

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 December 2010

Public Authority: Audit Commission

Address: 1st Floor
Millbank Tower
Millbank
London
SW1P 4HQ

Summary

The complainant requested the public authority to provide her with a copy of the "guidance in respect of council tax section 11 discounts and the electoral register match". The public authority relied on the exemption at section 31(1)(a) to refuse her request. The Commissioner's decision is that the exemption is engaged and that the public interest favoured maintaining the exemption.

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.

Background

2. A person deemed to be a sole occupier of domestic property is entitled to a 25% discount on their council tax (section 11 of the Local Government Finance Act 1992). The Audit Commission ("the public authority") has powers¹ to collate and match varying data, of those

¹ The Serious Crime Act 2007 inserted provisions dealing with data matching exercises into the Audit Commission Act 1998.

claiming the discount, to indicate whether the claim is being made on a fraudulent basis. The public authority maintains a secure website through which it collects data for matching and disclosing the results of matching exercises. The public authority also makes available guidelines to participating bodies via its secure website.

The Request

3. The complainant, on 20 August 2009, requested the public authority to provide her with a copy of the "guidance in respect of council tax section 11 discounts and the electoral register match". The public authority determined that the complainant was seeking the "Code of Data Matching" and informed the complainant that while it held it, it was exempt from disclosure by virtue of section 31(1)(a) of the Act; this was conveyed to the complainant in correspondence dated 14 September 2009.
4. In an email dated 15 September 2009 the complainant requested the public authority to review its decision to rely on section 31(1)(a) not to communicate the Code of Data Matching to her. The public authority undertook the review and its finding, of upholding its original decision, was conveyed to the complainant in correspondence dated 7 October 2009.

The Investigation

Scope of the case

5. On 31 October 2009 the complainant contacted the Commissioner to complain about the way her request for information had been handled.
6. In her submission to the Commissioner the complainant set out a number of arguments as to why she believed the withheld information should be disclosed. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
7. The public authority later released Appendices 1 and 2 (see below) to the guidance and thus the substantive issue for consideration in this notice is whether the public authority was correct in withholding the remainder of the guide.

Chronology

8. In the course of the Commissioner's investigation the public authority provided the Commissioner with a copy of the withheld information and further representations to support its application of s31(1)(a).
9. The public authority also informed the Commissioner, in a letter dated 18 December 2009, that it would release to the complainant Appendices 1 and 2 of the Code of Data Matching to the complainant. This was, it said, because the appendices were a suggested letter and declaration that local authorities could utilise when contacting people regarding potentially erroneous claims for the single person discount and thus they were likely to be in the public domain. The public authority explained that it considered that disclosure of the appendices would not prejudice the detection and prevention of crime. The public authority provided the complainant with the said appendices under cover of a letter dated 25 November 2010.

Analysis

Exemption – Section 31(1)(a)

10. The withheld information contained in the Code of Data Matching comprises guidelines on the exercise of interpreting matches relating to people claiming the single person discount, including:
 - How matches relating to specific individuals are grouped and recorded on the secure website;
 - Information and guidance on approaches to the investigation of matches;
 - Instructions on how to record investigation outcomes;
 - Screenshots of the secure website.
11. Section 31(1) provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) the prevention or detection of crime,
12. Section 31 only applies to information not exempt by virtue of section 30. As the public authority does not have the particular duties or powers, as regards the withheld information, to engage section 30 the

Commissioner is satisfied that the withheld information is not exempt by virtue of that section.

13. In its refusal and internal review notices to the complainant the public authority decided that it "would be likely" to prejudice the prevention or detection of crime if the withheld information was released and therefore this is the (higher) threshold the Commissioner will adjudicate upon.
14. The public authority maintains that disclosing the withheld information about how matches are investigated and interpreted would be likely to assist those intending to defraud (by fraudulently claiming the single person's discount) by alerting them to the investigation process.
15. The Commissioner's position is that the prejudice test is not a weak test, and a public authority must be able to point to prejudice which is "real, actual or of substance" and demonstrate some causal link between the potential disclosure and the prejudice.
16. The Commissioner concurs with and accepts the assertion of the public authority that disclosure of the information would be likely to prejudice the prevention or detection of crime and thus is qualitatively different from the appendices released by it. This is because the withheld information gives guidance (the content of which cannot be found in the public domain) on how to investigate for fraud and what factors indicated possible fraudulent activity. It is a reasonable supposition that if these factors were given public dissemination then those who are contemplating or engaging in fraudulent activities (of the type the guidance is designed to restrict) would so order their affairs as to make the investigation of these activities more difficult and detection consequently less likely. The Commissioner therefore considers that section 31(1)(a) of the Act is engaged in relation to the disputed information.

Public interest test

17. However, as section 31 is a qualified exemption, the Commissioner has gone on to consider the public interest test.
18. In its letter to the Commissioner dated 18 December 2009, the public authority put forward the following section 31 public interest arguments it believed were relevant in this case:

Public interest argument in favour of disclosing the requested information

- shows that the guidelines on investigation matches are appropriate

Public interest arguments in favour of maintaining the exemption

- ensure that fraudsters are not able to avoid or reduce the likelihood of detection
 - protects the public purse by making fraudulent activity less likely to be successful
19. In reaching a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the public interest inherent in the exemption; that is the public interest in avoiding likely prejudice to the prevention or detection of crime.
20. However the Commissioner has also taken into account several opposing public interest arguments, all of which he believes to carry some weight in this case. Such factors occurred to the Commissioner as a result of his considerations of the complainant's submissions to him and from his review of the withheld information itself.
21. Those arguments relate to the general public interest in the transparency and accountability of the public authority – and those bodies which make use of the guidance - as well as the specific circumstances and arguments that apply in relation to this case and the information in question. The Commissioner considers the factors specific to this case to be as follows:
- Providing greater transparency and accountability in relation to the guidance, as well as the investigation process and the basis upon which it is carried out.
 - Informing public debate and understanding in respect of the guidance and the investigation process (including among those accused of fraud on the basis of the operation of the guidance). This includes debate and understanding in relation to the appropriateness and effectiveness of the guidance, and its compliance with relevant statutory provisions.
22. The Commissioner has also taken into account that the Information Tribunal has stated that there is an assumption in favour of disclosure under the Act, even though not expressly stated. It said: "what it means is that there is always likely to be some public interest in favour of the disclosure of information under the Act". However it went on to state that "the strength of that interest, and the strength of the competing interest in maintaining any relevant exemption, must be assessed on a case by case basis". Guardian Newspapers Limited and Heather Brooke v the Information Commissioner and the BBC (EA 2006/0011 and EA 2006/0013)

23. As is clear from paragraph 21, the Commissioner considers that the public interest which would be served by the disclosure of this information extends beyond that identified by the public authority. However, although he considers the factors identified all to be relevant (and therefore not worthy of dismissal), in the circumstances of this case he does not consider them to carry a great deal of weight, especially when compared with the very strong arguments in favour of the maintenance of the exemption.
24. This is because the public interest factors for disclosure, in the Commissioner's view, are clearly outweighed by those public interest factors that favour the maintenance of the exemption. In the Commissioner's view, those latter factors are the same as those arguments set out above as to why the exemption is engaged in this case. He has therefore not repeated them here.
25. The Commissioner would add, however, that the public interest is plainly better served by withholding information that if it were publicly disseminated would make it less likely that fraudulent claims on the public purse would be detected. The Commissioner is of the view that there is actually little merit for the public in releasing this information that he accepts would assist a small minority of people to escape detection for committing activities that are criminal. In this case the Commissioner believes that this factor clearly outweighs any of the public interest factors in favour of disclosure set out above, either individually or collectively.
26. The Commissioner, for the reasons discussed above, finds that the exemption is engaged and the public interest in maintaining the exemption outweighs, by a large margin, the public interest in disclosure.

Procedural Requirements

27. The failure of the public authority to provide the complainant with Appendices 1 and 2 of the Code of Data Matching within 20 working days of receiving the request for information and after it had conducted its internal review places it in breach of sections 1(1)(b) and 10(1) respectively. The Commissioner reaches this decision on the basis that the public authority acknowledges that this information should have been disclosed at the time of the request.

The Decision

28. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act, save for the procedural breaches recorded above,.

Steps Required

29. The Commissioner requires no steps to be taken.

Right of Appeal

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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Dated the 20th day of December 2010

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution**

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

Legal Annex

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (b) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (c) if that is the case, to have that information communicated to him."

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Section 17(1) provides that –

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (d) states that fact,
- (e) specifies the exemption in question, and
- (f) states (if that would not otherwise be apparent) why the exemption applies."

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-

- (g) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
- (i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it,

Section 31(1) provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- a) the prevention or detection of crime,
- b) the apprehension or prosecution of offenders,
- c) the administration of justice,
- d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- e) the operation of the immigration controls,
- f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”