

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 December 2009

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
West Yorkshire
LS1 1UR

Summary

The complainant requested 2 reports which the Council held relating to an investigation carried out by the Leeds City Credit Union into concerns about management following legal action taken by an employee and press articles which appeared in the local press. The Council claimed the exemption in section 41 of the Act applied. The Commissioner has considered the information and is satisfied that the information falls within the exemption in section 41 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 24 March 2009 the complainant requested the following information from the council:

"I would like to ask for the investigation reports produced by LCCU and given to Leeds City Council into the conduct of the former chief executive..."

3. The council responded on 24 April 2009. It stated that the information was exempt under section 41 of the Act. The complainant appealed that decision on

the same day. On 22 May 2009 the council responded to the appeal request, refusing the information for the same reasons.

Background

4. This request follows a series of articles in the Yorkshire Post highlighting problems and making allegations against the LCCU and the CEO in particular.
5. Initially the complainant made a request on 6 February 2008 for the following information:

"I would be grateful if the Council would provide the information it holds on the recent investigation into alleged wrongdoing at Leeds City Credit Union. This should include copies of any reports (majority and minority findings) or correspondence between the credit union and the Council."

6. This request was refused by the Council on 19 March 08 on the basis that sections 41 and 30 applied. The complainant asked the Council to review its decision on 20 March 2008. The Council refused the request on the grounds that section 41 applied, however it revoked its decision to rely upon section 30. The complainant then made a complaint to the Commissioner who began to investigate that complaint.
7. During the course of that investigation, due to subsequent events at the LCCU, the complainant made a fresh request for the same information. On 24 March 2009 the complainant requested the following information from the council:

"I would like to ask for the investigation reports produced by LCCU and given to Leeds City Council into the conduct of the former chief executive...."

8. The Commissioner wrote to the complainant and asked him if he was willing to withdraw his initial request given that all of the information he had requested in that request would also fall within this, and another request he had made to the authority. The council also agreed that this would be the case. On this basis the complainant agreed to withdraw his initial request and that case was therefore closed.

Findings of fact

9. Credit Unions are financial co-operatives owned and controlled by their members. A Credit Union has a 'common bond' which determines who can join it. The common bond may be for people living or working in the same area, people working for the same employer or people who belong to the same association, such as a church or trade union. The Commissioner understands that Credit Unions exist, in part, to provide credit for members of the community who may

- find it difficult to obtain credit from high street banks and other mainstream lenders.
10. The Credit Union started life in 1987 as the Leeds City Council Employees Credit Union serving a common bond of current and retired employees. It changed its name to the Leeds City Credit Union Ltd (the 'LCCU') in 1996 and in 2001 it expanded its common bond to include everyone who lives or works in the Leeds Metropolitan District.
 11. The Credit Union is regulated by the Financial Services Authority which is also responsible for monitoring its performance.
 12. A series of articles have been published in the Yorkshire Post newspaper alleging mismanagement of the Credit Union. The articles referred to letters from the council to the Credit Union which appeared to suggest that the council had concerns about the Credit Union's management.

The Investigation

Scope of the case

13. On 1 June 2009 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.
14. Given the complainant's agreement to withdraw his initial request (which was already under investigation) the Commissioner made the decision to continue with his previous investigation in respect of this request. Hence the chronology below includes some correspondence which occurred between the Commissioner and the council prior to the complainant's request being made
15. The Commissioner recognises that the second request was made in order to take into account further information which entered the public domain subsequent to the council receiving the first request. Recently the LCCU has needed an emergency cash input of £4 million due to a shortfall it has discovered in its cash reserves. This 'bail out' was provided by the council and other government bodies and required a substantial input of public funds from various public bodies.

Chronology

16. On 5 November 2008 the Commissioner wrote to the council stating that the cases had been allocated. He asked the council if it wished to add any further arguments in support of its position that the information was exempt from disclosure. The council responded on 17 November 2008 stating that it did not wish to do so at that time, but would be happy to clarify matters to the Commissioner if that was needed.

17. After a preliminary analysis of the complaint the Commissioner wrote to the complainant on 4 February 2009 stating that his preliminary view was that the information was likely to be exempt. He asked if the complainant was happy to withdraw his request for a decision on that basis. The complainant replied on the 9 February 2009 providing further arguments in support of the view that the information should be disclosed. He stated that he was not willing to withdraw his request.
18. On 10 March 2009 the Commissioner wrote to the council asking for clarification relating to the application of section 41 to the information. The council responded providing that clarification on 12 March 2009.
19. On 17 March 2009 the Commissioner wrote again to the complainant providing a response to the complainant's further arguments. Again he stated that his view was likely to be that the information would be exempt.
20. The complainant responded again on the same day highlighting new allegations of funding difficulties at the LCCU together with allegations of mismanagement by the former CEO. He asked that these new events be taken into account and for the preliminary decision to be reconsidered.
21. On 24 March the Commissioner responded stating that if this situation was a recent development and occurred after the council made its decision to refuse the request then he could not consider it relevant to his decision. The complainant replied stating that the recent allegations related to facts which were in existence at the time that the council made its decision, albeit that the council did not know about those facts at that time. He therefore felt that the new allegations could be taken into account. He asked the Commissioner to produce a Decision Notice in order that he could appeal the final decision should it not find in his favour.
22. On 1 June 2009 the complainant wrote to the Commissioner stating that in light of previous correspondence with the Commissioner he had made a further request for the same information. He provided further correspondence between himself and the council in relation to this request.
23. On 11 June 2009 the Commissioner wrote to the council regarding the new complaint. The council responded on 14 July 2009 providing further, additional arguments in support of its position taking into account the fact that new request clearly caught recent events at the LCCU with its scope.

Analysis

Section 41

24. Section 41(1) provides that information is exempt from disclosure if:
 - (a) it was obtained by the public authority from any other person; and

- (b) the disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
25. The initial question for the Commissioner is therefore whether the information was provided to the council from another person. If that is the case then the common law requirements for a duty of confidence to apply must also be present in order for section 41 to apply.
26. In order for the exemption to be engaged the Commissioner considers that in this case the appropriate test is that it must be shown that the information:
- was provided to the authority by another person, and
 - that a disclosure of the information would give rise to an actionable breach of confidence - which in turn the Commissioner considers in this case requires that:
 - the information has the necessary 'quality of confidence' – it need not be highly sensitive, but it must not be trivial;
 - the circumstances in which the information was provided gave rise to an obligation of confidence, in that a 'confider' provided information to a 'confidant' in the expectation, whether explicit or implied, that the information would only be disclosed in accordance with the wishes of the confider;
 - disclosure of the information would be unauthorised and to the detriment of the person(s) to whom the duty of confidence is owed, or cause a relevant loss of privacy;
 - the action would not fail on grounds which provide a legal defence to a breach of a duty of confidence, for instance that disclosure would be protected by a public interest defence.

The Commissioner accepts that the above does not constitute the only test of confidence, however he considers it appropriate to use in this case.

27. The Commissioner does not accept that all information is held in confidence merely because the parties decide together that that will be the case. Allowing this would essentially allow parties to contract their way out of their obligations under the Act. The Commissioner has therefore considered whether the information meets the necessary criteria for a duty of confidence to apply.
28. The Commissioner has firstly considered whether the information was obtained from a third party as required under section 41(1).

Was the information provided to the council by another person?

29. The reports are reports drafted after an internal investigation ordered by the board of the LCCU. The council has confirmed that the information it holds was provided to it by whistleblowers and the board of the LCCU.

30. The Commissioner is satisfied that the first element of the section 41 exemption has been met as the reports were obtained from other persons.
31. The Commissioner has therefore considered whether the requirements for an actionable duty of confidence are present.

Quality of confidence

32. In order to decide whether the information has the necessary quality of confidence the Commissioner must consider whether the information is otherwise accessible and/or whether the information is more than trivial.
33. The council has argued that the withheld information is not otherwise accessible. In its letter to the complainant dated 17 June 2008 it stated that the information had been provided to it by the LCCU, and that the documents are marked private and confidential. It has also stated that one of the reports was provided to it by a whistleblower.
34. The council recognised that this "confidential" marking does not of itself mean that the information automatically falls within the scope of section 41 and so it considered further whether the criteria applied. It stated that it has also considered whether time had eroded the need for confidentiality, however it had at the time of the original request only held the information for "a short time" and the information was still relevant and sensitive. By the time of this, second request further information had become known relating to the funding problems at the LCCU and the reports were still relevant because the issues addressed within the reports are likely to have relevance to the deficit within the LCCU's finances.
35. The council has stated to the complainant that it believes that he may already hold a copy of one of the reports following the publication of a story by the complainant which referred to sections from it. The complainant has also stated to the council that he has had sight of some (if not all) of the information he has requested already. It is suggested that this was obtained from a "leak" or a whistleblower. However, the fact that a person discloses information in breach of a duty of confidence does not mean that a public authority is then entitled to disclose that information as if that duty no longer exists.
36. The Commissioner has therefore considered whether the information which is already in the public domain means that in essence the confidential information is already known and accessible. He notes that allegations were published in the Yorkshire Post and that the reports in part address those allegations. Therefore some of the information will already be in the public domain. However where information is published only in part, confidence will still protect the undisclosed parts of the information. In this case, although stories relating to the incidents at the LCCU have been published not all of the information is known more widely, and it retains its significance to the parties involved.
37. Following from the above, the Commissioner notes that a large amount of the information is now in the public domain through one means or another, and this must be taken into account when considering whether the necessary quality of

confidence still exists. However the detail of the reports is not widely known and the Commissioner does not therefore consider that the current level of information in the public domain prevents the necessary quality of confidence from being retained.

38. The Commissioner is further satisfied that the information is not trivial. The information embodies a private interest worthy of protection, since it relates to the Yorkshire Post's allegations of mismanagement by the CEO and others. It therefore has the potential to prove professionally embarrassing to those involved in it. The Commissioner also recognises that a furtherance of stories which have appeared in the Yorkshire Post because of the disclosure of this information could impact upon consumer confidence in the credit union as well as damage its commercial reputation. This is particularly so given recent events requiring the council and other authorities to provide £4 million emergency funding to the LCCU to ensure its continued viability, and following the overall concerns about the banking system which have arisen in the last year.
39. For this reason the Commissioner has concluded that the information retains the necessary quality of confidence.

Obligation of confidence

40. The Commissioner has gone on to consider whether the information was imparted in circumstances giving rise to an obligation of confidence. He asked the council to confirm the conditions under which it obtained copies of the reports. The council explained that one of the reports was given to it in confidence by a whistleblower, and the other was provided to it, also in confidence, by the board of the LCCU.
41. He notes that the board issued the following response to the Yorkshire Post's inquiries about the decision to instigate a review:

"In the light of the success and rapid expansion of Leeds City Credit Union we are continually reviewing all aspects of management and performance.

We have set up a panel of directors to examine the role, responsibilities and performance of management. This panel will report back to the Board with any necessary recommendation to ensure the highest standards of professionalism, accountability and transparency.

The Yorkshire Post can be assured that issues it has raised will be considered as part of the review"

42. However the Commissioner also notes that the introduction to the report highlights that at a later meeting the board added to the terms of reference for the investigation and added that it felt that the report should specifically investigate the allegations made by the Yorkshire Post with a view to producing a report for which could be provided to "interested parties". The term "interested parties" was not clarified however.

43. As the reports were drafted specifically for the purposes of the board of the LCCU and for “interested parties” the Commissioner is satisfied that there was no specific intention to publish this information widely. The Commissioner notes that in the letter providing a copy of one of the reports to the council the LCCU specifically asks for comments from the council, and in doing so it states quite clearly that that response should be provided to a specific member of the board at the LCCU and should be labelled “private and confidential”. The Commissioner further notes that a footnote on one of the reports highlights the intention for it to be considered confidential.
44. The Commissioner is therefore satisfied that the board had the intention of providing the information to a limited number of parties only. This limited intention does not therefore weaken the creation of any obligation of confidence.
45. The Commissioner has also considered the nature of the information. They are, in part, reports instigated as a result of serious allegations which were made against the CEO by the Yorkshire Post. In addition to being designed for other purposes, the reports are also therefore an employer’s investigation into allegations which have been made against some of its employees. That investigation would therefore have fallen within the implied duty of confidence which has historically been recognised between an employer and an employee. A wider disclosure of the report would clearly be considered to be a breach of that duty.
46. Although there is no absolute test of what constitutes a circumstance giving rise to an obligation of confidence, in *Coco v Clark Megarry J* suggested that the ‘reasonable person’ test may be a useful one – “If the circumstances are such that any reasonable man standing in the shoes of the recipient of the information would have realised that upon reasonable grounds the information was being given to him in confidence, then this should suffice to impose upon an obligation of confidence.”
47. The Commissioner notes that some of the information was provided by a whistleblower. The council confirmed that it was received from a confidential source at the LCCU, and the Commissioner is satisfied that the information was provided in confidence given that the whistleblower provided it directly to an officer of the council responsible for ensuring that council funds were being used appropriately. He is also satisfied that that is the case given the nature of the information within the report, although the Commissioner is unable to elaborate further upon this within this Decision Notice.
48. The Commissioner is satisfied that due to the nature of the information in question, together with the way in which the reports were provided to the council that an obligation of confidence exists.

Detriment to the confider

49. The third element of the test of confidence involves the likely detriment to the confider if the confidence is breached. In some cases, for example involving the personal information of individuals acting in their private capacities, there is no

- need to prove the element of detriment. Indeed the Information Tribunal has taken the view that the loss of privacy is a sufficient detriment in itself.
50. The withheld information relates generally to the governance arrangements and the management of the LCCU, and it is clear that the central focus in the articles which were published was the actions and competence of the CEO. In an undated email to the council the complainant stated to the council *“You also referred to the LCCU’s ‘business affairs’. The investigation was not about its business affairs but specific actions of wrongdoing carried out by specific individuals - very definitely not some general investigation about the level of interest it offers or whether it’s sufficiently staffed, for example.”* Given that the LCCU board stated that the reports were in part a response to those articles it is clear that one of the central emphasis in those reports is an examination of the allegations made against the former CEO.
 51. The council argued that a disclosure of the information would prove detrimental to the commercial interests of the LCCU, particularly at a time when it is seeking to recover from the stories relating to the deficit which it discovered in its books, and at a time when concerns about banks and building societies remains high given recent events and the economic downturn. The Commissioner recognises that any damage to the professional reputation of the former CEO is also likely to be closely allied to damage to the LCCU’s reputation.
 52. The council argues that a disclosure of the information would impact upon consumer confidence in the credit union. It argues that a disclosure of this information would fuel further media stories, and that this would in itself be commercially damaging to consumer confidence in the Credit Union.
 53. The Commissioner is satisfied that the arguments above have merit. A disclosure of the information would have increased concerns regarding the situation at the Credit Union, potentially increasing the loss of confidence in it following the press stories published by the complainant. The council is unable to take into account the likely or proposed use of the information which would be disclosed by the complainant, however a disclosure under FOI is considered to be global. Hence the Commissioner has not taken into account the potential actions of the complainant in deciding that a disclosure would have a detrimental affect on consumer confidence in the LCCU.
 54. The Commissioner also notes that the LCCU would suffer further detriment as a result of a disclosure of this information. It provided this information, in confidence, to a limited number of interested parties in order to alleviate any concerns they may have had after the publication of the news articles. If this information were subsequently to be disclosed to the general public under an FOI request then the LCCU could prove to be in breach of the implied duty of confidence between an employer and its employees which it owes to those employees whose actions are explored in the reports. It would in any event find itself in a position where it would be unlikely to be able to provide full and frank reports of that nature to third parties in support of its functions again.

55. The LCCU may therefore find that it is unable to actively engage with the council at such a level in the future because it would owe a duty to its membership to protect its, (and their) interests and could not guarantee that information it provided to the council would not be disclosed more widely. As an example, in the current situation, the LCCU may not have been able to provide as much detail as was needed by the council in order to allow it to provide it with the bail out money of £2 million. It would also be detrimental if information could not be provided to the council on a full and frank basis in order for the LCCU to agree partnership deals with it to provide additional services in particular areas.
56. The Commissioner has further considered whether any detriment might occur to the whistleblower in this instance. It seems likely that the whistleblower did not want the disclosure of the information to be known more widely than by the council. He has surmised this given that it was open to the whistleblower to provide the information to the Yorkshire Post or other media outlets directly so that it would enter into the public domain. Clearly disclosing the information in this way would have been damaging to the Credit Union for the reasons described above. The individual did not do that, but chose instead to pass the information to the council in order for it to take the steps it thought appropriate. The Commissioner therefore recognises that if this information was disclosed in response to a freedom of information request this could cause a chilling effect on whistleblowers choosing to provide such information to authorities in the future given that there appears to have been no initial intention for this information to be disclosed more widely.
57. Further to this, if the information is more widely disclosed this may raise further questions about the identity of the whistleblower. Clearly press speculation may lead to that person being identified. A disclosure of the identity of this individual would be an infringement on his or her privacy, which was identified by the Information Tribunal as a detriment in its own right in the case of (Pauline Bluck v IC & Epsom & St Hellier University NHS Trust (EA/2006/0090).

Would an unauthorised disclosure be actionable?

58. The Commissioner must also consider whether the LCCU could take action against the council in order to prevent that information from being disclosed if it chose to do so. He has established above that all of the necessary criteria for a duty of confidence to arise are in place; however there are a number of defences to a disclosure of confidential information which prevent action being taken against the discloser. The Commissioner has therefore gone on to consider whether there would be any defence to an unauthorised disclosure of the information.

The public interest defence

59. The Commissioner has considered whether an action for a breach of confidence would fail because the disclosure of the information would be protected by a public interest defence.
60. In *Derry v ICO* (EA/2006/0014) the Information Tribunal clarified that the test to be applied in deciding whether the public interest provides a defence to a breach of a duty of confidence is that the duty should be maintained unless the public interest in disclosing the information outweighs the public interest in protecting confidences.

Public interest in disclosing the information

61. The Commissioner recognises there is a strong public interest in this information being disclosed. The LCCU manages funds of about £30 million and has 20,000 members using its services. Allegations about mismanagement have been published in the *Yorkshire Post* on a number of occasions. These stories raised serious concerns about the governance of the LCCU and thereby the safety of members' money. Those concerns will have been heightened further given the news articles relating to the funding deficit, and subsequent disclosures by both *Yorkshire Police* and the LCCU relating to an ongoing police investigation.
62. Taxpayers also have an interest in the situation given the £4 million bail out from taxpayers' money that has recently been provided to it, together with the fact that the council is a stakeholder in the LCCU and the LCCU operates from some premises which have been provided by the council.
63. A disclosure of the information would throw light on the LCCU's findings as regards these original allegations published in the *Yorkshire Post*. It might also help to inform public debate about the council reengagement with the LCCU in the form of the recent funds it has provided to "bail out" the LCCU.
64. Such a significant input of public funds greatly strengthens the public interest in the disclosure of information in the event that it might illuminate the circumstances which led to that situation. It is recognised however that when the reports were produced this funding gap was not known about, and it is not a subject which arises within the report. As such a disclosure would not be particularly of use in this respect.
65. A strong public interest reason for disclosing this information would be to show that the council is accountable for the funds and services it provided to the LCCU, that it properly scrutinised its interests and that it sought to safeguard the use of the public money and premises it provided to the LCCU.
66. The Commissioner recognises however that the information does not highlight the council's actions or the reasons for any decisions taken by the council, (e.g. reasons why it decided to provide taxpayers money to bail out the LCCU). It shows the steps which the LCCU took to investigate the allegations rather than actions taken by the council. He also recognises that a disclosure of that

information may in fact prove detrimental to its ability to do that in the future. This is explained further below.

67. The complainant has stated that the reports' findings and subsequent events have not been debated in open council and that decisions made by the council are not therefore accountable in any way. The Commissioner recognises however that delegated responsibility for decision taking is a normal practice in many organisations and that accountability can coexist with this way of working. He therefore does not place a great deal of weight on these arguments.

The public interest in maintaining confidences

68. The Commissioner notes that the courts have generally taken the view that the grounds for breaching confidentiality must be strong ones, since confidentiality is recognised as an important value in itself. There is a public interest in maintaining trust and preserving the free flow of relevant information to public authorities to enable them to perform their functions. This argument has a particular strength in the case of information provided by whistleblowers. The duty of confidence protects the necessary relationship of trust between the confider and the confidant, thereby operating to serve the public interest. The disclosure of confidential information may undermine that relationship.

69. In the case of *Bluck*, the Information Tribunal quoted from the Lords decision of *Attorney General v Guardian Newspapers* [1990] 1AC109:

'as a general rule, it is in the public interest that confidences should be respected, and the encouragement of such respect may in itself constitute a sufficient ground for recognising and enforcing the obligation of confidence...'

70. Historically, a duty of confidence has only been disapplied by the courts in very limited circumstances. Examples of cases where the courts have required disclosure in the public interest include those where the information concerns misconduct, illegality or gross immorality.
71. There are effectively two different confidences which are engaged by the consideration of the disclosure of this information in this case. It has been recognised historically in law that an employer owes a duty of confidence on some information it obtains on its employees in its role as employer; for instance information on health, personal circumstances and disciplinary information. Whilst this does not equate to a maximum level of confidentiality on all information which is held on the employee, the LCCU does however owe a duty to its employees to ensure potential disciplinary investigations into their conduct are maintained in confidence under that duty. It is recognised however that some details providing an overview of misconduct or criminality by an employee have been disclosed in some cases in the past.
72. The Commissioner notes that much of the withheld information involves the actions of individuals, some of which relate to potential disciplinary issues. The council claimed section 40 (personal information) for much of this information,

however the Commissioner has also taken into account the nature of the information when balancing the public interest test in this instance. He recognises that there is a strong public interest in protecting the employer/employee relationship of trust and confidence. He also recognises that the reports are drafted more widely than this however as they also address corporate management at the LCCU and its compliance with banking and credit union requirements.

73. In considering the public interest arguments the Commissioner has also taken into account the fact that the LCCU is regulated in its business dealings by the Financial Services Authority rather than the council. The council has no powers to compel the LCCU to provide it with information to allow it to scrutinise the management of the organisation or of the actions of individual employees within that organisation. If the LCCU refused to provide information in order to satisfy the concerns of the council its only means of recourse was to threaten to withdraw or withhold funding to the LCCU until such time as its concerns were satisfied.
74. In this specific instance if the council had not engendered the relationship it had with the LCCU it would not have been able to gain access to the information in this case. It was clearly an interested party due to the fact that LCCU business was being conducted from council premises, and the two had often worked in partnership on specific projects aiming to reach common goals for the benefit of the community. That relationship remains ongoing and is of vital importance given the recent emergency funding the council has provided to the LCCU.
75. If information is disclosed which was supplied to the council in confidence, then the degree of trust in the council to hold that information in confidence would be damaged. Clearly if that is the case then organisations or individuals would potentially reconsider providing sensitive or confidential employment, financial or corporate information to authorities in the future.
76. A refusal to provide this information could damage the council's ability to properly scrutinise the use of its funds, and could ultimately lead the council into making a decision to withdraw funding from projects completely because of its inability to guarantee that the funding was being used appropriately.
77. Whilst the council can refuse to fund organisations if information it requires is not accessible to it, the Commissioner considers that the council's funding of such organisations is intended to benefit the local community in some way, and a withdrawal of that funding would therefore itself not be in the public interest. In this case ensuring the continued existence of the credit union in Leeds is likely to be of increased importance given that the economic downturn is likely to have increased the need for credit facilities in many areas of the community, and so it is essential that a relationship of trust and confidence remains.
78. The Commissioner has balanced all of the above considerations. His view is that the public interest in the information being disclosed in this case does not outweigh the public interest in confidences being maintained.

Conclusions

79. In conclusion, the Commissioner considers that one of the main public interest factors in the maintaining of confidences in this instance is that if confidential information is disclosed the degree of trust such bodies have in the council to hold the information they provide to it in confidence would be damaged. Organisations could then reconsider the information they provide to councils in the future, thereby damaging the council's ability to properly scrutinise the use of its donations. If councils are unable to ensure the proper use of funding then it may refuse to fund organisations and the benefits of such activities to the general public would potentially be lost.
80. The council must be able to ascertain that senior management at an organisation are fit to be in such a position where they are managing public funds. In order to do that it must be able to receive information from a variety of confidential sources with some ability to provide legitimate assurances of confidentiality. Of equal importance is the ability of the organisations to supply information to the council which would satisfy that need, without risking its own position through the potential disclosure of information it holds in confidence being disclosed into the public domain. If organisations find themselves unable to do this then the risk is that such partnerships will become less viable in the future.
81. The Commissioner has balanced all of the above considerations. His view is that the public interest in the information being disclosed in this case does not outweigh the public interest in confidences being maintained. The damage which could be caused to the council's ability to properly scrutinise organisations to which it makes donations is not in the public interest. If in disclosing this information it finds it necessary to breach personal confidences owed between the employer and the employee of a private company then it is far less likely that such organisations will agree to provide information of such a personal nature to it in the future. Additionally the cessation of the aid that it can provide to charities and organisations if it is unable to obtain information which can demonstrate the use of those funds would also not be in the public interest. Similarly if their intention was primarily to highlight issues with interested parties, whistleblowers may be less inclined to provide "private" information to stakeholders in confidence if they believe that that information may subsequently be disclosed into the wider public domain in any event.
82. The Commissioner's decision is therefore that the public interest in disclosing the information does not outweigh the public interest in maintaining confidences in this instance, and that section 41(1) is therefore engaged. There would be no public interest defence to a disclosure of the information.

Section 40

83. The council also claimed that the information was exempt under section 40 of the Act. Given that the Commissioner has decided that the information is exempt under section 41(1) he has not gone on to consider the application of section 40 further.

Section 30

84. The council also claimed that the information was exempt as the exemption in section 30 of the Act was applicable. As the Commissioner's decision is that section 41(1) applies to this information he has not considered the application of section 30 further

The Decision

85. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it correctly applied the exemption at section 41(1).

Steps Required

86. The Commissioner requires no steps to be taken.

Right of Appeal

87. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 21st day of December 2009

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
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Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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.