

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 26 July 2007

**Public Authority:** Commission for Local Administration in England  
(Local Government Ombudsman)  
**Address:** 10<sup>th</sup> Floor Millbank Tower  
Millbank  
London  
SW1P 4QP

### Summary

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The complainant wrote to the Local Government Ombudsman to request information regarding a complaint he had previously made against Herefordshire County Council. The public authority responded by explaining that the information was exempt from disclosure under section 44 of the Act. The public authority said that the relevant statutory prohibition was section 32(2) of the Local Government Act 1974. After considering the complaint the Commissioner has found that the statutory prohibition applied to the majority of information withheld from the complainant. However, the Commissioner has found that the public authority also breached section 1 of the Act because the statutory prohibition did not apply to all of the information that had been withheld.

### 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. On 1 February 2006 the complainant wrote to the public authority to request information related to a complaint he had previously made against Herefordshire County Council. The complainant asked for sight of "all papers used in determining" the public authority's decision on the complaint against the said council.

3. The public authority responded to the request on 17 February 2006. It explained that the information requested by the complainant formed the contents of a complaints file and that this information is exempt under section 44 of the Act. It said that the relevant statutory prohibition is section 32(2) of the Local Government Act 1974 which prevents the disclosure of information obtained, in the course of, or for the purposes of an investigation.
4. The complainant requested that the public authority carry out an internal review of its handling of his request. The public authority reported back with the findings of the internal review on 7 March 2006 at which time it informed the complainant that it had upheld its earlier decision to withhold the information under section 44 of the Act.

## **The Investigation**

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### **Scope of the case**

5. On 9 March 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to consider the public authority's decision to refuse his request.

### **Chronology**

6. On 29 August 2006 the Information Commissioner wrote to the public authority to request that it provide copies of the information it had withheld from the complainant. It was subsequently agreed that it would only be necessary for the public authority to send a schedule of the information it held in relation to the complaint against Herefordshire Council.
7. On 17 November 2006 the public authority provided the Commissioner with a schedule of information which it said were the key documents that it held in relation to the complaint.
8. The Commissioner reviewed the schedule and on 26 March 2007 wrote to the public authority to ask that it clarify which pieces of information it was withholding from the complainant.
9. It was eventually agreed that the public authority would send the Commissioner the original files regarding the complaint.

### **Findings of fact**

10. The complaint against Herefordshire County Council concerned the provision of care to the complainant's severely disabled wife by that council's social services department.
11. The information held by the public authority in relation to the complainant against Herefordshire County Council is the contents of a complaints file. This includes

both a documents file and an investigation file. The documents file contains documents passed to the public authority by the complainant, the Council or other third parties.

## Analysis

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### Exemption

12. Section 44(1) of the Act 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.

13. Section 32(2) of the Local Government Act 1974 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 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 Act 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 Commission 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

14. The Commissioner accepts that section 32(2) of the Local Government Act 1974 acts as a statutory prohibition on the disclosure of information obtained in the course of, or for the purposes of, an investigation and that responding to a freedom of information request is not one of the reasons for disclosure provided for in sub-sections a) – c) of section 32(2). Therefore the main issue to be considered in this decision is whether the information requested by the complainant constitutes information obtained by the public authority in the course of, or for the purposes of, its investigation into the complaint against Herefordshire County Council.

15. The complainant's request was for information which the public authority had used in determining its decision not to issue a formal report on his complaint

- against Herefordshire County Council. In reaching his decision the Commissioner has reviewed all the information which the public authority holds in relation to the complaint against the Council which has not previously been disclosed to the complainant or which he has not otherwise had access to. The Commissioner has considered the extent to which any or all of this information is covered by the statutory prohibition.
16. On reviewing the complaint file it is clear that a significant amount of the information was passed to the public authority either by the complainant, the public authority or third parties. The Commissioner is satisfied that such information has been obtained in the course of, or for the purposes of, the investigation into the complaint against Herefordshire County Council and that sub-sections a) – c) of section 32(2) of the Local Government Act 1974 do not apply. The Commissioner is satisfied that such information is covered by the statutory prohibition and that it is exempt from disclosure under section 44 of the Act.
  17. The Commissioner has also found that a certain amount of information contained within the complaint file is information that was generated by the public authority and its officers in the course of investigating the complaint against Herefordshire County Council. This information is typically comprised of telephone transcripts, correspondence from the public authority to Herefordshire County Council, notes made by the public authority's investigator, internal memo's and emails. It is the Commissioner's view that where such information draws upon, or makes reference to, the complaint against Herefordshire County Council or the public authority's investigation into this complaint, then this 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 into the complainant against Herefordshire County Council.
  18. A certain amount of the information generated by the public authority does not make reference to the nature of the complaint against Herefordshire County Council or information obtained as a result of the public authority's investigation into the complaint. It is the Commissioner's opinion that this information has not been obtained for the course of, or for the purposes of, the investigation and is therefore not covered by the statutory prohibition.
  19. Section 44 is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.
  20. 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

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21. The Commissioner's decision is as follows:

- The public authority complied with section 1 of the Act to the extent that it correctly applied section 44 (paragraphs 16 and 17 above).
- The public authority breached section 1 of the Act to the extent that it misapplied section 44 of the Act (paragraph 18 above).

## Steps Required

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

Disclose any information regarding the public authority's investigation into the complaint against Herefordshire County Council which was not obtained in the course of, or for the purposes of, the investigation.

23. The Commissioner has provided the public authority with a list of documents which should be disclosed to the complainant in order to meet the requirements of this decision notice.
24. 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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25. 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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26. 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 26<sup>th</sup> day of July 2007**

**Signed .....**

**Jane Durkin  
Assistant Commissioner**

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