

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 2020

Public Authority: London Borough of Lambeth
Address: Town Hall
Brixton Hill
London
SW2 1RL

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Lambeth (the Council) seeking information about any evaluation undertaken about a safeguarding programme run by a named organisation. The Council refused to confirm or deny whether it held information falling within the scope of the request on the basis of section 31(3) (law enforcement).
2. The Commissioner has concluded that the Council is entitled to rely on section 31(3) of FOIA and that in all the circumstances of the case the public interest favours maintaining this exemption. No steps are required.

Request and response

3. The complainant submitted the following request to the Council on 9 December 2019:

'I would like to request the following information about Aurety Limited:

- 1. Has Auretys' 'Mothers Safeguarding champions' programme been evaluated internally or externally?*

- 2. If so, can you provide evidence of this having taken place?*
- 3. Who was the individual/organisation/department who carried this out?*
- 4. When was the evaluation(s) carried out specifically dates?*
- 5. What was the sample size evaluated?*
- 6. What was the outcome of the evaluation?*
- 7. Please provide us with a copy of the evaluation report(s) or an executive summary of the report.'*

4. The Council responded on 9 January 2020 and refused to confirm or deny whether it held any information falling within the scope of the request on the basis of section 31(3) (law enforcement) of FOIA.
5. The complainant contacted the Council on 20 January 2020 and asked it to conduct an internal review of this refusal.
6. The Council informed her of the outcome of the internal review on 17 February 2020 and explained that it upheld its reliance on section 31(3) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 24 February 2020 in order to complain about the Council's refusal to provide her with the information she had requested.
8. In relation to this complaint it is important to note that the right of access provided by FOIA is set out in section 1(1) and is separated into two parts. Section 1(1)(a) gives an applicant the right to know whether a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the requested information, if it is held. Both rights are subject to the application of exemptions.
9. As explained above, the Council is seeking to rely on section 31(3) to neither confirm nor deny (NCND) whether it holds information falling within the scope of the request. Therefore, this notice only considers whether the Council is entitled, on the basis of this exemption, to refuse to confirm or deny whether it holds the requested information. The Commissioner has not considered whether the requested information – if held – should be disclosed.

10. It is also important to note at this stage that complainant had, prior to this request, submitted previous requests to the Council seeking information about whether Aurety Ltd had been contracted by the Council to deliver Prevent training. In response to those requests the Council had also refused to confirm or deny whether it held any information relying on sections 24(2) (national security), 43(3) (commercial interests) and 31(3) to do so.
11. The complainant has subsequently complained to the Commissioner about the Council's refusal of these requests. The Commissioner issued a decision notice on 4 May 2020 which concluded that the Council was entitled to rely on section 24(2) to refuse to confirm or deny whether it held the requested information.¹

Reasons for decision

Section 31 – law enforcement

12. Section 31 of the FOIA provides a prejudice-based exemption which protects a variety of law enforcement interests. That means that, in order to engage the exemption, there must be a likelihood that disclosure would cause prejudice to the interest that the exemption protects.
13. Section 31(3) states that:

'The duty to confirm or deny does not arise if, or to the extent that compliance with section 1(1)(a) would or would be likely to, prejudice any of the matters mentioned in subsection (1).'
14. In other words, section 31(3) provides an exclusion from the requirement to confirm or deny whether information described in a request is held if to do so would, or would be likely to, prejudice any of the functions in sections 31(1).
15. In this case the Council's position is that compliance with section 1(1)(a) of FOIA would prejudice the function protected by section 31(1)(a), namely the prevention and detection of crime.

¹ [FS50882456](#), [FS50884291](#), [FS50900363](#) & [FS50909664](#)

16. In order for a prejudice based exemption such as section 31(3) to be engaged the Commissioner considers that three criteria need to be met:
- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if it confirmed whether or not it held the requested information has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between confirming whether or not the requested information is held 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
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, confirming whether or not the information is held 'would be likely' to result in prejudice or 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

The Council's position

17. As explained above, the Commissioner has previously issued a decision notice in relation to the Council's reliance on section 24(2) in relation to very similar requests submitted to it by the complainant. One of the requests in the previous complaint concerned whether Aurety had received funding for its 'Mothers Safeguarding champions' programme. The request which is the focus of this complaint seeks information about whether any evaluation had been undertaken by the Council of this programme.
18. The Council also sought to refuse the requests considered in that decision notice on the basis of section 31(3) of FOIA, albeit that the Commissioner did not consider that exemption in the decision notice given her finding that section 24(2) applied. However, the Council's submissions to the Commissioner in that case to support its reliance on section 31(3) mirrored the arguments to support its position that section 24(2) applied. That is to say, confirming or denying whether the requested information was held would harm national security and in turn prejudice the prevention or detection of crime.

19. The Council's arguments to support its reliance on section 24(2) – and thus by implication its arguments to support section 31(3) – are set out at paragraphs 29 to 41 of the decision notice cited in footnote 1.
20. However, in summary the Council's position is that confirming whether or not it held the requested information would undermine the effectiveness of Prevent programmes and in turn this would be likely to prejudice its ability to protect the public from terrorism related offences. In order to support this position the Council outlined two ways in which complying with section 1(1)(a) of FOIA would result in such consequences. Firstly, by reducing the number of civil society organisations (CSOs) willing to deliver this Prevent training and secondly that highlighting an area that received dedicated Prevent funding would allow for a geographical 'threat map' to be built up.

The complainant's position

21. The complainant argued that given the ability of other local authorities to reveal the information requested this undermined the Council's reliance on section 31(3). She argued that if disclosing this information posed a genuine threat to the prevention or detection of crime it seems highly unlikely that other local authorities would see fit to disclose.

The Commissioner's position

22. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice envisaged by the Council clearly relates to the interests which the exemption contained at section 31(1)(a) is designed to protect.
23. The Commissioner is also satisfied that there is a causal relationship between complying with section 1(1)(a) and the prevention of crime and therefore the second criterion is met. In her view, if the effectiveness of the Council's ability to deliver Prevent training is undermined then it is plausible to argue that this in turn could result in prejudice to the prevention of crime given that the aim of Prevent is, as the name suggests, to safeguard and protect those vulnerable to radicalisation.
24. Finally, the Commissioner accepts that the chance of such prejudice is more than a hypothetical possibility; rather there is a real and significant risk of it occurring if the Council complied with section 1(1)(a) of FOIA. The third criterion is therefore met. In reaching this conclusion the Commissioner relies on her findings in the aforementioned decision notice set out at paragraphs 45 to 49. That is to say, the Commissioner accepts that Prevent has attracted some controversy. She also acknowledges that it encompasses a range of different activities as

outlined by the Council to her in the context of her previous investigation and some arguably more sensitive, and thus understandably requiring greater anonymity, than others. In light of the controversial nature of Prevent, and given the specific evidence provided to her by the Council, again as part of her previous investigation, the Commissioner is persuaded that if the Council complied with section 1(1)(a) of FOIA in relation to this request this could result in some CSOs being unwilling – or at least less willing – to offer to undertake the delivery of such programmes in the future.

25. Furthermore, the Commissioner considers there to be a genuine risk of a series of disclosures of information allowing a motivated individual with malicious intent to build up a detailed picture across London, or more broadly, across the UK of where dedicated Prevent training has been delivered by particular CSOs. Furthermore, the Commissioner accepts that such a process could undermine the effectiveness of the Prevent programme in some or all of the three ways identified by the Council (see paragraph 34 of the previous decision notice). In reaching this conclusion she acknowledges that the threats to the UK from terrorism are clearly real.
26. In addition the Commissioner has also taken into account the importance of NCND provisions being applied consistently in order for them to be effective. That is to say there are situations where a public authority will need to use the neither confirm nor deny response consistently over a series of separate requests, regardless of whether it holds the requested information. Otherwise, if the same (or same type of) requests were made on several occasions, a changing response could reveal whether information was held. The Commissioner considers that such concerns apply here and maintaining a consistent NCND position is both relevant and important in relation to both of the Council's arguments.
27. With regard to the complainant's argument above regarding the actions of other local authorities, in the Commissioner's view each request needs to be considered on its own merits. Furthermore, she does not consider it to be the case that simply because one (or more) local authorities have complied with a similar request this fundamentally undermines the Council's reliance on section 31(3) in this case. For the reasons highlighted above, and set out in detail in the aforementioned decision notice, she considers there to be compelling reasons for the Council to rely on section 31(3). She would also note that she is aware that a number of other London Boroughs have also adopted a NCND position when they have received the same or similar requests to this one.

28. In light of the above, the Commissioner has concluded that section 31(3) is engaged.

Public interest test

29. Section 31(3) is a qualified exemption. Therefore, the Commissioner is required to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether the Council holds the requested information.
30. The complainant argued that there was a clear public interest in the disclosure of the requested information as it provides assurance that the Prevent agenda and contracts that are awarded are appropriate and effective.
31. The Council argued that it was clearly against the public interest to jeopardise the delivery of any counter-terrorism strategy, and, as a result jeopardise the prevention of crime. It was therefore of the view that public interest favoured maintaining the exemption contained at section 31(3) of FOIA.
32. The Commissioner agrees that there is a clear public interest in local authorities being open and transparent about how they are delivering training within their area given the role that Prevent plays in the UK's CONTEST strategy. Furthermore, the Commissioner acknowledges that in light of the arguably controversial nature of Prevent, the importance of such transparency should not be underestimated. However, the Commissioner agrees with the Council that there is a very strong public interest in ensuring that the counter-terrorism strategies are not undermined. Given the risks that complying with section 1(1)(a) in respect of this request presents to the delivery of Prevent, not just in Lambeth, but more broadly, she has therefore concluded that the public interest favours maintaining the exemption contained at section 31(3) of FOIA.

Right of appeal

33. 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@justice.gov.uk

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

34. 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.
35. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF