considers the public authority's response of 16 November to be a refusal of the request under section 44 of the Act and that any information disclosed was done so at the discretion of the public authority under subsection a) of section 32(2) LGA.
17. The Commissioner recognises that responding to a request under the Act is not one of the reasons for disclosure provided for in subsections a) to c) of section 32(2) LGA. The Commissioner is satisfied that section 32(2) LGA acts as a statutory prohibition to the disclosure of the information withheld from the complainant and that section 44 of the Act applies. Section 44 of the Act is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.

18. The Commissioner recognises that the public authority has discretion to disclose information obtained in the course of or for the purposes of an investigation where it believes that it would be beneficial for the purposes of that investigation. In reaching his decision the Commissioner has not sought to question the public authority's use of its discretion in this regard.

The Decision

19. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

20. The Commissioner requires no steps to be taken.

Right of Appeal

21. 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

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 3rd day of April 2007

Signed

**Jane Durkin
Assistant Commissioner**

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