

## Freedom of Information Act 2000 (FOIA) Decision Notice

**Date:** 5 October 2011

**Public Authority:** Norfolk County Council  
**Address:** County Hall  
Martineau Lane  
Norwich  
Norfolk  
NR1 2DH

### Decision

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The complainant requested a copy of an investigator's report (and any documents referred to therein) into the alleged misconduct of a County Councillor. The Commissioner's decision is that, as maintained by the public authority, section 44(1)(a) of the Act exempted from disclosure this requested information.

### Background

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1. On 7 October 2010 a County Councillor of Norfolk County Council ("the public authority") made a complaint that a fellow County Councillor had breached the Council's Code of Conduct. Under the powers contained in the Local Government Act 2000 (as amended)<sup>1</sup> (hereinafter "LGA") and the Standards Committees (England) Regulation 2008<sup>2</sup> the County Council, via its Monitoring Officer, investigated the complaint.

### Request and response

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2. The complainant made a request to the public authority on 28 February 2011 for a copy of the investigator's report (and any documents referred to therein). The public authority provided its substantive

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2000/22/>

<sup>2</sup> <http://www.legislation.gov.uk/uksi/2008/1085/regulation/12/made>

response on 31 March 2011. It refused to disclose the requested information on the basis of the exemptions contained in sections 32, 36 and 40(2) of the Act. The complainant requested an internal review of the public authority's decision on 31 March 2011. On 20 April 2011 the public authority wrote to him with the details of the outcome of the internal review it had carried out. The outcome was to release a small proportion of the requested information but otherwise it upheld the original decision. The information disclosed at this stage consisted of copies of a newspaper article, the relevant Councillor's formal Declaration of Acceptance of Office and the Decision Notice in relation to the investigation, all of which was available to the public in any event.

3. In correspondence (dated 29 June 2011) to the Commissioner the public authority sought to rely on a further exemption (provided by section 44(1)(a) of the Act) to withhold the information. This exemption is applicable to information, the disclosure of which is prohibited by another statute.

### **Scope of the case**

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4. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
5. Where a public authority has not referred to a particular exemption when refusing a request for information, the Commissioner may exercise his discretion and decide whether, in the circumstances of the case, it is appropriate to take the exemption into account if it is raised by the public authority in the course of his investigation. The Commissioner will be pragmatic, taking into consideration the potential risks associated with disclosure of the information in question. This will include considering the topic of the information, its profile, its sensitivity and the impact of release.
6. The assertion of the public authority, as regards the late relied on section 44, is that if they were to release the requested information they would be acting unlawfully in contravention of section 63(1) of the LGA<sup>3</sup>. As the Commissioner cannot order a public authority to act unlawfully and, as the public authority appears to have an arguable case on this point, he will consider the applicability of section 44. If

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2000/22/section/63>

required the Commissioner will then consider the other exemptions the public authority relied upon.

## Reasons for decision

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7. 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,....”
8. The public authority maintains that section 63(1) of the LGA prohibits the disclosure of the requested information.
9. The Commissioner notes that section 63(1) of the LGA prohibits the disclosure of certain information. Regulation 12 of the Standards Committee (England) Regulations 2008<sup>4</sup> extends the application of this to information obtained by Monitoring Officers in the performance of any of their functions under Part 3 of the LGA and regulations made under that Part. The relevant function here is the investigation of complaints against elected officials (regulation 14 of the Standards Committee (England) Regulations 2008<sup>5</sup>).
10. As stated above the aforesaid allegation of misconduct was investigated by a Monitoring Officer of the County Council in accordance with section 57A(2) of the LGA.
11. The withheld information, which the Commissioner has viewed, in this case is the Investigator’s report prepared on behalf of the Monitoring Officer and documentation obtained as part of the investigation. It therefore consists of information obtained or generated in the course of the investigation which was then passed to the Monitoring Officer in the circumstances set out above. The Commissioner therefore finds that section 63(1) of the LGA prohibits the disclosure of this report, unless the circumstances set out in section 63(1) [(a) to (j)] and sub paragraph (aa) of the LGA apply.
12. The only relevant grounds to this information request are:

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<sup>5</sup> <http://www.legislation.gov.uk/uksi/2008/1085/regulation/14/made>

- a. Section 63(1)(b) LGA - the person to whom the information relates has consented to its disclosure.
  - b. Section 63(1)(c) LGA - the information has previously been disclosed to the public with lawful authority.
13. The public authority maintains that the person to whom the information relates to has not consented to its release and the Commissioner has not discerned evidence contrary to this. The Commissioner has also not been able to discern evidence that the withheld information has been previously publically disclosed. The Commissioner therefore finds that these circumstances, that would permit public disclosure of the Investigator's Report, have not been met.
14. The Commissioner's decision, having regard to the above matters, is that the section 44(1)(a) statutory bar was applicable to the withheld information. This is because he is satisfied that disclosure of the withheld information, by the public authority, is prohibited by section 63(1) of the LGA and thus section 44(1)(a) is engaged and does exempt the withheld information from disclosure.
15. As the Commissioner has concluded that section 44(1)(a) has been correctly applied he has not gone on to consider the application of sections 32, 36 and 40(2) of the Act.

## Right of appeal

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16. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)
17. 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.
18. 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 .....**

**Alexander Ganotis  
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Information Commissioner’s Office  
Wycliffe House  
Water Lane  
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SK9 5AF**