

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

### **Decision notice**

**Date:** 19 March 2014

**Public Authority:** Leicestershire County Council  
**Address:** County Hall  
Glenfield  
Leicestershire  
LE3 8TG

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

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1. The complainant has requested a copy of a report regarding horse meat in Asda Smart Price Corned Beef. Leicestershire County Council ('the council') applied the exemption for investigations and proceedings conducted by public authorities at section 30(1)(b) of the FOIA. The Commissioner's decision is that the exemption was correctly engaged but in all the circumstances of the case, the public interest in maintaining the exemption does not outweigh the public interest in disclosure of the information.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the Public Analyst's Report on Asda Corned Beef redacting the name and signature of the Public Analyst and the name of the contact at Trading Standards.
3. The public authority must take this step 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 the Act and may be dealt with as a contempt of court.

#### **Request and response**

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4. On 2 April 2013, the complainant made the following request for information under the FOIA:

"I have recently read a report in the Financial pages of a national newspaper.

It reported that Leicestershire County Council carried out test on 'Asda Smart price corned beef' – manufactured in France and concluded that this brand contained 50% horsemeat and was hugely contaminated.

Under the freedom of information act I would like to request a copy of that report and an analyst report on this brand of corned beef."

5. The council responded on 1 May 2013 and refused to provide the requested information citing the exemption at 30(1) of the FOIA.
6. On 24 June 2013, the complainant made another request for information under the FOIA:

"I made a freedom of information request 4159, to your department on 3.4.13.

I would now like to make a fresh request for 4159 to now be released to me.

That being your reports, and your Analyst [sic] reports, regarding Asda. Value Range. Corn Beef "French".

7. The council responded on 23 July 2013 and again refused to provide the requested information citing the exemption at 30(1) of the FOIA.
8. The complainant requested an internal review on 25 July 2013. The council provided its internal review response on 15 August 2013 and maintained its original position.

### **Scope of the case**

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9. The complainant wrote to the Commissioner on 19 September 2013 to complain about the way his requests for information had been handled.
10. During the Commissioner's investigation, the council clarified that it is relying on the exemption at section 30(1)(b) to withhold the Public Analyst's Report on Asda Corned Beef. Therefore, the Commissioner has considered whether the council was correct to apply the exemption at section 30(1)(b) where information held by a public authority is exempt information if it has at any time been held by the authority 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 power to conduct.

11. The council explained that its Trading Standards Service did not prepare an investigation report as a decision was made that Asda had satisfied the defence provisions of the Food Safety Act 1990 legislation by taking all reasonable precautions and exercising due diligence and it would only compile an internal investigating officer's written report where legal proceedings are considered appropriate. Therefore it said that it only holds the Public Analyst's Report and no further documentation of an investigation. This has not been disputed by the complainant and therefore the Commissioner has only considered the application of section 30(1)(b) to the Public Analyst's Report.

## **Reasons for decision**

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### **Section 30 - Investigations and proceedings conducted by public authorities**

12. Section 30(1) provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of –  
(b) 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 power to conduct...”

13. The withheld information in this case is the Public Analyst's Report on Asda Corned Beef. The council has explained that its Trading Standards Department has the power and duty to conduct investigations under the Food Safety Act 1990 and that such legislation allows it to conduct an investigation which may have led to the initiation of criminal proceedings. It further explained that the nature of the investigation was whether Asda had sold food which was not as described by Section 15 of the Food Safety Act 1990 or not of the quality demanded by the purchaser under Section 14 of the Act. The investigation was closed on 11 June 2013 and no further action was taken against Asda.
14. Due to the phrase 'at any time', the Commissioner considers that is irrelevant for the application of section 30(1)(b) that the investigation was complete at the time of the second request. What is relevant is whether the information was held at some point for the purposes of the investigations. Additionally, the fact that no prosecutions materialised does not affect the applicability of the exemption.
15. As section 30(1)(b) is a class-based exemption it is not necessary for the council to demonstrate that disclosure would prejudice any particular interest in order to engage the exemption.

16. Taking the above into consideration, the Commissioner is satisfied that that the information requested was held as part of an investigation being conducted by the council, with the potential for criminal proceedings to be instituted which the council has to the power to conduct. He therefore considers the section 30(1)(b) exemption to be engaged in respect of the withheld information.

### **The public interest test**

17. As section 30(1)(b) is a qualified exemption it is subject to a public interest test under section (2)(2)(b) of the FOIA. This favours disclosure unless;

“in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information”.

18. The starting point is to focus on the purpose of the relevant exemption. With section 30(1)(b) this involves weighing the prejudice that may be caused to an investigation or prosecution, or more generally to the investigatory and prosecution processes of the public authority, against the public interest in disclosure. There is general recognition that it is in the public interest to safeguard the investigatory process. The right of access should not undermine the investigation and prosecution of criminal matters.

### **Public interest arguments in favour of disclosing the requested information**

19. The Commissioner is mindful of the public interest in promoting openness and transparency in the discharge of a public authority's statutory functions. For example, disclosure of the requested information may enable the public to understand why a particular investigation reached a particular conclusion, or in seeing that the investigation had been properly carried out. In this case, disclosure would ensure that the council is held to account for this particular investigation into Asda Corned Beef.

### **Public interest arguments in favour of maintaining the exemption**

20. The council, in its response to the complainant of 23 July 2013, said that there is risk in disclosing an isolated certificate that is one piece in an overall jigsaw. It said that disclosure could create an inaccurate, almost distorted view of the investigation process and that, coupled with intense media interest, could lead to wide scale reporting based on inaccurate or poorly explained facts, at best misleading the public and at worst resulting in a trial by media situation which could undermine the whole investigations process.

21. The council also said that the fact that the sample contained 50% equine meat is already in the public domain and as such there would be no obligation to disclose the information requested.
22. During the Commissioners investigation, the council said the following;

“As far as the public interest test is concerned the Council weighed up the value to the public in knowing the evidence behind the media story regarding horse meat and the Council’s ability to investigate and take action where appropriate in such matters. As the information that the sample contained 50% equine meat was already in the public domain, as [complainant’s name] had himself seen these details reported in the media, we considered there to be no extra insight gained by releasing this document. We also had regard to the fact that this is a legal notice in itself which could be used to take legal proceedings. As [complainant’s name] and the general public have already been informed that there was a high level of horsemeat in this product, so therefore the Public Analyst’s report does not add any further illumination or facts, as the Council did not compile an investigation report in to this matter there was no further information to provide.”
23. The Commissioner also notes that section 30 is concerned primarily with preserving the integrity of certain proceedings and investigations which public authorities have the power or duty to conduct and therefore recognises that there is an inherent public interest in ensuring the ability of public authorities to carry out investigations.

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

24. The Commissioner has not given weight to the council’s argument that disclosure could create an inaccurate view of the investigation process. He considers that the FOIA provides a right to information that public authorities hold; it does not require that information to be complete, accurate or up to date. Any concerns regarding the withheld information creating an inaccurate or distorted view could be allayed by the council providing some context or explanation at the time the information is released.
25. The council has indicated that disclosure could result in a trial by media situation which could undermine the whole investigations process. Although the Commissioner considers that trial by media is not in the public interest, he notes that in this case the investigation was closed at the time of the second request and therefore there was no requirement for a safe space for the council to operate in and no situation where media pressure could present problems for a specific judicial process.

26. The Commissioner also considers that the fact that the investigation was closed, and no further action would be taken due to a decision being made that Asda had satisfied the defence provisions of the Food Safety Act 1990, reduces the public interest in maintaining the exemption in this case. Particularly so as this is not a case where there is a risk of revealing the identity of confidential sources which could deter people from providing information in the future.
27. In relation to the council's assertion that the fact that the sample contained 50% equine meat is already in the public domain means there would be no obligation to disclose the information requested, the Commissioner considers that where the same or similar information is already known, it is more difficult to argue that there could be any great harm in releasing the disputed information. On the one hand he acknowledges that disclosure of information which is already in the public domain will not reveal anything new to further public understanding, which means that the public interest in disclosure is limited, but on the other hand, as there is always some weight to be accorded to general transparency and providing the full picture, the Commissioner considers that the balance of the public interest test is likely to favour disclosure unless this would cause additional prejudice.
28. As noted in paragraph 23 above, section 30 is concerned primarily with preserving the integrity of certain proceedings and investigations. The existence of the exemption recognises the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings. The Commissioner notes the lack of arguments from the council that disclosure in this case would hinder this specific investigation or investigations more generally.
29. The Commissioner considers that it is important that the public have confidence in those authorities tasked with upholding the law and that this confidence will be increased by allowing scrutiny of a public authorities' performance which could involve examining the decisions taken in particular cases. Disclosure of the information in this case would ensure that the council is held to account for this particular investigation. He has therefore given this weight in favour of disclosing the requested information.

Taking all the above into consideration, the Commissioner is of the view that the public interest in maintaining the exemption does not outweigh the public interest in disclosure of the information in this case. He therefore finds that the council was not entitled to withhold the requested information under section 30(1)(b).

## Right of appeal

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30. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

31. 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.
32. 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 .....**

**Andrew White**  
**Group Manager - Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**