

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 May 2015

Public Authority: Cheshire West and Chester Council

Address: Floor 2, HQ Building
58 Nicholas Street
Chester
CH1 2NP

Decision (including any steps ordered)

1. The complainant has requested health and safety information and correspondence concerning the Tarzan Swing operated by Adventure Forrest Limited at Delamere Forest in Cheshire. Cheshire West and Chester Council has confirmed that it holds information falling within the scope of the complainant's request but has refused to disclose this in reliance on the exemptions provided by sections 31(1)(c) and 44(1)(c) of the FOIA.
2. The Commissioner's decision is that Cheshire West and Chester Council has correctly applied section 31(1)(c) to the withheld information.
3. The Commissioner does not require the Council to take any further action in this matter.

Request and response

4. On 22 July 2014, the complainant wrote to Cheshire West and Chester Council requested recorded information in the following terms:

"I am making a request for information relating to all reported tree Top Adventure accidents/incidents since 2010 relating to the Go Ape sites. In particular, I am seeking incident and RIDDOR data relating to the Go Ape tree top swing known as the 'Tarzan Swing'".

And also:

"I seek information from your Environmental Health and Safety responsible officer for the Go Ape sites on all correspondence they may have had with Go Ape in respect of reported accidents/incidents especially where this may relate to the named 'Tarzan Swing' apparatus".

5. The Council responded to the complainant's request on 19 August by advising him that it does not hold the information he seeks.
6. On 24 August the complainant wrote to the Council to advise it that his information request is part of an ongoing legal process. He asked:

"...can you confirm with me that [a named person] (Environmental Health Practitioner) and/or the Cheshire West and Chester Borough Council Environmental Health and Safety Department, as the Regulatory Authority for the Go Ape tree top adventure (trading name of Adventure Forrest Limited, 'AFL'), do not hold any RIDDOR/accident reports of related correspondence with AFL in respect of reported accidents occurring on AFL premises? Furthermore, that the department do not hold any information relating to health and safety inspections or correspondence specifically relating to the apparatus referred to by AFL as the 'Tarzan Swing'?"
7. The Council treated the complainant's email of 24 August as a new request for information and gave this a new reference number – 2277505.
8. On 22 September the Council sent the complainant its response. The Council confirmed that it holds some of the information relating to the complainant's request but refused to provide this to him in reliance of the exemptions to disclosure provided by sections 31(1)(c) and 44(1)(c) of the FOIA.
9. On 2 December, following the completion of its internal review, the Council wrote to the complainant to advise him of its final position. The review concluded that the Council had correctly confirmed that it held information relating to the complainant's request and also that it had been correct in refusing to provide that information in reliance on sections 31(1)(c) and 44(1)(c) of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 30 December 2014 to complain about the way his request for information had been handled.

11. The complainant asked the Commissioner to consider the appropriateness of the Council's decision not to release the information he seeks, particularly where there are on-going concerns for public safety.
12. The complainant also drew the Commissioner's attention to information disclosed to him by Stirling Council. This information relates to the AFL site at Aberfoyle.
13. This decision notice sets out the Commissioner's decision in respect of the Councils reliance on sections 31(1)(c) and 44(1)(c) of the FOIA.

Reasons for decision

14. The Council has provided the Commissioner with copies of the information it holds which falls within the scope of the complainant's request. This information consists of three documents which are held by the Council by virtue of it being the Primary Authority dealing with the Go-Ape facilities.
15. The Commissioner understands that all local authorities, except those in Scotland, have a legal obligation to liaise with the nominated officer within the Council in matters concerning the Go-Ape tree-top swing known as 'Tarzan Swing'.

Section 31(1)(c) – where disclosure of information would prejudice the administration of justice

16. Section 31(1)(c) states –

"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 –

(c) the administration of justice."

17. Section 31 can be claimed by any public authority: It is not limited to public authorities who have law enforcement functions.
18. In order to rely on this exemption it is sufficient for the public authority to show that disclosure of the requested information would, or would be likely to, prejudice the particular subsection it has identified – here the administration of justice, and that the public interest in maintaining the exemption outweighs the public interest favouring disclosure.
19. In this case the Council has advised the Commissioner that its application of the section 31(1)(c) has flowed from the complainant's

voluntary confirmation that the information forms part of an on-going legal process.

20. Whilst the Council itself is not party to the legal process identified by the complainant, it has liaised with Stirling Council about this matter.
21. The author of the withheld information – an officer of Stirling Council, has confirmed that he had spoken with the complainant about his accident by way of a telephone conversation. During that conversation the complainant had confirmed his intention to pursue a civil action and that he was gathering more information about Go Ape for that purpose.
22. It is because the complainant has confirmed that he requires the requested information for the purpose of his intended civil action, that both Councils – Chester West and Cheshire Council and Stirling Council, consider that placing the information into the public domain, outside of the intended legal process, would likely be unfair to the defendant and other parties and would likely affect the possibility of a fair trial by undermining the particular proceedings.
23. In consequence of the above, the Council asserts that disclosing information without knowledge of the particular court would interfere with the case management function of that court. The Council has stressed to the Commissioner – and to the complainant, that an application could have been made to the relevant court for an order of disclosure to be granted, which the Council would have complied with.
24. Having considered the representation made by the Council, the Commissioner is persuaded to accept that section 31(1) (c) is engaged. He is satisfied that the withheld information is such that its disclosure would likely prejudice the administration of justice.

Consideration of the public interest

25. In order to rely on section 31(1)(c) the Council is required to consider the public interest factors which favour both the disclosure and continued withholding of the requested information. The Council is required to 'weigh' the public interest factors it has identified and to determine where the balance of the balance of the public interest lies. This task now falls to the Commissioner.

Arguments in favour of disclosing the requested information

26. The Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of information held by public authorities. This assists the public in understanding the basis and how public authorities make their decisions and carry out their functions. This in turn fosters

trust in public authorities and may allow greater public participation in the decision making process.

27. Having examined the withheld information in this case, the Commissioner finds there is a clear public interest in the public having knowledge that the Council is acting properly, in all respects, concerning its role as the Primary Authority dealing with Go-Ape facilities: He recognises that the public should be adequately assured of the safety of the apparatus used at those facilities; of the safety procedures in place; that accidents are properly reported and investigated; and where appropriate, that recommendations following inspections are considered and acted on where that is required.

Arguments in favour of the continued withholding of the requested information

28. Where there is a clear possibility that the requested information is relevant to an existing or contemplated legal process, there is a clear public interest in ensuring that the administration of justice is dealt with according to the judicial process and carried out according to the Civil Procedure Rules.
29. The administration of justice would be undermined where documents are disclosed through the freedom of information legislation in circumstances where legal action is known to be contemplated by one of the parties or where such action has already commenced.
30. The Commissioner considers that no party should be placed at an advantage over the other by virtue of the provisions of the FOIA, particularly where the disclosure is required from a third party, and where the Civil Procedure Rules make provision for the disclosure of documentation to the relevant parties in a legal dispute.
31. In the circumstances of this case there is a real possibility that the jurisdiction of the court would be undermined should disclosure of the requested information be made under the provisions of the FOIA.
32. The Commissioner notes that the information held by the Council was provided on a voluntary basis. He considers that the providers of that information would be reluctant to furnish the Council with the same or similar information in future, potentially leading to a negative impact on the Council in terms of its ability to carry out its statutory duties in respect of investigations and court proceedings.

The Commissioner's decision

33. The Commissioner has considered where the balance of the public interest lies in respect of the public interest factors identified above.

34. He has decided that, whilst significant weight must be given to the principles of accountability and transparency, greater weight must be afforded to the potential negative impact on the jurisdiction of the court which disclosure is likely to bring about.
35. The Commissioner cannot ignore that the information was provided to the Council on a voluntary basis. In consequence of this he has given particular weight to the negative impact on the Council's functions which disclosure would have in respect of the voluntary provision of this type of information in the future.
36. The Commissioner finds that the public interest favours the continued withholding of the information requested by the complainant. He has therefore decided that the Council is entitled to rely on section 31(1)(c) to withhold that information.
37. In view of the Commissioner's decision regarding the application of section 31(1)(c), it is not necessary for him to consider the Council's additional application of section 44(1)(c) to the same information.

Right of appeal

38. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.
40. 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

Andrew White
Group Manager
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Wycliffe House
Water Lane
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SK9 5AF