

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2015

Public Authority: Wigan Metropolitan Borough Council

Address: Town Hall
Library Street
Wigan
WN1 1YN

Decision (including any steps ordered)

1. The complainant has requested information from the Council about an alleged safeguarding matter at Wood Fold School. The Council is withholding the information, which it says is exempt from disclosure under section 31(1)(g) of the FOIA (law enforcement).
2. The Commissioner's decision is that Wigan Metropolitan Borough Council has correctly applied the exemption to the requested information and that the public interest favours maintaining the exemption. He does not require the Council to take any further steps.

Background

3. A relative of the complainant alleges that their child has been mistreated by staff at Wood Fold Primary School. An investigation that involved Ofsted and the police confirmed that there was no evidence that the child had been mistreated. The complainant's relatives subsequently submitted a complaint to the Council about its investigation. The resulting Stage 3 Review Panel report, dated February 2015, found flaws in the investigation and recommended that the Council review its investigatory procedures and report on the nature and quality of all aspects of the investigatory work it had completed. The Commissioner is aware that the matter has received coverage in the local newspaper.

Request and response

4. On 17 June 2015, the complainant wrote to Wigan Council and requested information in the following terms:

"Details of all advice and copies of all correspondence between Wigan Council and

- 1 Wood Fold School staff*
- 2 Wood Fold School Governing Body*

Regarding allegations of mistreatment of my [Named Individual 1] by staff at Wood Fold school.

You are already in possession of letters of authorisation from [Named Individuals 2 and 3] for the release of personal information. Your ref:- FOI 6262."

5. The Council responded on 8 July. It refused to release the requested information. It cited the exemption under section 31(1)(g)(law enforcement) with reference to its function under 31(2)(b) (ascertaining whether any person is responsible for any conduct which is improper)
6. In the circumstances of this case and its relationship to an earlier complaint the complainant submitted to the Commissioner – [FS50561768](#) – the Council confirmed to the Commissioner that it was not necessary to undertake an internal review and that it is satisfied with its response.

Scope of the case

7. The complainant contacted the Commissioner on 8 July to complain about the way his request for information had been handled. He considers that it is in the public interest to know how a local authority responds to allegations of mistreatment against a pupil at a school.
8. The Commissioner has focussed his investigation on the Council's application of section 31(1)(g) to the requested information.

Reasons for decision

9. Section 31(1)(g) of the FOIA says that information is exempt from disclosure if disclosing it would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).
10. The purpose that the Council says would be prejudiced is the purpose under 31(2)(b) of ascertaining whether any person is responsible for any conduct which is improper.
11. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but, before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.
12. To engage the exemption a public authority must:
 - demonstrate that it has been entrusted with a function to fulfil one of the purposes listed in section 31(2);
 - confirm that the function has been specifically designed to fulfil that purpose, and
 - explain how the disclosure would prejudice that function.
13. A test of prejudice means that information can only be withheld if its disclosure would, or would be likely to, prejudice one of the activities in section 31(2). The prejudice test involves a number of steps:
 - One of the law enforcement interests protected by section 31 must be harmed by the disclosure.
 - The prejudice claimed must be real, actual or of substance. Therefore, if the harm was only trivial, the exemption would not be engaged.
 - The public authority must be able to demonstrate a causal link between the disclosure and the harm claimed.
 - The public authority must then decide what the likelihood of the harm actually is, ie would it occur, or is it only likely to occur?
14. The information that the Council says it holds and is withholding concerns the allegation of mistreatment and the investigation of the allegation by its Local Authority Designated Officer. It comprises one email, minutes from one pre- Local Authority Designated Officer (LADO)

meeting, the agenda and minutes of two LADO Initial Action meetings and the final outcome of the LADO meetings. The meetings occurred as a result of the allegation against a member of school staff, discussed at paragraph 3.

15. The Council has told the Commissioner that the Children's Act 2004 entrusts it with a function to fulfil the purpose of ascertaining whether any person is responsible for improper conduct. Section 11 of the Children's Act places a duty on local authorities (amongst other organisations) to have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children. This includes clear policies in line with the Local Safeguarding Children Board for dealing with allegations against people who work with children. Local authorities should have a Local Authority Designated Officer who manages and has oversight of individual cases.
16. The LADO investigation in this case had been re-opened to further investigate the allegation of mistreatment against staff at Wood Fold Primary School. An earlier LADO investigation of the same matter had been undertaken, with the outcome recorded as 'Unsubstantiated'.
17. The Commissioner is satisfied that the Council has a statutory function – through LADO investigations – that is specifically designed to ascertain whether any individual is responsible for improper conduct with regard to the welfare of children.
18. The LADO investigation to which the withheld information refers was concluded in December 2014. Disclosing the information could not therefore prejudice this specific investigation, at the point that it was requested. The explanation that the Council provided to the Commissioner in its submission amounted to one line. It said the function at paragraph 15 should be allowed to be carried out *"...without the glare of public scrutiny as this would prejudice the ... purpose of the role."*
19. When invited to explain its position further, the Council told the Commissioner that disclosing the information would (as opposed to 'would be likely to') prejudice its function. Again, the Council did not provide a great deal of additional explanation to support its position. It simply said that it believed the LADO function *"should be able to carry out its statutory duty in relation to safeguarding without public scrutiny in relation to its actions or processes, regardless of whether the investigation has closed or not."*
20. The Commissioner understands this to mean that, even though the investigation in question has concluded, if it were known that the Council regularly released information concerning its investigations, this

would prejudice LADO investigations that it carried out in the future. The term 'would prejudice' means that it has to be more probable than not that the prejudice would occur. The onus is on the public authority to demonstrate that specified prejudice test is met. The Council's initial reasoning regarding the prejudice of its investigations is given above.

21. The Commissioner considered that the Council had not sufficiently demonstrated that the prejudice test at paragraph 13 was met and, for a third, time invited the Council to provide further information, which it did on 11 September.
22. Having consulted '*Working Together to Safeguard Children (2013)*' himself, the Commissioner notes that this says that local authorities should have a LADO who should be alerted to all cases in which it is alleged that a person who works with children has: behaved in a way that has harmed, or may have harmed, a child; possibly committed a criminal offence against a child; or behaved towards a child/children in a way that indicates he or she is unsuitable to work with children. LADOs manage and have oversight of individual cases, provide advice and guidance to employers and voluntary organisations, liaise with the police and other agencies and monitor the progress of cases to make sure they are dealt with as quickly as possible, and are consistent with a thorough and fair process.
23. In addition, the Council has now told the Commissioner that following initial discussions, the LADO will either arrange an Initial Action meeting or record the case as 'advice given, no further action needed'. Initial Action meetings bring together information and evidence to plan the investigation. It is a multi-agency meeting that will decide if there is a criminal offence that needs to be investigated by the police, whether a child is in need of protection or services, and if an employer needs to consider disciplinary action against an individual.
24. The Commissioner has noted that the investigation in this case has concluded. However, the Council argues that the prejudice it is claiming remains real, actual or of substance. This is because it is important that it does not set a precedent by releasing the requested information into the public domain, given the highly sensitive and confidential nature of the LADO function. The police, Children's Social Care or the employer may also need to take a range of enforcement actions as a consequence of a future LADO's Initial Action meeting.
25. The Council has highlighted the fact that it is now easy to access and obtain information through social media avenues and similarly, sensitive information can also easily be published through these avenues.

26. It says that regularly releasing information generated by its LADO investigations would compromise the investigatory process. This is because individuals and witnesses participating in an investigation may not be open and frank, if they were aware that the information they were volunteering might be placed in the public domain. The Council says the causal link between disclosing the information and the potential detriment to an investigation is as follows:
- Insufficient information might be obtained on which to pursue an investigation.
 - An individual could resign before any disciplinary action could be taken.
 - In cases where a child is in need of protection or services, the level of information obtained could be compromised. This would not be in the child's best interests as it could lead to a failure to identify what protection or services the child needed.
 - The ability to apprehend offenders would be compromised.
27. At paragraph 18, the Council said it is important that the LADO is able to carry out their statutory duty without scrutiny. It has gone on to explain that a large part of the LADO function depends on co-operation from interested parties and the full and frank disclosure of information in a confidential setting. It has drawn the Commissioner's attention to his own guidance on section 31, which says that *"...investigators need private thinking space, or safe space, if they are going to fully explore all aspects of a case without fear that their half formed opinions would be reported in the press or enter the public domain. Such concerns would hinder the efficient running of an investigation..."*
28. As a result of its considerations, the Council has confirmed that it has decided that the harm described at paragraph 26 *would* occur.
29. The Commissioner has considered the Council's arguments. He is not entirely convinced that the prejudice the Council has claimed would definitely occur. However, he is satisfied that disclosing the requested information in this case would be likely to prejudice the Council's future investigations for the reasons it has given: witnesses' unwillingness to volunteer free and frank information to an investigation, for fear of this information being made public, with the result that sensitive child safety investigations are not robust.
30. The Commissioner is satisfied that section 31(1)(g) is engaged: releasing the requested information would be likely to prejudice the exercise of the regulatory function it has (LADO investigations), the

purpose of which is to ascertain whether any person is responsible for any conduct which is improper.

31. He has gone on to consider the public interest test: balancing the public interest in disclosure against the public interest in maintaining the exemption.

Public interest test

Public interest in favour of disclosing the information

32. The Council says there is a public interest in demonstrating that child safety allegations, when made, are acted on in a timely manner and that any subsequent LADO investigation is a fair and robust one. It also says there is public interest in making public that all relevant organisations are an active part of the LADO process, and that actions and learning resulting from a LADO investigation are acted on and followed through.
33. The complainant also argues that there is public interest in knowing how a local authority responds to allegations of mistreatment of a child by a member of staff at a school. He considers this is particularly so in cases, such as the one his family has been involved in, where a local authority's investigation has been found to be flawed.

Public interest in favour of maintaining the exemption

34. The Council says there is a strong public interest in preventing prejudice to any future regulatory actions, such as its LADO investigations, by maintaining the exemption.
35. If potential witnesses were concerned that the information they provide could be put in the public domain, and was not therefore confidential, they may not participate in an investigation or may be reluctant to be open and frank.
36. As a result, the Council's child welfare investigations would not be robust, because the information that participants may volunteer would be insufficient or compromised. This might lead to a child who is at risk of harm not receiving the protection or services they need.
37. The Council argues that there is a public interest in maintaining the safety and welfare of the people involved in any investigation, and of those on whose behalf the investigation is being carried out. Again, it says this might be compromised if the requested information was released to the world at large.

38. The Council also says that disclosing the requested information may lead to a key individual in an investigation resigning, before the Council could take any disciplinary action. Finally, the Council says there is strong public interest in apprehending any offenders and so removing the risk of harm from children; this takes investigations that are thorough and robust.

Balance of the public interest

39. The Commissioner has considered the public interest arguments for disclosing the information. He finds that these do not outweigh the overwhelming public interest in public authorities being able to carry out robust investigations into child welfare allegations in order to apprehend offenders and provide children with the protection and services they need. LADO investigations need the confidence of their witnesses and participants in order to be effective. In the Commissioner's view, it is credible that investigations would be likely to be compromised if material generated at LADO meetings, at which the sensitive details of a case are discussed, was to be put into the public domain, for the reasons discussed in this notice.
40. The Commissioner acknowledges the complainant's argument for disclosing the information. He considers however, that the concerns he and his family had about the Council's LADO investigation in this case were sufficiently addressed through the public authority's Stage 3 Panel Review report. In the Commissioner's view, the public interest in people having recourse to fair, timely and robust LADO is adequately met through these staged complaints procedures, operated by local authorities.

Right of appeal

41. 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

42. 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.
43. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF