

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 February 2022

Public Authority: Bristol City Council
Address: The Council House
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant has requested information concerning the value of the chains of office of the mayor and mayoress of Bristol, which were stolen in 2020. The council initially claimed that the exemption in section 31(1)(a) of FOIA applied (prevention and detection of crime). During the course of the Commissioner's investigation, however, it changed its position to state that some information is not held, and to apply section 31(3) to neither confirm or deny whether other relevant information is held.
2. The Commissioner's decision is that the council was not correct to apply section 31(3). She has also decided that the council did not comply with the requirements of section 10(1) in that it did not provide its response to the request within 20 working days.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - As regards parts a) and c) of the request, to respond to the complainant confirming or denying whether the requested information is held. In relation to any information that is held, this must either be disclosed, or the complainant given a valid reason as to why it will not be disclosed.

4. The council 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 11 April 2021, the complainant wrote to council and requested information in the following terms:

“Chains of Office of the Lord Mayor and Lady Mayoress

The chain of office of the Lord Mayor, made of 23-carat gold, had been in the care of the Council since 1828. The chain of office of the Lady Mayoress, made of 18-carat gold, had been in the care of the Council since 1926. Both were stolen from Council premises on Monday 24 February 2020 and have not subsequently been recovered.

Please advise:

- a. The value that each item was insured for.
 - b. The estimated replacement cost for each item.
 - c. The amount, if any, paid by the insurance company for the loss of each item. (If payment has not been received from the insurance company, please advise why.)
 - d. Plans, anticipated timetable, and budgeted costs for the replacement of these two key items.
 - e. If the items are not to be replaced, please advise who made that decision, and if funds from the insurance company will be retained for the future purchase of civic ceremonial jewellery.”
6. The council responded on 17 June 2021. It refused to provide the requested information on the basis that section 31(1)(a) of FOIA applied.
 7. Following an internal review, the council wrote to the complainant on 15 July 2021. It upheld its previous decision.

Scope of the case

8. The complainant contacted the Commissioner 4 June 2021 to complain about the way his request for information had been handled. Initially his complaint was that the council had not carried out a review of his complaint when asked to do so.

9. After the council provided its review response to the complainant his complaint was that the council was not correct to withhold the information under the exemption it had claimed.
10. During the course of the Commissioner's investigation the council changed its position as regards b, d, and e of the request. It said that no information is held which could respond to these parts of the request as a decision to replace the items has not yet been made. The complainant accepted the council's response in this respect.
11. The council also changed its position to apply the exemption in section 31(3) in place of its initial reliance upon section 31(1)(a) to its response to parts a) and c) of the request. The complainant, however, disagrees with the application of this exemption.
12. The Commissioner therefore considers that the complaint is whether the council was correct to apply section 31(3) of FOIA to refuse to confirm or deny whether it held information within the scope of parts a) and c) of the request. He has also considered whether the council's response complied with the requirements of section 10(1).

Reasons for decision

Section 31(3)

13. Section 31(3) of FOIA provides that

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)."

14. The council is relying upon prejudice to the matters concerned in section 31(1)(a); the prevention and detection of crime.
15. In order for prejudice-based exemptions, such as section 31(3) to be engaged prejudice must be at least likely to occur to the interest that the exemption is designed to protect. The Commissioner considers that three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed, has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of

the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., whether disclosure “*would be likely*” to result in prejudice or disclosure “*would*” result in prejudice. In relation to the lower threshold (would be likely), the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner’s view this places a stronger evidential burden on the public authority; the public authority must show that the anticipated prejudice would be more likely than not to occur as a result of disclosure of the requested information.

The council’s arguments

16. The council’s argument is that confirming whether or not information is held in respect of parts a) and c) of the request would be likely to prejudice the prevention of crime.
17. It argues that, as FOIA responses are considered to be to the whole world, disclosing the value of items held by the council, and their insurance arrangements, would highlight items that are worth stealing to criminals.
18. It said that whilst a disclosure would not provide the location of the items, their nature may assist in working out the likely location, and further investigation could obviously be made in order to narrow down their likely locations.
19. It argued that once it is established that the risk of crime is increased by confirming whether the information is held or not, then the full force of the public interest in the detection and prevention of crime should then tip the balance in favour of the exemption being maintained.

The Commissioner's analysis

20. The Commissioner has considered the council’s argument for section 30(3) being applicable.

The applicable interest

21. The first criterion in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to “*the prevention or detection of crime*”.

22. The Commissioner notes, from the outset, the counter argument that the specific items in question have already been stolen. However, the council's arguments are not specific to these individual items. Its arguments are set more widely. In essence, the council's argument is that highlighting the value of council items generally is likely to engage the interest of criminals and raise the likelihood that they will try to steal those items.
23. The Commissioner accepts that the applicable interest has been identified correctly by the council as the prevention and detection of crime.

Does a causal relationship exist?

24. The council's argument is that neither confirming or denying whether it holds information on the value of the items it holds prevents such information from being made public, and therefore the prejudice it has foreseen arising will not occur.
25. The Commissioner notes that part c) of the request relates to the amount, if any, paid by the insurance company for the loss of each item. In order for information to be held as regards part c), however, the items in question must already have been lost or stolen in order for an insurance claim to have been made; therefore, confirming or denying whether information is held would only ever relate to items no longer in possession of the council. The council's argument cannot therefore apply to this information.
26. Section 1 of FOIA requires that a public authority (a) confirms whether it holds relevant information, and b) to disclose that information if an exemption is not applicable.
27. The mechanism of section 30(3) is that if the exemption is applicable then a public authority does not have to comply with its duty under section 1(1)(a) of FOIA to confirm whether relevant information is held or not. The council's application of the exemption is seeking to negate its obligations under this section in the first instance.
28. In complying with section 1(1)(a), the council would only need to confirm or deny whether it holds information in respect of parts a) and c) of the request. It would not disclose the value of the items concerned, nor the value of any payment made by the insurance company in respect of the theft.
29. The council's argument cannot therefore be correct. As the value of the items concerned would not be disclosed by confirming whether relevant information is held nor not, responding would not raise criminal interest in the items in the manner described by the council.

30. The Commissioner's decision is that confirming or denying whether information within the scope of requests a) and c) would not be likely to result in prejudice to the prevention or detection of crime. His finding is, therefore, that the council was not correct to apply section 31(3) to neither confirm nor deny whether relevant information is held.
31. At paragraph 3 above the council is now required to respond to the complainant confirming or denying whether this information is held.

Section 10(1)

32. Section 10(1) of FOIA provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

33. The complainant made his request for information on 11 April 2021. The council, however, did not provide its response until 17 June 2021.
34. This falls outside of the 20 working days required by section 10(1) and the Commissioner therefore finds that the council breached this section in its handling of this request.

Right of appeal

35. 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@justice.gov.uk

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

36. 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.
37. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF