

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2014

Public Authority: Leicestershire County Council
Address: County Hall
Glenfield
Leicestershire
LE3 8TG

Decision (including any steps ordered)

1. The complainant has requested from Leicestershire County Council ('the council') reports regarding horse meat in Asda Smart Price Corned Beef. In a previous investigation (case reference FS50518770), the council informed the Commissioner that the only report it held was the Public Analyst's Report and the Commissioner decided that the council correctly applied the exemption for investigations and proceedings conducted by public authorities at section 30(1)(b) of the FOIA but in all the circumstances of the case, the public interest in maintaining the exemption did not outweigh the public interest in disclosure of the information. The Commissioner therefore ordered disclosure of the identified report. A complaint was then made that the council must hold further reports other than the Public Analyst's Report. The Commissioner's decision is that that, on the balance of probabilities, the council does not any further reports. He does not require the council to take any steps to ensure compliance with the legislation.

Request and response

2. On 2 April 2013, the complainant made the following request for information:

"I have recently read a report in the Financial pages of a national newspaper.

It reported that Leicestershire County Council carried out test on 'Asda Smart price corned beef' – manufactured in France and concluded that this brand contained 50% horsemeat and was hugely contaminated.

Under the freedom of information act I would like to request a copy of that report and an analyst report on this brand of corned beef."

3. The council responded on 1 May 2013 and refused to provide the requested information citing the exemption at 30(1) of the FOIA.
4. On 24 June 2013, the complainant made another request for information under the FOIA:

"I made a freedom of information request 4159, to your department on 3.4.13.

I would now like to make a fresh request for 4159 to now be released to me.

That being your reports, and your Analyst [sic] reports, regarding Asda. Value Range. Corn Beef "French".

5. The council responded on 23 July 2013 and again refused to provide the requested information citing the exemption at 30(1) of the FOIA.
6. The complainant requested an internal review on 25 July 2013. The council provided its internal review response on 15 August 2013 and maintained its original position.
8. The Commissioner's decision notice FS50518770¹ dated 19 March 2014 found that the exemption at section 30(1)(b) was correctly engaged but the public interest test favoured disclosure of the requested information. As a result, the council provided the complainant with the Public Analyst Report.
9. The complainant wrote to the council on the 19 May 2014 referring to the above mentioned decision notice and asking for the 'full reports on the matter along with the Analyst full reports and not just a copy of his certificate".
10. The council contacted the Commissioner on 23 May 2014 for advice as it said that there is no further information held by the council.

¹ http://ico.org.uk/~media/documents/decisionnotices/2014/fs_50518770.ashx

11. On 20 June 2014 the council wrote to the complainant stating the following:

"We have re-checked our records and I can confirm that we do not hold any "full reports", which have been complied by our officers in respect to this case and I also confirm that the Public Analyst's certificate is the only certificate/report held on file.

Therefore unfortunately in relation to this FOI there is no further information held."

Scope of the case

12. The complainant contacted the Commissioner on 2 June 2014 to complain that further information, other than the Public Analyst Report must be held.
13. The Commissioner has therefore considered whether further information is held in response to the requests made on 2 April 2013 and 24 June 2013.
14. On 18 July 2014, the council informed the Commissioner that it is processing a further request from the complainant as follows:
1. Copies of all correspondence, including emails, reports and letters between Leicestershire County Council and Asda regarding the analysis in 2013 of "Asda smart price corned beef" where over 50% of horse meat was identified.
 2. Evidence as to why the decision was made not to prosecute Asda
 3. Who made the decision not to prosecute Asda
15. For the avoidance of doubt, the request referred to in paragraph 14 is not considered as part of this decision.

Reasons for decision

16. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
17. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to

check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

18. The complainant said that it is impossible to believe that a decision not to institute legal proceedings was made without any reports or paperwork. He referred to the council's initial response dated 23 July 2013 and its internal review of 15 August 2013 as evidence that further reports must exist. He believes that such letters demonstrate that an investigation took place and therefore he believes it follows that reports on the investigation must exist.
19. During the investigation in the previous case on this matter (case reference FS50518770), the council explained that its Trading Standards Service did not prepare an investigation report as a decision was made that Asda had satisfied the defence provisions of the Food Safety Act 1990 legislation by taking all reasonable precautions and exercising due diligence and it would only compile an internal investigating officer's written report where legal proceedings are considered appropriate. Therefore it said that it only holds the Public Analyst's Report and no further documentation of an investigation.
20. During the investigation in this case, the Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. The council explained that it is not unusual for the Trading Standards Service to review case evidence (including a defendant's responses) in an officer briefing with a senior manager and a decision is made as to whether a formal and full report is required from the officer. It said that this case had such a review and the decision was taken not to proceed to a "Simple Caution" or prosecution, so no written report of the investigation was compiled. It said that all information, including records of phone calls, emails, letters, notes and documents is held on ALTIA (which is a case management software tool), all instances were printed and checked individually but nothing was found. It also said that if information were held it would likely be electronically, that no information had ever been held which had since been deleted or destroyed or held in other locations, and that it retains documents for 7 years according to its retention schedule.

21. In reaching a decision as to whether the requested information is held, the Commissioner enquired whether there was any legal requirement or business need for the council to hold the information. The council said that information would be held for the purpose of a criminal investigation under the Food Safety Act 1990 and that there is no statutory requirement to keep case information beyond the investigation being closed but explained that it retains some information in respect to a business' history and also in respect to the Limitation Act 1980. The Commissioner also considered whether the council had any reason or motive to conceal the requested information but he has not seen any evidence of this. Therefore he has not identified any reason or motive to conceal the requested information.

23. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any further reports other than the Public Analyst Report which was disclosed as a result of a previous decision notice. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Right of appeal

24. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

25. 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.
26. 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
Group Manager
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