



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2019/0469P

Decided without a hearing on: 28 September 2020

Before

**JUDGE SOPHIE BUCKLEY
PAUL TAYLOR
ANNE CHAFER**

Between

DAVID POOLE

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

DECISION

1. For the reasons set out below the appeal is dismissed.

MODE OF HEARING

1. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 Chamber's Procedure Rules.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice FS50828533 of 5 December 2019 which held that London Borough of Redbridge (LBR) was entitled to rely on s 31(1)(a) Freedom of Information Act (FOIA) to withhold the information. The Commissioner did not require the public authority to take any steps.

Factual background to the appeal

2. This appeal arises out of newspaper reports in the Independent and the Ilford Recorder on about 7 January 2019 which reported that an 8-year-old boy in a school in Ilford had been interviewed by counter-terrorism officers.

Request and Decision Notice

The Request

3. Mr Poole made the request which is the subject of this appeal on 8 January 2019:

I read with concern the article in yesterdays Independent and now covered by the Ilford Recorder.

...

Can you please confirm the name of the school in question, the Mosque in question and if any after school religious lessons had been provided, and if so the name and location of the premises.

The Response

4. LBR replied to the request on 18 January 2019, confirming that it held information within the scope of the request but refusing to provide the information relying on s 31(1) FOIA (Law enforcement).
5. Mr Poole requested an internal review on 18 January 2019. LBR upheld its initial decision.
6. Mr Poole complained to the Commissioner on 11 March 2019. During the investigation:
 - 6.1. LBR confirmed that the only information that it held was the name of the school.

6.2. Initially LBR relied in addition on s 40(2) (personal information) but subsequently withdrew reliance on s 40(2).

6.3. LBR confirmed that they relied on s 31(1)(a) (prevention and detection of crime) and s 38(1)(a) and (b) (health and safety).

The Decision Notice

7. The Commissioner concluded that s 31(1)(a) was engaged. Disclosure would or would be likely to prejudice the prevention of crime for these reasons:

7.1. The potential prejudice claimed by LBR relates to the interests which the exemption in s 31(1)(a) is designed to protect (the prevention of crime);

7.2. The prejudice claimed is real, actual and of substance and there is a causal link between the disclosure and the prejudice. The threat from far-right anti Islamic groups and the consequent detrimental impact on the local community and residents is real. A demonstration outside school could plausibly escalate to a confrontation and public order offences. Disclosure could lead to an increase in public order offences and physical assaults based on racial or religious differences.

7.3. If the information was disclosed there is more than a hypothetical possibility that prejudice of the nature envisaged by LBR would be likely to occur given the political climate at the time of the request.

8. The Commissioner concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure after taking into account the general public interest in transparency and the following arguments of the parties:

8.1. LBR argues that disclosing the name of the school would heighten the risk of it being targeted by extremists. It is likely that individuals from a right-wing background would use the information to approach the school in person to exert pressure on parents, staff or children to identify the child in question. This would create an atmosphere of unrest or fear and is likely to have lasting consequences for community cohesion.

8.2. Mr. Poole argues that premises and organisations that are attempting to radicalise children should be exposed and shut down. The Commissioner noted that it is the responsibility of the appropriate authorities to take this action rather than members of the public.

9. The Commissioner did not go on to consider s 38.

Grounds of Appeal

10. The Grounds of Appeal in summary are:
 - 10.1. The Commissioner allowed LBR to rely on s 31(1)(a) even though no reference was made to it in the initial response and internal review.
 - 10.2. There have been unacceptable delays in LBR responding to the Commissioner's office.
 - 10.3. Despite extensive press coverage claiming that the London Bridge terrorist taught at a local school within Redbridge, there have been no reports of discrimination, protests, targeting of particular groups or tensions in the local community.
 - 10.4. Conversely the publicity has shone a light on something LBR would rather not be seen and has allowed parents and children from all community groups to be aware of this growing problem within Redbridge.

The Commissioner's response

11. The Council did claim reliance on s 31(1)(a) in its refusal notice dated 18 January 2019 and in its internal review. It withdrew its reliance on s 40(2). A local authority is entitled to rely on further or additional exemptions before the Commissioner and the Tribunal.
12. The applicable interest is the prevention or detection of crime. Crimes associated with extremist activity against specific racial groups and the school in question are real, actual and of substance and therefore prejudicial.
13. There is clearly more than a hypothetical chance of the prejudice occurring in the current political climate. Mr Poole cannot guarantee that no prejudice arose or will not arise in the future out of the previous incident. Further even if no prejudice arose in that instance this does not guarantee that prejudice will not arise out of the release of this information.
14. The public interest factors relied on by Mr. Poole are insufficient to outweigh the strong public interest in the prevention of crime in the circumstances of the case.

Evidence

15. We have read an open bundle of documents, which we have taken account of where relevant.

Legal framework

S 31 – law enforcement

16. S 31 FOIA provides a qualified exemption subject to the public interest test in respect of information relevant to specific areas of law enforcement:

S 31 - law enforcement

- (1) Information which is not exempt information by virtue of section 30 [*investigations and proceedings conducted by public authorities*] is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
- (a) the prevention and detection of crime,
17. The exemption is prejudice based. ‘Would or would be likely to’ means that the prejudice is more probable than not or that there is a real and significant risk of prejudice. The public authority must show that there is some causative link between the potential disclosure and the prejudice and that the prejudice is real, actual or of substance. The harm must relate to the interests protected by the exemption.

The Task of the Tribunal

18. The tribunal’s remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner’s decision involved exercising discretion, whether she should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.
19. The question of whether or not LBR delayed in responding to the Commissioner is not within our remit.

Issues

20. The applicable interest in this case is the prevention of crime. The issues for us to determine are:
- 20.1. If the disputed information were released, would it prejudice, or be likely to prejudice, the prevention of crime?
- 20.2. If so, does the public interest in maintaining the exemption outweigh the public interest in disclosing it?

Discussion and conclusions

Late reliance on s 31(1)(a)

21. LBR relied on the whole of s 31(1) in its initial response, albeit that it only specified s 31(1)(a) later on. It only raised s 40 at a later stage and then withdrew its reliance on that exemption. In any event a local authority is

entitled to rely on a new exemption not raised at the time (Birkett v Defra [2011] EWCA 1606).

If the disputed information were released, would it prejudice, or be likely to prejudice, the prevention of crime?

22. When assessing the potential consequences of disclosure, we look at unrestricted disclosure and not just disclosure to Mr Poole.
23. Mr Poole is unaware of any incidents resulting from a previous disclosure of similar information. This does not mean that there were no incidents. Nor does it bear significantly on the likelihood of harm arising out of this disclosure.
24. We accept that the release of the name of a school where a pupil has been questioned by anti-terrorism officers makes the school more likely to be the target of extremist activity. We accept that this makes the school more vulnerable to crime, whether this could be criminal action by extremist groups, or protests that present a risk of escalation to criminal offences. We find that this amounts to harm to the interest in question (the prevention of crime), which is real, actual and of substance. We find that there is more than a remote or hypothetical risk of this harm given the political climate at the time of the request.

Does the public interest in maintaining the exemption outweigh the public interest in disclosing it?

25. We find that there is a strong public interest in maintaining the exemption in this case. If the police's ability to prevent crimes of this nature is reduced, we accept that this would have a detrimental effect on the wellbeing and safety of staff, parents and children, in particular those directly involved in the case who face a potential risk of being identified and explicitly targeted. We accept that there is a strong public interest in staff and students feeling safe in a school. Further we accept that it is in the public interest that the running of schools and therefore the provision of education is not disrupted by dealing with an increased risk of crime, or actual crime. We also accept that there is likely to be a wider impact with a real possibility of negative consequences on community cohesion.
26. There is a clear general public interest in transparency. In terms of facilitating the holding of local authorities to account it is already public knowledge that the school is within LBR's area and therefore the disclosure of the name of the school adds only marginally to the public's ability to hold the local authority to account. This adds some limited weight to the public interest in disclosure.

27. We accept that there is a public interest in the exposure of schools that are attempting to radicalise pupils. However, there is no evidence before us to suggest that the school in question was either accused of or was in fact attempting to radicalise its pupils. Further, there are other avenues for dealing with such issues, including under the Prevent Strategy referred to by LBR.
28. Taking all the above into account, we find that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Conclusion

29. Because of our conclusions on s 31(1)(a) we do not need to consider s 38.
30. For the reasons set out above the appeal is dismissed. Our decision is unanimous.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 1 October 2020

Promulgated Date: 6 October 2020