

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 11 April 2007

Public Authority: Commission for Local Administration in England
(Local Government Ombudsman)

Address: 10th Floor Millbank Tower
Millbank
London
SW1P 4QP

Summary

The complainant requested a copy of a letter which the public authority had received from Wealden District Council in the course of investigating a complaint against this Council. The public authority refused to supply this information because it said that section 32(2) of the Local Government Act 1974 prevented it from disclosing information it had obtained in the course of an investigation. The Commissioner investigated the complaint and is satisfied that section 32(2) of this Act prevents the public authority from disclosing the information requested by the complainant. The Commissioner therefore accepts that the information is exempt under section 44 of the Freedom of Information Act 2000.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 11 July 2006 the complainant wrote to the public authority to request a copy of a letter it had received from Wealden District Council in the course of investigating a complaint he had made against that Council.
3. The public authority responded to this request on 13 July 2006. The public authority refused to disclose the information requested by the complainant. It appears that the public authority did not immediately treat the complainant's

request as a request for information under the Act and explained that it would not release the letter as “it contains information relating to third parties which, for reasons of confidentiality, I do not consider it would be appropriate, relevant or necessary to disclose to you”.

4. The complainant challenged the public authority's decision to withhold the information and on 18 July 2006 the public authority formally responded to the request under the Act. It said that the letter the complainant requested formed part of a complaints file and that it was exempt from disclosure under section 44 of the Act. The public authority explained that the relevant statutory prohibition was section 32(2) of the Local Government Act 1974 (“section 32 LGA”) which states that “the Ombudsman is not permitted to disclose any information obtained in the course of, or for the purposes of, the investigation of a complaint, unless he or she considers it necessary for the purposes of the investigation”.
5. The public authority conducted an internal review of its handling of the request on 31 July 2006. The internal review upheld the decision not to disclose the letter to the complainant.

The Investigation

Scope of the case

6. On 10 August 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the public authority's decision to refuse the request under section 44 of the Act, by virtue of section 32 LGA.

Chronology

7. On 13 December 2006 the Commissioner wrote to the public authority and asked that it fully explain and justify its use of section 32 LGA. The Commissioner also asked the public authority to provide the following:
 - a copy of the information it was withholding from the complainant
 - a brief chronology of its investigation into the complaint against Wealden District Council
8. The public authority responded on 3 January 2007 and provided the extra information requested by the Commissioner.

Findings of fact

9. The public authority's investigation into the complaint against Wealden District Council covered the period 15 November 2005 to 12 October 2006.

10. The letter referred to by the complainant in his information request was a letter dated 18 May 2006 from Wealden District Council to the public authority. The letter related to the public authority's investigation into a complaint of maladministration against the Council.

Analysis

Exemption

11. Section 44(1) provides that –

“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,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.”

12. Section 32(2) of the LGA provides that:

Information obtained by a local Commissioner, or any officer of either Commission, in the course of or for the purposes of an investigation under this part of the Act shall not be disclosed except-

- a) for the purposes of the investigation and of any report to be made under section 30 or 31 above; or
- 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 an officer of either 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 enquiry with a view to the taking of such proceedings, or
- c) for the purposes of any proceedings under section 29(9) above and the Local Commissioner and the officers of his Commission 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 the Act.

13. The Commissioner recognises that the letter requested by the complainant was received by the public authority during the period in which it was investigating a complaint against Wealden District Council. Therefore the Commissioner is satisfied that the letter was obtained by the public authority in the course of, or for the purposes of its investigation of the said council.

14. The Commissioner is satisfied that section 32(2) of the LGA acts as a statutory prohibition to disclosure of the information requested by the complainant and therefore that section 44 of the Act applies. Section 44 of the Act is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.
15. The Commissioner recognises that the public authority has discretion to disclose information obtained in the course of or for the purposes of an investigation where it believes that it would be beneficial for the purposes of that investigation. In reaching his decision the Commissioner has not sought to question the public authority use of its discretion in this regard.

The Decision

16. The Commissioner's decision is that the information requested by complainant is exempt under section 44 of the act and that the public authority has dealt with the request in accordance with the requirements of the Act.

Steps Required

17. The Commissioner requires no steps to be taken.

Failure to comply

18. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

19. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 11th day of April 2007

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**