

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2014

Public Authority: Staffordshire County Council
Address: County Buildings
PO Box 11
Martin Street
Staffordshire
ST16 2LH

Decision (including any steps ordered)

1. The complainant has requested from Staffordshire County Council ('the council') a list of internal audit reports. The Commissioner's decision is that the council has incorrectly applied the exemption for prohibitions on disclosure at section 44 of the FOIA.
 2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - Disclose the requested list of Internal Audit reports and the assurance given.
 3. The public authority must take this step 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.
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Request and response

4. On 18 July 2013, the complainant wrote to the council via the WhatDoTheyKnow website¹ and requested information in the following terms:

"Please provide me with a list of all Internal Audit Reports - High Risk Reviews plus Limited Assurance Reviews plus Special Investigations in the last 12 months.

Please include the assurance given for each report plus a list of any follow-up reports."
5. The council responded on 16 August 2013 and refused to provide the requested information citing the exemptions at sections 21 and 44 of the FOIA.
6. The complainant requested an internal review on 27 August 2013. The council provided its internal review response on 17 October 2013. It maintained its original position in relation to sections 21 and 44 of the FOIA and also cited the exemption at section 12 of the FOIA to 'more informal reports' that 'may have been completed by service areas'. It also clarified that it was applying section 44 by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 ('the LGA').

Scope of the case

7. Following a previous complaint to the Commissioner regarding the time taken by the council to carry out an internal review of this request (case reference number FS50514433), the complainant contacted the Commissioner on 17 October 2013 to complain about the refusal to disclose the information. He stated that; -

"I would like to make it clear, as I did in my request, that I have asked for a list of the audit reports for the last 12 months and the assurance given on each (which is usually between one and three words long). I have not asked for copies of any reports in themselves in this particular request."

¹ https://www.whatdotheyknow.com/request/internal_audit_reports_3#outgoing-306658

8. In its response to the Commissioner enquiries, the council reviewed the request and compiled a list of reports which it had no concerns in releasing and said that to locate such information on its web pages would be a lengthy exercise. As it was not clear from the council's response whether it had provided the list to the complainant, the Commissioner telephoned the council on 25 February 2014 and it was informed that the list would be released. The Commissioner has therefore not deemed it necessary to consider the application of section 21 as the council has confirmed that it will release the information to which this exemption was initially applied.
9. In the same response to the Commissioner, the council also said that the reason that Schedule 12A of the LGA applies in many of these cases is due to commercially sensitive and personal information being contained within these reports so both sections 43 and 40 of the FOIA are also applicable. It provided the Commissioner with a list of these reports stating which were commercially sensitive and which involved personal data. As the request was for a list of Internal Audit Reports, not the reports themselves, and the council has not claimed that the names of the reports are exempt under section 43 and 40 of the FOIA, the Commissioner has not considered such exemptions. The Commissioner notes that the council did not provide any arguments for the application of the exemptions for commercial interests or personal information at sections 43 and 40 respectively and the application of these exemptions is not evident to the Commissioner from the titles of the withheld Internal Audit reports.
10. As the complainant confirmed that his request covered reports pertaining to the council's internal audit function, the Commissioner has not considered the council's application of the exemption where the cost of compliance exceeds the appropriate limit at section 12 of the FOIA. The council did not apply section 12 of the FOIA to the list of internal audit reports.
11. The Commissioner has considered the council's application of the exemption for prohibitions on disclosure at section 44 of the FOIA.

Reasons for decision

Section 44 - Prohibitions on disclosure

12. Section 44(1) 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. The council said that the reports it had concerns in releasing have gone to the Audit & Standards Committee and have been classified as exempt via 'Not for publication by virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972' and therefore it applied section 44 of the FOIA.
14. The Commissioner considers that Schedule 12A LGA 1972 does not operate as a statutory bar to disclosure under the Freedom of Information Act for the following reasons:
- Firstly, Schedule 12A lists the information that is exempt from the requirements of Part VA², not information that is exempt from disclosure under any other regime. Consideration of disclosure under the FOIA requires the application of the FOIA categories of exempt information to the information and not the Schedule 12A description of exempt information.
 - Secondly, nothing in Part VA or Schedule 12A actually prohibits the disclosure of information. At no point is it provided that such information should not be disclosed, merely that it is not subject to the Part VA requirement to disclose.
15. Therefore the exemption at section 44 of the Act does not apply in this instance.

² Part VA LGA 1972, sections 100A to 100K, provides for what information local government authorities must make available to the public and how.

Right of appeal

16. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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

Andrew White
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