

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 February 2020

Public Authority: Local Government Social Care Ombudsman
Address: 53-55 Butts Road
Coventry
CV1 3BH

Decision (including any steps ordered)

1. The applicant has requested information relating to interviews carried out by LGSCO.
2. The Commissioner's decision is that LGSCO has correctly cited section 44(1)(a) in response to the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 27 November 2019 the applicant made an information request in the following terms:

Request Ref 19/261

"Please provide copies, redacted if necessary, of the last 12 cases in which para 27.2 of the Investigator Guidance Notes was implemented with regard to an interview by telephone."

5. LGSCO responded on 13 December 2019 and refused to provide the information citing section 44(1)(a) of the FOIA as its basis for doing so.
6. In its response, LGSCO stated:

"I cannot release the information to you and am relying on section

44(1)(a) of FOIA. The information you have requested is included in the contents of a complaints file. Although the public do have rights to see information held by public bodies under the FOIA, this Act does not override any restriction on releasing information covered by an earlier law.

There is a restriction that applies to the Ombudsman's complaint files. Under the Local Government Act 1974 (section 32(2)), the Ombudsman is not permitted to disclose any information obtained in the course of, or for the purposes of, investigating a complaint, unless it is necessary for the purposes of the investigation (or for other very limited reasons mostly related to legal proceedings)."

7. Following an internal review on 10 January 2020, LGSCO maintained its position.

Scope of the case

8. The applicant contacted the Commissioner on 13 January 2020 to complain about the way his requests for information had been handled.
9. During the course of her investigation the Commissioner wrote to the applicant and advised that in the event of issuing a decision notice in this case, it was highly likely to find in favour of LGSCO and invited him to withdraw his complaint.
10. The applicant declined, providing some additional background to his complaint and requested a decision notice.
11. The Commissioner considers the scope of this case to be to determine if LGSCO has correctly cited section 44(1)(a) in response to the request.

Background

12. The applicant provided background that the Commissioner has not felt necessary to detail in full in this decision notice. However, the underlying issue relates to misleading information being provided to a local council in a feasibility study to provide new sports facilities. A complaint was subsequently raised with the LGO.
13. The Commissioner notes that the applicant made a request in 2018 that included a request for copies of all investigations carried out that did not comply with the LGSCO criteria that any complaint must first exhaust the relevant Council's complaints process over the last 3 years.

14. The request also included information about how many times in the preceding 5 years the LGSCO had face to face meetings with a complainant. This was refused under section 12 of the FOIA, as it would exceed the appropriate limit of £450 and the Commissioner issued a decision notice (FS50788387¹) upholding LGSCO's position.
15. The applicant also explained that following that decision he had appealed to the Information Rights Tribunal. He stated that he withdrew the complaint following email exchanges with a solicitor from the ICO. The Commissioner has not had sight of these communications and therefore is unable to comment further on this aspect.
16. The applicant further stated that having suggested a compromise which appeared to be acceptable he submitted 2 questions (1) about interviews (a) face to face (b) by telephone over a 12 month period. The applicant agreed to accept redacted copies or just the date each of 12 cases for (a) and 12 cases for (b) when the interview took place.
17. The Commissioner notes that in its response to her in case reference FS50788387 the LGSCO stated it did not consider that by suggesting to the applicant that he narrows the parameters of his request to a single identified authority and reduce the time period to one year would enable it to provide the detail he was asking for within the cost limit.
18. It is therefore unclear to the Commissioner who considered that the applicant's revised compromise request appeared acceptable.

Reasons for decision

Section 44 – Prohibitions on disclosure

19. Section 44 of the FOIA states that:

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) is prohibited by or under any enactment,

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2614856/fs50788387.pdf>

20. The task for the Commissioner here is, therefore, to consider whether the disclosure of the information requested by the complainant is prohibited by law; if this is the case, this exemption will apply.
21. Section 44 is a class based exemption which means if the requested information falls within the class of information described in section 44(1)(a), the exemption is engaged. As section 44(1)(a) is also an absolute exemption, it is not subject to any public interest considerations.

Is disclosure prohibited by or under any enactment?

22. Information is exempt under section 44(1)(a) if its disclosure would breach any of the following:
 - primary legislation (an Act of Parliament); or
 - secondary legislation (a Statutory Instrument)
23. The position of the LGSCO is that disclosure of the information in question is prevented by section 32(2) of the Local Government Act 1974² (the LGA).

Would any of the exceptions from section 32(2) of the LGA apply?

24. Sections 32(2)(a) to (c) of the LGA set out the specific situations where the prohibition on disclosure does not apply.

(2) Information obtained by a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, in the course of or for the purposes of an investigation under this Part of this Act shall not be disclosed except -

(a) for the purposes of the investigation and of any report, statement or summary under section 30, 31 or 31B above; or

(aza) for the purposes of an investigation under Part 3A of this Act and of any statement, adverse findings notice or summary under section 34H, 34I or 34J in relation to such an investigation; or

(aa) for the purposes of a complaint which is being investigated by the Parliamentary Commissioner or the Health Service Commissioner for England (or both); or

² <http://www.legislation.gov.uk/ukpga/1974/7/contents>

(b) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1939 alleged to have been committed in respect of information obtained, by virtue of this Part of this Act, by a Local Commissioner or by a person discharging or assisting in the discharge of a function of Local Commissioner or for an offence of perjury alleged to have been committed in the course of an investigation under this Part of this Act or for the purposes of an inquiry with a view to the taking of such proceedings, or

(c) for the purpose of any proceedings under section 29(9) above,

and a Local Commissioner and persons discharging or assisting in the discharge of a function of a Local Commissioner shall not be called upon to give evidence in any proceedings (other than proceedings within paragraph (b) or (c) above) of matters coming to his or their knowledge in the course of an investigation under this Part of this Act.

25. The Commissioner accepts that none of those exceptions applies in this case.

Conclusions

26. Despite the limitation of the proposed compromise request, this, and the information requested above relates to investigations being carried out and therefore the exemption is engaged.
27. Although the applicant considered he had compromised on the information requested, that information has still, by its very nature, been collected in the course of an investigation by the LGSCO. The date the complaint has been received will of course be the starting point for the investigation, any interview notes will form part of the investigation, and the completion date will obviously be the conclusion of the investigation
28. The Commissioner is satisfied that the requested information in this case was subject to a statutory prohibition on disclosure, provided in section 32(2) of the LGA. Therefore it is exempt from disclosure under FOIA by virtue of the absolute exemption at section 44.

Other matters

29. Although the Commissioner does not encourage the use of multiple exemptions, in this case it may have been appropriate for LGSCO to advise the applicant that any information held in its complaint files would be likely to be exempt from disclosure under section 44 of the FOIA.

30. This may not have dissuaded the applicant from making the request but it would, at least, have managed his expectations at the earliest opportunity.

Right of appeal

31. 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

32. 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.
33. 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

Pamela Clements
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