

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

### **Decision notice**

**Date:** 7 March 2023

**Public Authority:** Cherwell District Council  
**Address:** Bodicote House  
White Post Road  
Bodicote  
Banbury  
OX15 4AA

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

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1. The complainant requested a copy of the food hygiene inspection report for a named business. Cherwell District Council ('the Council') refused the request citing section 30(1)(b) (investigations and proceedings conducted by public authorities) FOIA. The Commissioner's decision is that the Council was entitled to rely on section 30(1)(b) to refuse the request. The Commissioner does not require further steps

#### **Request and response**

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2. On 8 October 2022, the complainant wrote to the Council and requested the following information:  
  
"The Food Hygiene Inspection Reports for [named company] ... "
3. The Council responded on 7 December 2022. It confirmed that it held the information, but refused to provide it citing section 30(1)(b) FOIA.
4. Following an internal review the Council wrote to the complainant on 3 January 2023. It upheld its original response.

## Scope of the case

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5. The complainant contacted the Commissioner on 4 January 2023 to complain about the way their request for information had been handled. The complainant expressed dissatisfaction with the Council's refusal to provide the information, stating that other councils have provided them with food hygiene inspection reports in the past with no issue.
6. The Commissioner considers that the scope of his investigation is to determine whether the Council was correct to rely on section 30(1)(b) to refuse the request.

## Reasons for decision

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### Section 30 – investigations

7. Section 30(1)(b) provides that information is exempt if it has been held at any time for the purposes of any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has the power to conduct.
8. The phrase "at any time" means that information is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.
9. Section 30 is also a class based exemption. This means that it is not necessary to demonstrate that disclosure would lead to any kind of prejudice in order to engage the exemption, only that the request falls within the class of information which the exemption is designed to protect.
10. Section 30(1) can only be relied upon by public authorities that have a duty to investigate whether someone should be charged with an offence.
11. The withheld information in this case comprises of a number of food hygiene inspection reports of the premises named in the complainant's request for August and September 2022.
12. The Council confirmed to the Commissioner that its power to conduct the relevant investigation is provided for under section 111 of the Local Government Act 1972 Regulation (EC) No. 852/2004, and more specifically, the Food Safety and Hygiene (England) Regulations 2013.

13. The Commissioner is satisfied that Council is a Food Authority as defined by section 5(1)(a) of the Food Safety Act 1990. He also notes that section 6(2) of the Act states that every food authority shall enforce and execute the provisions of the Act, whilst Section 6(5) states that an enforcement authority may institute proceedings under provisions of the Act, or any regulations or orders made under it. The Food Safety and Hygiene (England) Regulations 2013 are made under the Food Safety Act.
14. The Commissioner has reviewed the withheld information and is satisfied that the inspection was carried out to consider food hygiene offences under the Food Safety and Hygiene (England) Regulations 2013 and the Food Safety Act 1990. It is also clear that the Council, as a food authority, has the power to investigate potential criminal breaches of food safety legislation and to institute proceedings. Therefore, the Commissioner is satisfied that the section 30(1)(b) exemption is correctly engaged and he has now 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**

#### **Factors in favour of disclosure**

15. The Council recognised that disclosure of the information would further the understanding of, and participation in public debate.
16. The Council also acknowledged the public interest in promoting transparency and increasing the awareness in its decision making processes and to help persons understand whether to use the premises concerned.

#### **Factors in favour of maintaining the exemption**

17. The Council argued that where an investigation is ongoing, disclosure of the requested information could make it harder for it to carry out its investigations regarding the business in question, and to institute legal proceedings should it prove necessary.
18. It further argued that at the time of the request, it was not in the public interest to disclose this information as it was necessary to preserve the free thinking space to consider the matter in full. It added that premature disclosure of the information into the public domain would prejudice the conclusion of the investigation.
19. The Council also argued that the published rating for the business gives the public sufficient information about whether or not they wish to use

the premises concerned, without the need to disclose the requested information.

### **Balance of the public interest arguments**

20. The Commissioner accepts that there is a public interest in disclosure of food hygiene inspection reports as it would promote transparency and accountability in how the Council carries out its responsibilities as a food authority. In particular, such transparency could ultimately help to improve food hygiene standards by both promoting good practice and highlighting businesses that need to make improvements. It might also be argued that such transparency could also improve the standards of inspections and decisions taken by Food Authorities, such as the Council.
21. A further argument in favour of disclosure is that it is in the public interest to disclose information about businesses which do not meet the required standards of food hygiene so that the public may decide whether or not to use their services.
22. However, the Commissioner is mindful that the Food Hygiene Rating Scheme provides the public with information about the hygiene standards in food premises. The rating is publicly available for anyone to view. This does, to an extent, allow the public to make informed choices about which food businesses to use and so reduces the case for disclosure somewhat.
23. Additionally, there will always be a strong public interest in maintaining the section 30 exemption where an investigation is ongoing. It is accepted that whilst investigations and prosecutions are ongoing, public authorities require a safe space in which to operate and premature disclosures could create media pressure which could present problems for the judicial processes.
24. The Commissioner accepts that in this case, there is a significant public interest in protecting the integrity of ongoing investigations so as not to compromise it, or any future legal proceedings.
25. The Commissioner therefore considers that although there is a public interest in disclosure, given that the investigation was still live at the time of the request, the public interest in disclosure is outweighed by the public interest in maintaining the section 31(1)(b) exemption.

### **Procedural matters**

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#### **Section 17(1) – refusal of request**

26. Section 17 concerns the refusal of a request, and section 17(1) states:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision under Part II ...is exempt information must, within the time for complying with section 1(1), give the applicant a notice ...

27. The Commissioner would point out that although the request was dated 8 October 2022, the Council did not issue its refusal notice until 7 December 2022.

28. The Council's failure to issue a refusal notice within the required 20 working days from the date of the request, represents a breach of section 17(1) FOIA.

## Right of appeal

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29. 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)

30. 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.
31. 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 .....**

**Catherine Dickenson**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**