

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 July 2019

Public Authority: Ministry of Housing, Communities and Local Government

Address: 2 Marsham St
Westminster
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information regarding financial assessments of local authorities. The Ministry of Housing, Communities and Local Government (MHCLG) refused the request under the exemption for prejudice to commercial interests (section 43(2)). During the Commissioner's investigation MHCLG additionally relied on exemptions in section 36 to withhold the information.
2. The Commissioner's decision is that the MHCLG has correctly withheld the information under section 36(2)(b) and section 36(2)(c).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 26 July 2018, the complainant wrote to Ministry of Housing, Communities and Local Government (MHCLG) and requested information in the following terms:

"In written evidence to the Public Accounts Committee, published on 20 June, (<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-accounts-committee/financial-sustainability-of-localauthorities/written/85649.html>), the Ministry of Housing, Communities and Local Government details its risk framework, which it uses to assess the health of the sector and identify those councils which demonstrate elements of concern. The evidence says that the department's Accounting Officer receives quarterly advice on: trends within the sector, which local authorities or groups of authorities are at highest risk of financial distress, service failure or governance failure, and information on progress on all statutory and non-statutory interventions.

Please disclose the last four pieces of quarterly advice received by the ministry's Accounting Officer (i.e. covering the last 12 months). If my request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all non-exempt material."

5. MHCLG responded on 23 August 2018. It stated that it was withholding the requested information under the exemption for prejudice to commercial interests – section 43(2) of the FOIA.
6. Following an internal review MHCLG wrote to the complainant on 27 September 2018. It stated that it was maintaining its position.

Scope of the case

7. On 9 November 2018 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that her investigation would consider whether MHCLG had correctly withheld the requested information.

9. During the Commissioner's investigation MHCLG confirmed that it also wish to rely on the exemptions in section 36(2)(b) and section 36(2)(c) to withhold the requested information.

Reasons for decision

Section 36 – prejudice to effective conduct of public affairs

10. MHCLG has withheld all the requested information under the exemptions in section 36(2)(b) and section 36(2)(c).
11. MHCLG has advised that, as its submissions contain references to the withheld information and have been submitted to the Commissioner on a strictly confidential basis, they should not be published in the decision notice. The Commissioner has, therefore, set out her conclusions in summary form without direct reference to any submissions received or specific analysis undertaken.
12. Section 36(2)(b) of the FOIA says that information is exempt information if, in the reasonable opinion of a qualified person, disclosure would, or would be likely to inhibit (i) the free and frank provision of advice or (ii) the free and frank exchange of views for the purposes of deliberation.
13. Section 36(2)(c) says that information is exempt information if, in the reasonable opinion of a qualified person, disclosure would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
14. Section 36 differs from all other prejudice exemptions in that the judgement about prejudice must be made by the legally authorised, qualified person for that public authority. The qualified person's opinion must also be a "reasonable" opinion, and the Commissioner may decide that the section 36 exemption has not been properly applied if she finds that the opinion given is not reasonable.
15. Having considered MHCLG's submissions, the Commissioner accepts that the exemptions provided by sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) are engaged. She must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosing the information.

Balance of the public interest

16. The Commissioner acknowledges that the core areas of public interest here are in knowing that local authorities are managing their finances effectively and responsibly, and that there are appropriate mechanisms

for monitoring and (where relevant) holding to account or assisting authorities in difficulty. The Commissioner accepts that disclosing the information may go some way to serve these interests, however, it is clear that another effect of disclosure would be to place unwarranted additional stress on authorities which may no longer even be in the financial position reflected in the information.

17. As a general principle, the Commissioner acknowledges that disclosing the information would serve the entirely justifiable public interest in knowing that local authorities are using resources responsibly and effectively and the interest in holding authorities to account that are failing to do this. However, the Commissioner is mindful that, taking into account the transient nature of the analyses and recommendations, the accompanying damage that disclosing misleading information would cause and the prejudice to the Department's ability to maintain trust with the parties with which it must consult in order to carry out its public function, the practical impact of disclosure would result in more damage than benefit to the public interest.
18. More importantly, from the perspective of MHCLG's role as overseer of the framework that provides assurance about local authority resilience, the Commissioner agrees that disclosure would damage trust with its partners and severely inhibit its ability to carry out this work. The Commissioner consider that the public interest arguments in favour of maintaining the exemptions, therefore, carry significant weight.
19. The Commissioner is also mindful that there is a wide range of published information which allows for public scrutiny of both local authority spending and MHCLG's role in overseeing this. The Commissioner accepts that these disclosures go some way to addressing the public interest in transparency and accountability in these matters.
20. Whilst the Commissioner is sympathetic to the complainant's concerns and accepts that there is some public interest in making the withheld information available she considers that any benefits from disclosure would be far outweighed by the countervailing harm which would be done to MHCLG's public role in this regard and to local authorities themselves.
21. Having considered all the relevant facts of this case the Commissioner has concluded that MHCLG has correctly applied the exemption and that the public interest favours maintaining the exemption. As she has decided that all the information has been correctly withheld she has not gone on to consider MHCLG's application of other exemptions.

Right of appeal

22. 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

23. 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.
24. 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
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