

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 1 September 2016

**Public Authority:** Suffolk County Council  
**Address:** Endeavour House  
8 Russell Road  
Ipswich  
IP1 2BX

#### Decision (including any steps ordered)

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1. The complainant has requested copies of the warrants used by three named Trading Standards Officers at Suffolk County Council (the "Council"). The Council initially cited section 40 (unfair disclosure of personal data) as its reason for refusing to provide this information. It revised this position at internal review and introduced reliance on section 31(1)(a) (prejudice to law enforcement). The complainant had also requested a copy of the Letter of Delegation that gave the officers the authority to act on the Council's behalf. The Council did not properly address this request until it undertook an internal review of its original response when it denied holding a letter of delegation. It provided information about the delegation of authority in this matter.
2. The Commissioner's decision is that the Council is entitled to rely on section 31(1)(a) as its basis for refusing to provide the warrants. However, it breached its obligations under section 1 and section 10 in failing to deny within 20 working days that it held a "Letter of Delegation" as described in the complainant's request.
3. No steps are required.

## Request and response

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4. On 30 November 2015, the complainant requested information of the following description:

"I would ask you to supply me with the following information regarding the following three Suffolk Trading Standards Officers, [complainant listed three named officers].

[1] Who appointed these Officers?

[2] Please send copies of their Warrants.

[3] If the authority to appoint these Officers was delegated please supply the Letter of Delegation."

5. For ease of future reference, the Commissioner has numbered these requests.
6. On 6 January 2016, the Council responded. It provided information in response to Request 1. It argued that it was not obliged to provide information within the scope of Request 2. It cited exemptions in FOIA section 40 (unfair disclosure of personal data) as its basis for doing so. It argued that Request 3 was "not applicable" although it is not clear what it meant by that.
7. The complainant requested an internal review of its responses to Requests 2 and 3 on 6 January 2016. The Council sent him the outcome of its internal review on 29 January 2016. It revised its position. It argued that the information it held within the scope of Request 2 was exempt under provisions of section 30 (investigations and proceedings conducted by public authorities) and section 31 (prevention/detection of crime). It explained that it did not hold a letter of delegation as described in Request 3 but sent him a link to a relevant section of its constitution to explain more about delegation of authority.

## Scope of the case

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8. Having made earlier contact about this matter, the complainant provided the Commissioner with the information needed to progress his complaint on 3 May 2016. He complained about the way the Council handled his Requests 2 and 3.
9. During the course of the investigation, the Commissioner reminded the Council that section 30 and section 31 were mutually exclusive and it

was up to the Council to assert which one it sought to rely on. The Commissioner also explained that the Council could only rely on section 30 if the information fell within one of the classes of information described in that exemption. If it did not fall within any of the applicable classes of information, it may be exempt under section 31 or another exemption but it was for the Council to make the arguments about that. The Council asserted reliance on section 31. It also introduced reliance on section 38 (health and safety exemption) for the same information.

10. The Commissioner has considered whether the Council is entitled to rely on section 31 as its basis for refusing to provide the requested warrants (Request 2 refers). Where she finds that the Council cannot rely on section 31, she will consider the application of section 38. She has also considered whether the Council provided a proper response to Request 3.

## **Reasons for decision**

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### **Section 1**

11. Section 1 of the FOIA sets a two-part obligation upon public authorities. They must confirm or deny whether they hold requested information and, where requested information is held, they must provide it. Exemptions can apply to either part. In this case, the Council confirmed that it held the warrants described in Request 2 but refused to provide them citing section 31 as its basis for doing so. However, it did not provide a proper response as regards Request 3.
12. Before the Commissioner considers the application of section 31 to Request 2, she notes that the Council did not explain that it did not hold a Letter of Designation until it completed its internal review. In its refusal notice, it said "not applicable" in answer to Request 3 rather than "we do not hold a Letter of Designation". It acknowledged to the Commissioner that it should have done so and that it should have explained more about why the requested letter was not held. It eventually did so at internal review.
13. In failing to deny that it held a Letter of Designation, it contravened the requirements of section 1(1) of the FOIA. It rectified this at internal review but this was outside the time required by section 10 of FOIA (20 working days).

14. The Commissioner is pleased that the Council rectified its error at internal review and would encourage all Councils to read her guidance on how to write a proper refusal notice under FOIA.<sup>1</sup> The Commissioner is also pleased that the Council provided an explanation as to why it did not hold a Letter of Designation in its letter of internal review.

### **Section 31 - law enforcement**

15. Section 31 provides a prejudice based exemption which protects a variety of law enforcement interests. In this case the Council argued that it was not obliged to provide the information described in Request 2 because it can rely on the exemption at section 31(1)(a). This section 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—*

*(a) the prevention or detection of crime,"*

16. Consideration of this exemption involves two stages. First, in order to be engaged, the following criteria must be met:
- the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
17. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

18. It is also important to remember that disclosure under FOIA is disclosure to the world. Regardless of the complainant's reasonable intentions in accessing the warrants, disclosure to him under FOIA means that the warrants can be disclosed to anybody.

*Does the harm envisaged relate to an applicable interest?*

19. Covering first whether the exemption is engaged, the relevant applicable interests cited in this exemption are the prevention or detection of crime.
20. The Council explained that "release of the warrants into the public domain could enable malevolent persons to copy them and commit crime by impersonating a Trading Standards Officer and then purporting to exercise powers of entry and of seizure of goods."
21. The Commissioner is satisfied that the harm envisaged does relate to an applicable interest. Impersonating a Trading Standards Officer ("TSO"), is, of itself, a criminal offence. Use of false identification could lead to the commission of further offences such as unlawful entry to premises and theft.

*Is there a causal relationship between the potential disclosure and prejudice to law enforcement?*

22. The Commissioner can clearly see that impersonating a TSO is of itself a criminal act and could lead to further acts of criminality. The Commissioner, having viewed the withheld information, is satisfied that there is a causal relationship between access to the warrants and potential misuse of those warrants for criminal purposes.

*How likely is it that the prejudicial outcome in question could arise?*

23. When asked directly, the Council said that it is highly likely that disclosure would lead to criminal misuse of the warrants. It explained that it was vital that it retained public confidence in its work. It described in some detail how the warrants could be misused if they fell into the wrong hands. Strictly speaking, this does not make clear whether the Council is relying on the lower threshold of likelihood described in the exemption – prejudice to law enforcement "would be likely" to occur rather than prejudice "would" occur. It would have been more helpful had the Council used the specific language of the FOIA. The Commissioner has therefore considered whether the Council has adequately demonstrated the lower threshold of likelihood, that is, that prejudice to law enforcement "would be likely" to occur.

24. The Commissioner has seen the warrants and is entirely satisfied that they could be manipulated to create false TSO identification with the consequence of further criminal activity that would be likely to follow. While a new version could be created to combat future misuse of TSO identification, the damage to law enforcement would already have occurred. Until the new format was widely known (and this may be a long process), individuals may assume that a false identification is a true one. A window of opportunity for criminality would open until it was widely known what a fake warrant looked like. It is unclear how long it would take to ensure that everybody who needed to know did, in fact, know what a valid warrant looked like.
25. The Commissioner therefore agrees that disclosure of the information would be likely to give rise to a prejudicial impact on the prevention or detection of crime because it is likely that it could be used by those with criminal intent to impersonate a TSO.
26. For the reasons outlined above, the Commissioner is therefore satisfied that the exemption at section 31(1)(a) is engaged in relation to the withheld information. However, the Council cannot rely on the exemption unless the public interest in doing so outweighs the public interest in disclosure.

*Public interest arguments*

27. The complainant raised concerns about the manner in which these warrants had been used and the lack of transparency about their validity. He implied that failure to provide them when entering premises could, of itself, indicate illegal entry or unauthorised activity by TSOs. He alluded to other matters that are not within the remit of the Commissioner to consider.
28. The Council acknowledged the public interest in disclosure in order to serve the following interests:
  - Promoting transparency and accountability of public money.
  - Promoting transparency, accountability and participation in decision making.
  - Promoting transparency, accountability and participation in public debate.
  - General expectation for a local authority to be transparent with its information.
29. It argued the following as its countervailing arguments:
  - Release of the warrants into the public domain could enable malevolent persons to copy them and commit crime by

impersonating a TSO and then purporting to exercise powers of entry and of seizure of goods.

- That would set a precedent for further harmful material to be released.
- The purpose of the exemption is to protect the effective investigation and prosecution of offences. Releasing this information would prejudice any investigations techniques for any future prosecutions, thus making them unfeasible.
- The Council has a duty to investigate and bring legal proceedings quickly and thoroughly against anyone involved in criminal activity. It also has a duty to protect this information from prejudicing its proceedings and/or law enforcement activities.

*Balance of public interest*

30. The Commissioner is unconvinced by the Council's arguments as to precedent setting. Each request must be considered on its own merits.
31. However, the Commissioner agrees that there is a compelling public interest in avoiding the likely risk that the warrants could be misused to create fake TSO identification. As noted above, the Commissioner is satisfied that this could be achieved by those with criminal intent and ready access to the withheld information. FOIA disclosure is disclosure to the world. Regardless of the complainant's benign personal reasons for having access to the warrants, once disclosed under FOIA, the warrants become available to everyone.
32. The Commissioner also recognises the Council's concern about the risk to ongoing investigations and those conducted in the immediate future.
33. In the Commissioner's view, the arguments in favour of maintaining the exemption carry more weight in this case. While there is a public interest in transparency as regards the operation of law enforcement activity, this is counterbalanced by the more compelling public interest in preventing likely criminal activity that can arise as a result of disclosing the requested information.
34. If the complainant has concerns about the actions of Trading Standards Officers at the Council or where he wishes to verify the bona fides of those officers, he is at liberty to do so by other means that are not in the Commissioner's remit.

### **Section 31(1)(a) - Conclusion**

35. Having given due consideration to the opposing public interest factors in this case, the Commissioner has concluded that the public interest in maintaining the exemption is greater than the public interest in disclosure.
36. The Council also cited the exemption at section 38 (health and safety) as a basis for refusing to provide the requested information. Given the Commissioner's conclusion as regards section 31(1)(a), she has not considered the application of this exemption.



## Right of appeal

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37. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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