

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2017

Public Authority: London Borough of Newham
Address: Newham Dockside
1000 Dockside Road
London
E16 2QU

Decision (including any steps ordered)

1. The complainant has requested the London Borough of Newham (the council) to disclose all minutes from the Safety Advisory Group meetings relating to the London Stadium in 2016. The council disclosed some information but withheld other information citing sections 31(1)(a) and 43 of the FOIA.
2. The Commissioner's decision is that sections 31(1)(a) and 43 of the FOIA do not apply. She therefore requires the council to take the following steps to ensure compliance with the legislation:
 - The council should disclose the withheld information to the complainant.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 5 September 2016, the complainant wrote to the council and requested information in the following terms:

"Please can the meeting minutes for all Safety Advisory Group (SAG) Meetings held in relation to the London Stadium in Queen Elizabeth Park in Stratford be made available online on a public domain (in particular, all meeting minutes dated 2016 until the date of this request 05/09/2016)?"

5. The council responded on 4 November 2016. It disclosed some information but withheld other information citing sections 31(1)(a) and 43 of the FOIA.
6. The complainant requested an internal review on 7 November 2016.
7. The council carried out an internal review and notified the complainant of its findings on 28 November 2016. It upheld the application of sections 31(1)(a) and 43 of the FOIA but explained in a little more detail why they applied.

Scope of the case

8. The complainant contacted the Commissioner on 29 November 2016 to complain about the way his request for information had been handled. Specifically, the complainant disagrees with the application of sections 31(1)(a) and 43 of the FOIA and believes more information could be legitimately disclosed.
9. Section 31(1)(a) of the FOIA has been applied to all redactions except a limited number which have been redacted under section 43 of the FOIA. The Commissioner understands that section 43 of the FOIA has been applied to a couple of references in the minutes to a planned event and references to commercial negotiations relating to the Airwaves system.
10. The complainant did not raise any concerns with the Commissioner about the council's application of section 40 of the FOIA to junior members of staff mentioned throughout the withheld information. The Commissioner's investigation has therefore focussed on the council's application of section 31(1)(a) and 43 of the FOIA.

Reasons for decision

Section 31(1)(a)

11. Section 31(1)(a) of FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the prevention or detection of crime.

12. This exemption is also subject to the public interest. So, in addition to demonstrating that disclosure would or would be likely to prejudice the prevention or detection of crime, the council must consider the arguments for and against disclosure and demonstrate that the public interest rests in maintaining the exemption.
13. The council explained that at the time of the request there was a lot of concern between all partners of the London Stadium that the information contained in the minutes, which on some occasions highlighted security issues and weaknesses, could be used by parties at high profile and potential troublesome matches. At the time of the request there was a Chelsea match, as well as other games, which were identified as high risk by the stadium owners and police. It was therefore agreed that all references relating to any issue surrounding security and management should be redacted under section 31(1)(a) of the FOIA.
14. The council also confirmed that the withheld information includes coverage of CCTV around the stadium and its locations, and in relation to the Airwave functionality. It considers the disclosure of this information at the time of the request could have been exploited in order to identify weaknesses in the stadium's security systems. This would then have prejudiced the effectiveness of the current operational security at the stadium.
15. The Commissioner received a copy of the withheld information and brief submissions from the council; essentially making the same arguments described above. The Commissioner asked the council on two separate occasions to explain in more detail why this exemption was engaged and how the withheld information itself could potentially prejudice the prevention or detection of crime if it were to be disclosed. She also informed the council that she had reviewed the withheld information herself and remained unconvinced that this exemption applied to the majority of the information highlighting the need to provide the necessary arguments and detail for her to consider. Despite this and being afforded ample opportunity to present this information to the Commissioner, the council has failed to do so.
16. The Commissioner considers the onus is on a public authority to provide the necessary information to enable her to reach a decision on the application of a particular exemption. Without such information, the Commissioner can only review the withheld information herself and make a judgement as to whether sight of the information alone is sufficient to warrant the application of an exemption. As stated above, in this case it is not. It may be the case that some of the information is exempt under section 31(1)(a) (for example information relating to the CCTV in operation) but the Commissioner cannot reach such a decision

based on the limited submissions she has received and sight of the withheld information.

17. The Commissioner therefore has no alternative but to conclude that the exemption does not apply and the withheld information should be released.

Section 43

18. Section 43 of the FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the council or a third party. Similar, to section 31 of the FOIA, section 43 is subject to the public interest test.
19. The council has said that the withheld information under this exemption makes specific reference to the profile of an event that did not actually go ahead in the end and how, at the time, it tied into stadium security. It said that the event may go ahead next year and so therefore disclosure of this information would be likely to prejudice the commercial interests of, what the Commissioner believes to be, the event organiser.
20. No further more detailed arguments were provided to the Commissioner.
21. The council also confirmed that it wished to apply section 43 of the FOIA to some redactions relating to the Airwaves system. It stated that negotiations were taking place at the time of the request and one redaction refers to an actual quote.
22. Again, no further more detailed arguments have been provided. The above paragraph is the extent of the council's submissions in relation to this element of the withheld information and its application of section 43.
23. Despite being afforded ample opportunity to do so, the council has failed to furnish the Commissioner with any detailed explanation as to why these redactions would or would be likely to prejudice the commercial interests of the council or any third party. The Commissioner has reviewed the redactions herself but cannot make any judgement on the application of this exemption on this alone.
24. Again, it is not the role of the Commissioner to produce the necessary submissions and arguments for a public authority and, for the same reasons as detailed above in respect of the council's application of section 31(1)(a) of the FOIA, the Commissioner has decided that section 43 of the FOIA is not engaged. As a result the withheld information should be disclosed to the complainant.

Procedural matters

25. The Commissioner notes in this case that the council failed to respond to the complainant's request within 20 working days of receipt. She therefore finds the council in breach of section 10 of the FOIA.

Right of appeal

26. 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

27. 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.
28. 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

Pamela Clements
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