

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

### **Decision notice**

**Date:** 28 September 2022

**Public Authority:** Warrington Borough Council  
**Address:** Town Hall  
Sankey Street  
Warrington  
WA1 1UH

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

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1. The complainant requested a copy of a letter to Warrington Borough Council (the "Council") from its auditors dated May 2020. The Council refused the request citing section 22 of FOIA (information intended for future publication) and section 36 of FOIA (prejudice to the effective conduct of public affairs).
2. The Commissioner's decision is that that the Council was entitled to rely on section 22 of the FOIA to refuse the request.

#### **Request and response**

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3. On 23 August 2021 the complainant, who is a councillor on the Council, made a request to the Council for information under the FOIA in the following terms:  
  
"a copy of the May 2020 Grant Thornton letter to the Chief Executive as mentioned by the Grant Thornton representative at the 22 July 2021 public meeting of the AGC.  
  
I also request a copy of the Council's substantive reply to the letter."
4. The Council responded on 15 September 2021. It withheld the information requested citing section 22 of the FOIA (information intended for future publication).

5. On 28 October 2021, the complainant requested an internal review, and, on 21 January 2022, the Council upheld its original decision regarding section 22 of FOIA and, in addition, cited section 36 of FOIA.

### **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the way their request for information had been handled.
7. The Commissioner considers the scope of his investigation is to determine if the Council has correctly refused to provide the information under section 22 of the FOIA. If he finds that section 22 does not apply, he will go on to consider whether the information should instead be withheld under section 36 of FOIA.

### **Reasons for decision**

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8. Section 22(1) states that information is exempt from disclosure if;
  - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
  - (b) the information was already held with a view to such publication at the time when the request for information was made, and
  - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
9. The exemption will be engaged if, and only if, the three conditions listed at (a) – (c) are satisfied. As a qualified exemption, section 22 of FOIA is also subject to the public interest test.
10. The Commissioner's guidance on the exemption explains that for section 22 to apply, the public authority must, at the time of the request, hold the information and intend that it or 'any other person' will publish it in future. This means that the public authority must have a settled expectation that the information will be published at some future date.
11. It is not disputed that the information was held by the Council at the time of the request. The Council has explained to the complainant that the requested information forms part of a suite of documents which will be presented to the Council's Audit and Corporate Governance Committee by the Council's auditors (Grant Thornton) when Grant Thornton presents its Audit Findings Report.

12. The Council acknowledged that it did not have a precise date for publication. It has explained to the complainant that it had not received a definitive date from Grant Thornton for receipt of the Audit Findings Report and was therefore unable to confirm the date of publication for that report or associated documents which include the requested information.
13. The Commissioner's guidance on section 22<sup>1</sup> does allow for situations where there is no fixed publication date. The guidance makes it clear that the key point is the information must be held at the time of the request with a view to its publication, a specific date does not have to be in place if, for example, publication will take place once other actions have been completed – in this case the completion of the Audit Findings Report by Grant Thornton.
14. In view of the above, the Commissioner considers that all three conditions (a)-(c) above were satisfied as, the Council held the information at the time of the request, it had a settled intention to publish the information at the time of the request. For part (c) to apply it must also have been reasonable to withhold the information prior to publication. In this case the information was withheld prior to publication in line with the Council's usual practices as regards its audit process.
15. The exemption is a qualified exemption and therefore even though the Commissioner considers the exemption has been correctly applied he must still consider the public interest test as there may be circumstances where, although it is reasonable to withhold the information under section 22, the public interest in disclosure outweighs the public interest in withholding it.
16. The complainant's view is that, as the withheld information relates to the Council's accounts for 2017/2018 which are still not signed off, it is a matter of public interest as to why there has been such a delay. Furthermore, the withheld letter was referred to by Grant Thornton at the Audit Committee in July 2021 and in a briefing for Audit Committee members on 21 September 2021, Grant Thornton referred to concerns about some parts of the Council's investment programme and the public needs to understand the implications and financial risks associated with the Council's investment programme.

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<sup>1</sup> [information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf \(ico.org.uk\)](https://ico.org.uk/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf)

17. The Council identified some factors in favour of disclosing the information. It acknowledged that disclosure would help to demonstrate the Council's commitment to the principles of accountability and transparency as well as empowering individuals to analyse and question the financial decision-making activities of the Council.
18. Against disclosure the Council identified several factors. Primarily the Council consider that partial disclosure of selective correspondence without full context in advance of formal disclosure to the Council's Audit and Corporate Governance Committee is open to misinterpretation. The requested document does not represent Grant Thornton's full and final views on the matters raised and the Audit Findings Report remains unfinished. Releasing the requested correspondence in isolation will do nothing to assist public understanding and could result in questions being raised that would be addressed by the content of the complete Audit Findings Report.
19. The Council acknowledged that it continued to suffer reputational damage because of delays in the external audit process which remain largely outside of its control. The Council considered it even more important, therefore, that misinterpretation of the financial position of the Council is avoided. The Council considered the public interest was best served by maintaining its current practice of publishing the Audit Findings Report after the report is complete and has been presented to the Audit and Corporate Governance Committee by Grant Thornton.
20. The Council argued there is no pressing public interest in disclosing the withheld information early. The public interest in transparency and compliance with the legislation is achieved by the publication of the Audit Findings Report on the Council's website. The Council argued that there is a stronger public interest in the information being released in its complete form so as to aid the public's understanding, to avoid unnecessary questions being raised, and to avoid further unhelpful speculation and confusion.
21. The Commissioner does not consider that there are compelling arguments for disclosing the information outside the agreed publication schedule. The Council is still meeting its obligations to be transparent by publishing the Audit Findings Report when that process is complete, and the Commissioner does not consider there is any compelling public interest argument for disclosing the withheld information sooner.
22. The Commissioner recognises that public authorities need to manage their resources and having a set process for publication assists with this. The Commissioner also considers it to be an unnecessary use of public resources for the Council to spend time answering questions on financial scenarios which may or may not be the complete picture.

23. As he finds that the information has been properly withheld under section 22 of FOIA, the Commissioner has not found it necessary to consider section 36 of FOIA.

## Right of appeal

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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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**