

Environmental Information Regulations 2004

Decision Notice

Date: 11 August 2011

Public Authority: Portsmouth City Council
Address: Civic Offices
Guildhall Square
Portsmouth
PO1 2AL

Summary

The complainant asked whether the Council had access to databases of the Serious and Organised Crime Agency and whether it had a partnership agreement in place with that Agency. The Council applied both sections 30 and 31 of the Act and refused to provide the requested information. During the course of the Commissioner's investigation the Council sought to rely on the exemption provided by section 23 of the Act. The Commissioner found that section 23(1) of the Act was engaged. The Commissioner found a procedural breach in the way the request was handled but requires no steps to be taken.

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 19 November 2010 the complainant made the following request to Portsmouth City Council (the "Council"):

"Please supply details of the formal partnership agreement between the Serious and Organised Crime Agency [SOCA] and Portsmouth City Council, as end user, regarding use of the Elmer database."

3. The Council responded on 30 November 2010 and stated that it did not hold the information requested.
4. This led the complainant to submit the following further request on 30 November 2010:

“To clarify your response, could you confirm whether:

1. the Accredited Financial Investigator employed by Portsmouth City Council has access to the Elmer database of the Serious and Organised Crime Agency, either through SOCA's UK Financial Intelligence Unit's MoneyWeb intranet-based reporting system or through any other portal?
 2. the Accredited Financial Investigator employed by Portsmouth City Council has access to any other database of the Serious and Organised Crime Agency?
 3. Portsmouth City Council, as the end-user, has a formal partnership agreement with SOCA?”
5. The Council refused the request on 8 December 2010. It refused to confirm or deny whether it held the information requested and stated that the exemption provided by section 30 (investigations conducted by a public authority) of the Act was engaged.
 6. On 21 December 2010, the complainant requested an internal review of the Council's handling of her request. She disputed the application of section 30 of the Act.
 7. The Council issued its response on 21 January 2011. The Council confirmed that it held information that would allow it to answer the three questions posed in the request of 30 November 2010 but said that it considered section 30(2) of the Act to be engaged. The Council also said that it considered section 31(1)(a) (the prevention or detection of crime) of the Act to be engaged. The Council found that the public interest favoured maintaining the exemptions.

The Investigation

Scope of the case

8. On 27 January 2011 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 Council's response of 30 November 2010 was that the information requested was not held but the Council had not advised her where she could obtain the information.
 - The Council's email to her of 20 December 2010 did not include details of her right of her appeal to the Commissioner and was dismissive and patronising.
 - Subsequent to her initial request, the complainant discovered that "SOCA has a blanket FoI exemption" and the fact that this was not used by the Council indicated that it was not aware of it.
 - She disputed the application of section 30 of the Act.
9. In further correspondence with the Commissioner the complainant stated that the purpose of her complaint was to understand why the Council had sought to withhold the information requested.
10. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
- The complainant clarified that she was not pursuing a complaint about her request of 19 November 2010.
11. The Commissioner's role in dealing with complaints under section 50 of the Act is to determine whether requests have been handled in line with the requirements of the Act. His role is not to consider the motives behind a public authority's application of the exemptions and his investigation in this case focused on whether the Council had appropriately applied the provisions of the Act.

Chronology

12. On 3 March 2011 the Commissioner wrote to the Council to notify it that he had received a complaint and to ask for further information to support its position in this case. The Council responded on 31 March 2011 and said that it had applied sections 30(2) and 31(1)(a) of the Act. In the case of both section 30(2) and 31(1)(a) the Council found that the public interest test favoured maintaining the exemption.
13. The Commissioner wrote to the Council again on 23 May 2011 in order to clarify the Council's position and received responses on 23 June 2011 and 12 July 2011. The Council clarified that having reconsidered the matter it considered that section 23 of the Act was the most appropriate exemption to disclosure and that it was applying it to the request of 30 November 2011 in its entirety.

Analysis

Exemptions

Section 23 – Information supplied by or relating to bodies dealing with security matters

14. As detailed in paragraph 13, above, during the course of the Commissioner's investigation the Council sought to rely on the exemption provided by section 23 of the Act in relation to the request of 30 November 2010 in its entirety. The Council has confirmed that it holds information that would enable it to answer the questions put forward by the complainant in her request but stated that it considered that information to be exempt and refused to provide answers to her request.
15. Under section 23(1) of the Act, information held by a public authority is exempt from disclosure if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3) of the Act. The full text of section 23 is set out in the legal annex at the end of this Notice. The exemption is class-based, which means that there is no requirement to consider the effect of disclosure. It is also an absolute exemption, which means that the public authority is not required to consider the public interest test.
16. In reaching a decision on whether the exemption is engaged, the Commissioner has considered whether the requested information could be considered as having been supplied by, or relating to a security body listed in section 23(3). This subsection lists bodies dealing with security matters, such as, the Security Service, the Secret Intelligence Service and the Government Communications Headquarters. Those bodies in subsection (3) include SOCA, the body which is explicitly named in the request. SOCA was added to the list of section 23(3) bodies by Schedule 4 (paragraph 159) of the Serious Organised Crime and Police Act 2005¹.
17. The Commissioner is of the view that the term "relates to" can be interpreted broadly, and will not be limited in scope to information "about" a security body. This case is slightly unusually because the request asked the Council to confirm or deny whether it had access to any SOCA databases and whether it had a formal partnership agreement with SOCA; ie it did not ask for the disclosure of any documentation and posed questions that required a 'yes or no' answer. While the Council has confirmed that it holds information that would answer the request

¹ <http://www.legislation.gov.uk/ukpga/2005/15/schedule/4/paragraph/159/prospective>

the Commissioner did not feel it necessary to inspect copies of that information. In his view, if the Council were to answer the questions with either a positive or negative response it would clearly involve the disclosure of information that relates to SOCA.

18. The Commissioner's view is that section 23(1) of the Act has been appropriately applied to the requested information. Section 2(3) of the Act provides that section 23 confers an absolute exemption to disclosure and there is no need for the Commissioner to consider the public interest test. Having found that section 23(1) of the Act was engaged, the Commissioner did not need to consider the Council's application of other exemptions.

Procedural Requirements

19. Section 17(1)(b) states that a public authority applying an exemption to disclosure should, within the statutory time for compliance, issue a refusal notice specifying the exemption in question. By failing to clarify in its refusal notice that it relying on section 23(1), the Council breached section 17(1)(b) of the Act.

The Decision

20. 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:

- It correctly applied section 23(1) of the Act.

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

- The Council breached section 17(1)(b) of the Act by failing to specify that it was relying on the exemption provided by section 23(1).

Steps Required

22. The Commissioner requires no steps to be taken.

Right of Appeal

23. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 11th day of August 2011

Signed

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

Legal Annex

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

Information supplied by or relating to, bodies dealing with security matters

Section 23(1) provides that –

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)."

Section 23(2) provides that –

"A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact."

Section 23(3) provides that –

"The bodies referred to in subsections (1) and (2) are-

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,

- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the Security Service Act 1989,
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and
- (l) the Service Authority for the National Criminal Intelligence Service."

Section 23(4) provides that –

"In subsection (3)(c) "the Government Communications Headquarters" includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions."

Section 23(5) 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 was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)."