

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 September 2013

**Public Authority:** Blackburn with Darwen Borough Council

**Address:** Blackburn Town Hall

Blackburn

BB1 7DY

### **Decision (including any steps ordered)**

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1. The complainant requested information from Blackburn with Darwen Borough Council (the Council) about the PREVENT programme. The Council provided some information but withheld the remainder citing the section 31 exemption (law enforcement).
2. The Commissioner's decision is that some information was incorrectly withheld under sections 31(1)(a) (prevention or detection of crime) and (b) (apprehension or prosecution of offenders).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - disclose to the complainant the information identified in the confidential annex.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Request and response**

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5. The complainant wrote to the Council on 8 November 2012 and requested information in the following terms:

*"1) The total budget for PREVENT in Blackburn with Darwen Borough Council for each year starting 2007 to present.*

*2) A list of organisations that have received PREVENT funding together with the amount and the main objective of the funding in each particular case.*

*3) Which council department is responsible for allocating PREVENT funding?*

*4) Is there a PREVENT focus/steering group? Who and what bodies does it consist of?*

*5) Please attach any documents/research that the council has undertaken to assist its decision making process of allocation and areas to focus on.*

*6) What procedures/measures does the council undertake to ascertain the level of success in the intended objective of a particular PREVENT programme?"*

6. The Council responded on 5 December 2012. It appears not to have addressed point (6) of the request. However it provided some information within the scope of the request – namely in respect of parts (1), (3) and (4) but refused to provide the remainder. It cited the law enforcement exemption (section 31) as its basis for doing so.
7. The complainant requested an internal review of the Council's response to parts (2) and (5) of his request on 8 December 2012. The Council sent him the outcome of its internal review on 7 January 2013. It upheld its original position, confirming its application of section 31(1)(a) and (b).

## **Background**

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8. The Council explained to the Commissioner that PREVENT is part of the Government's strategy for countering international terrorism.
9. The Commissioner understands that a new PREVENT strategy was launched by the Home Secretary in June 2011 as part of the Government's policy of protecting the UK against terrorism, the objective of that strategy being:

*"to prevent people being drawn into terrorism" .*

10. According to the Home Office website<sup>1</sup>, PREVENT is an integral part of the Government's counter terrorism strategy. The aim of PREVENT is to stop people becoming terrorists or supporting terrorism:

*"Prevent will address all forms of terrorism, including the extreme right wing. However, it is clear that Prevent work must be targeted against those forms of terrorism that pose the greatest risk to our national security".*

### **Scope of the case**

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11. The complainant contacted the Commissioner on 24 January 2013 to complain about the way his request for information had been handled. He advised that the request in this case was made through the 'whatdotheyknow' website, and therefore:

*"the whole communication is in the public domain".*

12. The Commissioner notes from reading that communication that the complainant does not query the apparent lack of response to point (6) of his request. Accordingly, the Commissioner wrote to the complainant advising that his investigation would look at whether the Council is entitled to rely on section 31 as a basis for refusing to provide the information he requested at points (2) and (5) of his request.

13. In further correspondence the complainant made a number of points, including telling the Commissioner:

*"The Council needs to be reasonable about this matter.*

*Firstly Blackburn with Darwen Borough Council already published information in 2009 after requests were made throughout the UK by the TaxPayers Alliance.....*

*The same laws regarding Freedom of Information apply now as they did back in 2009. Why the inconsistency?"*

14. Although the Commissioner understands from the complainant that the Council would appear to have complied with similar requests, he does not consider that this sets an automatic precedent for disclosure under

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<sup>1</sup> <https://www.gov.uk/government/publications/prevent-strategy-2011>

FOIA. In the Commissioner's view, each case must be considered on its merits.

15. During the course of his investigation, as is his practice, the Commissioner asked the Council to provide him with a copy of the withheld information, clearly marked with the applicable exemptions. The Council complied. However, it was not clear which part of the documentation provided to the Commissioner related to part (5) of the request.
16. The Commissioner asked the Council to provide further explanation. The Council responded by saying:

*"...the use of 31(1) is incorrect and the correct position is the information 'is not held for point 5' [of the request]"*.
17. The Council wrote to the complainant explaining that it had reviewed its response in relation to part (5) of his request. The Commissioner also wrote to the complainant, asking him to contact him if he disputed the Council's statement that it does not hold information within the scope of that part of the request.
18. In the absence of a response from the complainant, the Commissioner considers the scope of his investigation to be the Council's application of section 31(1)(a) and (b) to the information within the scope of part (2) of the request.

## **Reasons for decision**

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### *Section 31 law enforcement*

19. Section 31 provides a prejudice based exemption which protects a variety of law enforcement interests. For the exemption to be engaged it must be at least likely that the prejudice identified would occur. Even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
20. In this case the Council has applied the exemptions at section 31(1)(a) and (b) to the information it holds that falls within the scope of part (2) of the request.
21. Section 31(1)(a) of the FOIA provides an exemption where disclosure would, or would be likely to, prejudice the prevention or detection of crime. Section 31(1)(b) provides an exemption where disclosure would, or would be likely to, prejudice the apprehension or prosecution of offenders.

22. In requesting an internal review, the complainant said to the Council:

*"To request (a) the name of the organisations, and (b) the amount of money they have received, has nothing to do with what the Freedom of Information Act allows for exemption. These matters within the statute are to do with policing matters and have no correlation to the listing of organisations who are recipients of PREVENT funding / taxpayers money, how much they are getting, and the purpose of the funding."*

23. In the Commissioner's view, section 31(1)(a) will cover all aspects of the prevention and detection of crime. It is also his view that the exemption covers information held by public authorities without any specific law enforcement responsibilities. For example, it can be used by a public authority that has no law enforcement function to protect the work of one that does. The Commissioner considers that the exemption could be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime.

24. The Commissioner asked the Council to explain why disclosure of the information would prejudice, or be likely to prejudice, the functions which sub-sections 31(1)(a) and (b) are designed to protect. He also asked the Council to provide evidence which demonstrates a clear link between disclosure of the information that has been requested and any prejudice which may occur. He asked the Council to clarify whether its view was that prejudice *would* result, or *would be likely* to result.

25. During the course of his investigation, the Council provided the Commissioner with its arguments in support of its application of the exemptions at section 31(1)(a) and (b). Due to their nature, the Commissioner has considered some of those arguments in a confidential annex which will be provided to the public authority only.

#### *The applicable interests*

26. The public authority must show that the prejudice it envisages would affect the particular interest that the exemption is designed to protect. In this case, the relevant applicable interests are the prevention or detection of crime and the apprehension or prosecution of offenders.

27. Having considered its submissions, the Commissioner accepts that the Council's arguments relate to the law enforcement activities that the exemption is designed to protect.

#### *The nature of the prejudice*

28. Apparently referring to both sections 31(1)(a) and (b), the Council told the complainant:

*"The exemption applies due to sensitivity of some organisations being identified as participating in the delivery of the Prevent programme. Given the sensitivities around Prevent funding and provider status, disclosure would undermine our preparedness to deliver the programme in response to identified threats and vulnerabilities and reduce capacity in the future. Future strategies or operations may be prejudiced if information relating to specific areas of threat and vulnerabilities are inappropriately disclosed into the public domain undermining our ability to respond with potential implications for safety of the general public (sic)".*

29. It also said:

*"any information identifying the focus of anti-extremist activity could be used to the advantage of terrorists or criminal organisations. Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both national security and law enforcement".*

30. The Commissioner considers that some of the Council's arguments in relation to the public interest test - an issue which falls to be considered when, or after, the decision has been taken that the exemption is engaged - could be considered relevant to the nature of the prejudice. For example:

*"In many cases, those organisations involved in the PREVENT activities do so anonymously specifically to avoid community reprisal".*

*The likelihood of prejudice*

31. The Council told the complainant:

*"... disclosing the names of organisations that receive funding would be very likely to prejudice their future involvement in the PREVENT programme".*

32. During the Commissioner's investigation, the Council confirmed its view that disclosure in this case 'would' (as opposed to 'would be likely to') have a prejudicial effect "in that disclosure to the public at large would hinder the prevention and detection of crime".

*Would disclosure prejudice law enforcement?*

33. In the Commissioner's view, the exemptions provided by sections 31(1)(a) and (b) serve to protect society from crime.

34. In considering whether the exemption is engaged in this case, the Commissioner is mindful that the withheld information in this case comprises a list of organisations that have received PREVENT funding together with the amount of funding and the main objective of the funding in each particular case.
35. Having considered the information that the Council considers falls within the scope of the request, and its arguments with respect to section 31(1)(a), the Commissioner does not find the exemption engaged in respect of all of the information at issue. Likewise, having considered the Council's submissions with respect to section 31(1)(b) in relation to the same information, the Commissioner does not find the exemption engaged in respect of all of the information.
36. Specifically he does not find the exemption engaged in respect of the amount of funding and, in some cases, the main objective of the funding. In the circumstances of this case, he does not find it plausible that the disclosure of amounts of money would be prejudicial to law enforcement. Similarly, where the funding objective is described in generic terms, he does not accept that disclosure of such information would prejudice the functions sub-sections 31(1)(a) and (b) are designed to protect.
37. Accordingly he orders disclosure of that information. For the avoidance of doubt, he has described the information to be disclosed in the confidential annex.
38. The Commissioner has gone on to consider the public interest test in respect of the withheld information that he considers engages the exemptions at section 31(1)(a) and (b) – namely the list of organisations that have received funding and, where applicable, the main objective of the funding.

*The public interest test*

39. Although it told the complainant that it had conducted a public interest test, in the Commissioner's view the Council failed to explain clearly what arguments were taken into account in reaching its decision regarding the public interest. It was not until the Commissioner's investigation that it did so.

*Public interest arguments in favour of disclosing the requested information*

40. In the complainant's view:

*"Arguably it is in the public interest to know where public money is going".*



41. He also told the Commissioner:

*"Members of the community have the right to know who is working with and receiving funding from PREVENT in order that an informed choice can be made about who they work with".*

42. The Council recognised the public interest in transparency. It told the Commissioner that disclosure in this case:

*"...could provide a better understanding to the community of the ... reasoning behind the funding. There has been and continues to be a wide-ranging national interest in this project and release of information would contribute to the quality and accuracy of public debate".*

*Public interest arguments in favour of maintaining the exemption*

43. In favour of maintaining the exemption the Council cited *"sensitivities regarding the identification of the participating organisations"*. Further relevant submissions are referred to in the confidential annex to this notice.

*The balance of the public interest – section 31(1)(a)*

44. The Commissioner has first considered the public interest arguments in respect of the prevention and detection of crime. In doing so, he notes that, in this case, the public interest arguments put forward by the Council in relation to section 31(1)(a) are broadly similar to those cited in relation to section 31(1)(b).

45. The Council told the Commissioner:

*"In summarising the public interest test, the Council considered that the importance of citizen safety far outweighed the transparency of public spending and the potential to assist community cohesion in this instance".*

46. In this case, the Commissioner considers that the public interest arguments for disclosure are based on the general principles of accountability and transparency. In contrast, in the Commissioner's view, there will always be strong grounds for protecting information that may result in the prevention and detection of crime.

47. Having given due consideration to the opposing public interest factors in this case, the Commissioner's decision is that the public interest in avoiding prejudice to the prevention and detection of crime outweighs the public interest in disclosure in all the circumstances of this case.



48. Having reached that conclusion in respect of section 31(1)(a), the Commissioner has not gone on to consider separately the public interest with respect to the Council's application of section 31(1)(b) to the same information.

## Right of appeal

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49. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

50. 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.
51. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

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