

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2023

Public Authority: London Borough of Havering
Address: Town Hall
Main Road
Romford
RM1 3BB

Decision (including any steps ordered)

1. The complainant has requested information held by London Borough of Havering (the council) relating to a Race Equality, Accessibility, Diversity and Inclusion (READI) review conducted by the Local Government Association (LGA).
2. The Commissioner's decision is that the council is entitled to withhold the requested information under section 36(2)(c) (prejudice to the effective conduct of public affairs) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. The council asked the LGA to undertake a READI peer review in order to identify where potential improvements could be made to current practice and policy. This was a voluntary process, and led to the publication of a "[Feedback Report](#)" by the LGA, which set out details about how the review was carried out, and the advice and recommendations that were made to the council.

5. On 10 November 2021, the complainant wrote to the council and requested information in the following terms:

"On November 10,2021, a report was due to be presented to Cabinet in a public meeting about the READI report [Feedback Report]. That report can be viewed here:

[READI review 2 - Cabinet report.pdf \(havering.gov.uk\)](#)

On page 3 of that report, it says that the council felt that 'candour' was important, and the council had to take a 'warts and all' approach. As part of that process, the council produced a '400-page internal self-assessment document'.

This request is for the disclosure of that 400-page internal self-assessment document.

I do not wish to receive any personal data, which should therefore be redacted before the document is disclosed."

6. The council's response to the complainant confirmed that the qualified person (QP) had considered the request, and it was their decision to withhold the relevant information under section 36(2)(b)(ii) (prejudice to the free and frank exchange of views) and section 36(2)(c) of FOIA. The council upheld its decision at the internal review stage.
7. The complainant raised concerns with the Commissioner about the council's handling of the request.
8. During the Commissioner's investigation, it was found that the council had not properly fulfilled the requirements set out within FOIA. This is primarily because the QP's opinion was found to have predated the request. The Commissioner therefore decided that the council should reconsider the request, this time ensuring that any response met with its statutory obligations under FOIA.
9. The council then issued a fresh response to the complainant. It confirmed that it had sought the opinion of the QP, and that they had considered the information to be exempt from disclosure under section 36(2)(b)(ii) and 36(2)(c) of FOIA. The council went on to confirm that it considered the public interest to favour maintaining the exemptions cited.

Scope of the case

10. The complainant has advised the Commissioner that they are not satisfied with the council's decision to withhold the requested information. In particular, they argue that the council is not correct to say that the public interest favours maintaining the exemption at section 36 of FOIA.
11. The Commissioner is to decide whether the council is entitled to rely on section 36(2)(b)(ii) and, or, section 36(2)(c) as its basis for withholding the information within the scope of the request.

Reasons for decision

Section 36(2) – prejudice to the effective conduct of public affairs

12. Section 36(2)(b)(ii) provides that information can be withheld if disclosure would, or would be likely to, inhibit:
"the free and frank exchange of views for the purposes of deliberation."
13. Section 36(2)(c) protects information if its disclosure:
"would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."
14. For section 36(2)(b)(ii) or 36(2)(c) to be engaged, a specified qualified person (QP) within the public authority is required to give a reasonable opinion about the likelihood of prejudice or inhibition.
15. When determining whether the QP's opinion is a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable.
16. The Commissioner is satisfied that the council's Monitoring Officer is authorised as the QP under section 36(5) of FOIA.
17. The council has provided evidence that it sought the advice of the Monitoring Officer, in their position as the QP, on 28 March 2023, and that they were provided with a copy of the withheld information.
18. The QP has said that they consider both section 36(2)(b)(ii) and section 36(2)(c) to be engaged.

19. The QP states that the purpose of the LGA peer review was to conduct an honest critique of the council's operating practices and culture, and that as part of this process, the council's staff were invited to express frank and honest opinions about a sensitive subject, having been reassured as to the ongoing confidentiality of the process.
20. The QP explains that the self-assessment document requested by the complainant was presented to the LGA in a raw, unfiltered and uncensored state with a view to full and frank disclosure. They have said that to allow such information into the public domain would lead to staff being more reserved in their approach going forward.
21. The QP has also said that whilst the "chilling effect" argument may have limited weight in the circumstances of this case, they still consider that it would apply and would add some weight to their deliberations in that disclosure would inhibit free and frank discussions in the future. The QP goes on to say that the loss of frankness and candour would damage the quality of advice and deliberation and lead to poorer decision making.
22. The QP says that the LGA peer review is a voluntary process aimed at driving improvements within the public sector. They claim that if all the information provided was to be made public, it would lead organisations to either not engage in the process at all, or to spin such information so as to "control the narrative."
23. The QP has said that the disclosure of the information "would" adversely affect the council's ability to partake in future similar reviews. They also say that it would prejudice the process and would have an adverse effect on the LGA, which runs hundreds of similar processes within public sector bodies across the country; the QP argues that the effectiveness of this tool of self-improvement would be much reduced , should the withheld information be disclosed.
24. The Commissioner has considered the explanations presented by the QP for the reasoning of their application of section 36(2)(c). The Commissioner accepts that the QP's opinion that disclosure of the requested information would cause prejudice in the way the QP envisaged was reasonable.
25. The Commissioner therefore finds that section 36(2)(c) is engaged in respect of all of the withheld information. Given this, the Commissioner has not considered it necessary to consider whether section 36(2)(b)(ii) is engaged.

Public interest test

The complainant's position

26. The complainant has argued that there is clearly a public interest in the issue of institutional prejudice such as racism and sexism, stating that these are matters that have dominated the news agenda and public debate in recent years after MeToo and Black Lives Matter. They go on to say that it was as a direct consequence of public interest in these issues that the council commissioned the report in question.
27. The complainant goes on to say that it is Havering residents who will have funded the compilation of the report, and that it should be the case that they are provided with information which allows them to understand the outcome.
28. The complainant goes on to say that the LGA's report made a finding that there was a culture of normalised sexism and racism at the council; they argue that this goes beyond mere suspicion of wrongdoing, it is published evidence of wrongdoing.
29. The complainant argues that it is important that the public is provided with a full understanding of the background which led to the LGA's findings.

The council's position

30. The council claims that there is a public interest in withholding the information, given the prejudice that would be caused as a result of its disclosure.
31. The council has argued that the LGA has considered the self-assessment document, and from this, and other information, prepared a Feedback Report which draws contextualised conclusions from the information that was provided. The council states that given that the LGA's Feedback Report has been published, there is adequate information already within the public domain about the matter.
32. The council has also said that whilst it accepts that there is a public interest in disclosing information with a view to increasing accountability and good governance, it should be noted that the council entered into the peer review process as a means of self-improvement and enhancing accountability.

The Commissioner's finding

33. In considering complaints regarding section 36, where the Commissioner finds that the QP's opinion was reasonable, he will consider the weight of that opinion in applying the public interest test. This means that the Commissioner accepts that a reasonable opinion has been expressed that prejudice or inhibition would, or would be likely to, occur, but he will go on to consider the severity, extent and frequency of that prejudice or inhibition when forming his own assessment of whether the public interest test dictates disclosure.
34. The Commissioner considers (as the council has recognised and accepted) that there is a public interest in disclosure of the information and that openness may increase public trust in, and engagement with, the council. He also accepts that the public interest in transparency around the subject matter to which the request relates, that being race equality, accessibility, diversity and inclusion, is significant.
35. The withheld information in this case consists of an excel spreadsheet, referred to by all parties as a self-assessment document. The Feedback Report that has been published confirms that the content of this self-assessment was "modelled" on the LGA's [EFGL Assessment Framework](#); this Framework sets out a list of criteria and themes which a council can then use as guidance to "self assess or plan activity" and can also be provided to the LGA as part of the peer review or peer challenge process. The LGA website states that the Equality Framework is designed to assist all councils, enabling them to "informally self assess their progress on the equality improvement journey and determine where and how they need to improve."
36. The Commissioner accepts that the effectiveness of the self-assessment and LGA peer review relies on the contributors within a council being frank, open and honest about the policies and procedures that are currently in place. He considers that without the reassurance that the information they provide would be used only for the purpose of internal analysis and the peer review, there is a real risk that staff would be less willing to engage in the process, or they would be less candid about the information that they provide about their individual departments.
37. Given the above, it is the Commissioner's view that, in order for the self-assessment and LGA peer review process to be effective and achieve positive outcomes, it is important that a 'safe space' is provided to allow a local council to openly and honestly set out, analyse and reflect upon, its approach to matters relating to the relevant issues, so it can effectively identify where it is both doing well, and where improvements could be made.

38. The Commissioner also considers it pertinent to note that the request and withheld information do not relate to a formal investigation, and the peer review was not set up in circumstances where serious failings had been identified, or where the council had been required to take action. The peer review offered by the LGA is a voluntary process. Local councils are encouraged to engage with the LGA in order to achieve positive outcomes that are for the benefit of both staff and service users. However, the recommendations published by the LGA are not binding, and a council can choose not to follow the reviewee's advice.
39. The Commissioner has also had regard to the fact that the council's policies and practices have been subjected to independent analysis and scrutiny by a separate and impartial body (the LGA), who fully understands the working of local authorities. In addition, the LGA's published Feedback Report sets out clearly those areas where it was identified that improvements can be made.
40. The Commissioner considers it to be in the public interest that there is a willingness to engage in processes where improvements to policy relating to race equality, accessibility, diversity and inclusion, can be identified and then acted upon. In the Commissioner's opinion, if local councils decided not to participate in the self-assessment and LGA peer review process because a safe space in which to present information could not be assured, this would significantly reduce the potential opportunity for improvements to be identified and acted upon, which would not be in the public interest.
41. The Commissioner is mindful that, at the time of the request, the peer process was complete, and the LGA's Feedback Report had been published. However, the Commissioner accepts the council's argument that there is a real risk that disclosure of the requested information would affect the openness of future peer reviews and self-assessments conducted by councils, and there may be less willingness by councils to engage in process on a voluntary basis.
42. The Commissioner has already accepted that there is a weighty public interest in disclosure of information that relates to issues that concern race equality, accessibility, diversity and inclusion. In this instance, disclosure would inform public debate by providing a more detailed account of how the council conducted the self-assessment, which formed part of the LGA peer review. However, having had sight of the withheld information, the Commissioner considers that its content does not add any significant weight to the public interest in disclosure in this case.

43. Furthermore, it is the Commissioner's view that the publication of the LGA Feedback Report, and [additional information](#) available on the council's website go some way in meeting the public interest on the matters to which the request relates
44. In the Commissioner's opinion, if the safe space which allows local councils to engage freely, frankly and honestly with the LGA could not be assured, the effectiveness of the process would be severely compromised, leading to poorer working practices by councils in relation to race, equality, accessibility, diversity and inclusion.
45. Given the above, whilst acknowledging the weighty public interest in the subject matter to which the request relates, the Commissioner finds the public interest in protecting the integrity of the process to be the stronger argument in the circumstances of this particular case.
46. As a result, the Commissioner has concluded that the public interest favours maintaining the exemption at section 36(2)(c), and the requested information should be withheld.

Right of appeal

47. 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

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

48. 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.
49. 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

Suzanne McKay
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