

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 22 February 2007

Public Authority: Bridgend County Borough Council
Address: Civic Offices
Angel Street
Bridgend, Mid Glamorgan
CF31 4WB

Summary Decision

1. The complainant requested information from the public authority relating to reports prepared by the environmental health officers of Bridgend County Borough Council in respect of John Tudor & Sons, a large scale meat supplier based in the Authority. The complainant indicated that the request was to cover such reports prepared during the three years preceding the request. The public authority initially refused the request by virtue of Regulation 12 (5) (b) of the Environmental Information Regulations 2004. However, in subsequent correspondence, with the complainant, the Authority sought to rely on sections 22, 30 and 31 of the Freedom of Information Act, 2000 stating that the information requested constituted evidence that would be utilised in a current criminal investigation as well as a pending public inquiry. The Commissioner sought evidence to evaluate the Authority's position and a member of his staff visited the public authority to examine the reports that were the subject of the original request. The Commissioner decided, in this case, the authority applied the Act appropriately by refusing the request by virtue of section 30.

The Commissioner's Role

2. 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

3. The complainant has advised that on 12 November 2005 the following information was requested from the public authority in accordance with section 1 of the Act:

"I am making a request under the Freedom of Information Act for copies of the last three reports prepared by environmental health officers of Bridgend County Borough Council regarding John Tudor & Sons of Bridgend, a large scale meat supplier, or, if there are more than three, then all that have been produced in the last three years."

4. The public authority responded with a formal Refusal Notice on 15 November 2005. The complainant was initially referred to section 12 (5) (b) of the Environmental Information Regulations 2004. The Refusal Notice stated that the information requested formed part of the evidence for the joint Local Authority and Police investigation and that the release of the information could prejudice the investigation and the ability to institute legal proceedings at their conclusion.
5. The complainant wrote to the public authority on 4 December 2005 appealing the Refusal Notice and requesting that the public authority respond to the points raised.
6. In response the public authority wrote to the complainant on 21 December 2005. The public authority's head of legal services stated:

"I have considered your views but, given that there is a current criminal investigation and shortly to be a public inquiry undertaken by the Assembly I am of the view that it is not in the public interest for such evidence to be made public at the current time. In respect of the Freedom of Information Act, I consider it appropriate to rely upon sections 22, 30 and 31."

7. In view of the above, the complainant and the public authority have agreed that the matter should now be dealt with under the Freedom of Information Act.

The Investigation

Scope of the case

8. On 18 January 2006 the complainant contacted the Commissioner to complain that the local authority, in its refusal to disclose the information requested, had wrongly applied the Freedom of Information Act.
9. The Commissioner has primarily considered the public authority's use of the section 30 and 31 exemptions to refuse to provide the information requested. The Commissioner is, however, of the view that had the Environmental Information Regulations been applicable the outcome of his decision would have been the same.

Chronology of the case

10. The complainant made a complaint to the Commissioner on 18 January 2006 subsequent to the public authority having issued a Refusal Notice on 15 November 2005 and conducting an internal review.

11. The Commissioner wrote to the public authority on 12 July 2006 requesting further details in respect of the exemptions being relied upon. It was specifically requested that the public authority provide copies of the reports that were the subject of the initial request.
12. The public authority responded to the Commissioner on 24 July 2006. The response provided further information and argument as to why the public authority took the view that the information ought not to be released. Copies of the information requested were not disclosed at this stage.
13. In order to progress the investigation the Commissioner wrote to the public authority on 26 July, 9 August and 16 August. The letter of 16 August requested an attendance at the premises of the public authority for the express purpose of reviewing the information which is the subject matter of the complainant's request.
14. Staff from the Commissioner's office visited the public authority on 12 September 2006. During the course of his visit the Commissioner's representative was allowed access to the environmental health reports withheld by the public authority to consider the content of the reports in conjunction with the public authority's arguments and its refusal to disclose the information requested.

Findings of the case

15. The public authority's Refusal Notice of 15 November 2005 confirmed that its refusal to disclose the information requested was due to the fact that the public authority took the view that its disclosure could prejudice the outcome of ongoing investigations being carried out by both the public authority and South Wales Police.
16. The request itself was precipitated by an outbreak of E.coli 0157 in Wales. Given the extent and severity of the outbreak an investigation was implemented by the public authority.
17. During the course of the E.coli outbreak a young school boy contracted E.coli poisoning and sadly died. As a direct consequence a criminal investigation was implemented by South Wales Police. To date, the police investigation is ongoing.
18. The scale of the E.coli outbreak was extensive and far reaching. In addition to the public authority and South Wales Police, the National Assembly for Wales has similarly implemented a full investigation and called for extensive verbal and written evidence. To date, the investigation implemented by the National Assembly remains ongoing.

Analysis

19. The Commissioner has considered the public authority's response to the complainant's request for information.

Exemptions

Section 30

20. The Commissioner is satisfied that the information requested falls within the exemption set out in Section 30 of the Act, (see Legal Annex). The Commissioner has had sight of the information which consists of environmental inspection records, environmental inspection reports and Statutory Notices. The Commissioner is satisfied that all the information relates directly to the ongoing investigations, in terms of its evidential value, and therefore falls within the class of information which is covered by this exemption. The information in question has clearly been held by the public authority for the purposes of an investigation. Similarly, the public authority has a duty to undertake such an investigation with a view to it being ascertained whether a person should be charged, or is guilty of an offence. It is also the case that the investigations being carried out by the public authority may lead to a decision by the public authority to institute criminal proceedings.

Public interest test

21. The Commissioner has considered the public interest factors for and against disclosure in the case of information covered by the Section 30 exemption. The Commissioner has taken into account the general public interest in openness and accountability.
22. The Commissioner is of the view that the type of information requested in this case, relating to routine health and safety reports, should ordinarily be placed in the public domain as a matter of course, normally through inclusion in a publication scheme. The Commissioner has also considered the need for public authorities to have responsibility for the conduct of investigations and to conduct such investigations in confidence, in order to protect the integrity of the investigatory process.
23. The Commissioner is of the view that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information for the following reason:
24. The Commissioner is mindful of the complainant's desire to place the public authority's environmental inspection records into the public domain, although the information requested in this case had not been published. Whilst the information was not originally compiled or prepared for the purposes of an investigation, it is now, nonetheless, held specifically for that purpose both by the public authority which is the subject of the request and also the South Wales Police. The Commissioner is particularly aware of the need to protect the integrity of this investigatory process. The seriousness of the E.coli outbreak

has necessitated investigations and enquiries on a substantial scale involving the public authority, the South Wales Police and the National Assembly for Wales. The Commissioner has also been made aware that a number of other public authorities are also in the process of investigating the E.coli outbreak, although such investigations are not the subject of this request.

25. The Commissioner draws support for this view from the dicta from Lord Chief Justice Kerr in the Committee on the Administration of Justice & Anor, RE An Application for Judicial Review [2005] NIQB 25. In the application, Lord Chief Justice Kerr referred to the judgement of Taylor and others v. Serious Fraud Office (1999) and held that:

“These passages identify the public interest in maintaining confidentiality for police investigations unless the interests of justice require otherwise. Unless it can be demonstrated that there are compelling reasons for disclosing the contents of a police investigation file, it is vital confidentiality be preserved.”

26. The Commissioner has had access to the documents identified. The Commissioner is of the view that the documentation is likely to be relied upon as documentary evidence in the event of a prosecution. The Commissioner has concluded that there is nothing in the documentation to suggest that the interests of justice would require that the reports were opened to public scrutiny prior to the conclusion of the numerous ongoing investigations.

Section 31

27. The Act makes it clear that in cases where Section 30 applies it is neither necessary, nor permissible to make use of Section 31, (see Legal Annex). The Commissioner is therefore satisfied that Section 31 does not apply by virtue of the fact that section 30 is applicable.

Section 22

28. Although the public authority did raise Section 22, (see Legal Annex), in correspondence with the Commissioner, he does not propose to consider the arguments in relation to that exemption. This is because he is persuaded that Section 30 applies in relation to all the requested information. The Commissioner is also persuaded that the public interest in maintaining that exemption outweighs the public interest in disclosure.

Environmental Information Regulations

29. In its Refusal Notice to the complainant dated 15 November 2005 the Authority refused to disclose the information requested pursuant to Regulation 12(5)(b) of the Environmental Information Regulations, 2004, (see Legal Annex).
30. Following an internal review the Authority wrote to the complainant on 21 December 2005 and further relied on sections 22, 30 and 31 of the Freedom of Information Act.

31. Having considered the Authority's refusal, the Commissioner is satisfied that had the Authority maintained this position Regulation 12 (5)(b) would have been appropriate in the circumstances. Further, the Commissioner has considered the public interest arguments in accordance with Regulation 12(1)(b) and is satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosing the information for the same reasons as those advanced in paragraphs 21 to 26 above.
32. The Commissioner considers that there are strong arguments for considering that the information requested is environmental information by virtue of the definition in Regulation 2 (1)(f). However, he does not find it necessary or appropriate in all the circumstances of this case to make a formal decision on this point, particularly as the complainant has not raised it.

The Decision

33. The Commissioner's decision in this matter is that the public authority has dealt with the complainant's request in accordance with the requirements of Part 1 of the Act because it applied the Act correctly in refusing the request by virtue of section 30.

Steps Required

29. As the Commissioner's decision is that the public authority has responded to the complainant's request in accordance with the Act, no remedial steps are required.

Right of Appeal

30. 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 22nd day of February 2007

Signed

**Graham Smith
Deputy Commissioner**

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

Freedom of Information Act 2000

Legal Annex

Information intended for future publication

Section 22(1) provides that –

“Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”

Section 22(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).”

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.”

Section 30(2) provides that –

“Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority

- for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
- (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and

- (b) it relates to the obtaining of information from confidential sources.”

Section 30(3) provides that –

“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 subsection (1) or (2).”

Section 30(4) provides that –

“In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references-

- (a) to any officer of the authority,
- (b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and
- (c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department.”

Section 30(5) provides that –

“In this section-

"criminal proceedings" includes-

- (a) proceedings before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 52G of the Act of 1957,
- (b) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957,
- (c) proceedings before a court established by section 83ZA of the Army Act 1955, section 83ZA of the Air Force Act 1955 or section 52FF of the Naval Discipline Act 1957 (summary appeal courts),
- (d) proceedings before the Courts-Martial Appeal Court, and
- (e) proceedings before a Standing Civilian Court;

"offence" includes any offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.”

Section 30(6) provides that –

“In the application of this section to Scotland-

- (a) in subsection (1)(b), for the words from "a decision" to the end there is substituted "a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted",

- (b) in subsections (1)(c) and (2)(a)(ii) for "which the authority has power to conduct" there is substituted "which have been instituted in consequence of a report made by the authority to the procurator fiscal", and
- (c) for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence."

Law enforcement

Section 31(1) provides that –

“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-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

Section 31(2) provides that –

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

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,

- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

Section 31(3) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”

Environmental Information Regulations 2004

Legal Annex

Regulation 12 - Exceptions to the duty to disclose environmental information

Regulation 12(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Regulation 12(2) A public authority shall apply a presumption in favour of disclosure.

Regulation 12(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

Regulation 12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

Regulation 12(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
- (f) the interests of the person who provided the information where that person –
 - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
 - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from the Regulations to disclose it; and
 - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

Regulation 12 (6) For the purpose of paragraph (1), a public authority may respond to a request by neither confirming or denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

Regulation 12(7) For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.

Regulation 12(8) For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

Regulation 12(9) To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).

Regulation 12(10) For the purpose of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.

Regulation 12(11) Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.