

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2021

Public Authority: Doncaster Metropolitan Borough Council
Address: Civic Office
Waterdale
Doncaster
DN1 3BU

Decision (including any steps ordered)

1. The complainant requested from Doncaster Metropolitan Borough Council ("the Council") information relating to the cancellation of Penalty Charge Notices ("PCNs"). The Council withheld some of the requested information under section 31(1)(a) of the FOIA (prejudice to the prevention or detection of crime).
2. The Commissioner's decision is that the Council was not entitled to withhold the requested information under section 31(1)(a). The Commissioner also finds that the Council did not comply with its obligations under section 17(1)(c).
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information.
4. The Council 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

5. On 13 August 2020 the complainant wrote to the Council and requested information in the following terms:

"Query 1: I would like to request a copy of all policy and guidance documents that are available to council officers who are tasked with considering the question of whether a Penalty Charge Notice should be cancelled. For the avoidance of doubt, this request covers any policy that is published or otherwise publicly available, plus any internal council guidance or policy that is only available internally to council staff (such as any internal policy that outlines in what circumstances the council may exercise its discretionary powers to cancel a PCN).

Query 2: Please could you also disclose the training material that is used to train the council officers who make decisions regarding the cancellation of PCNs. This should cover only training material that is directly relevant to their role in deciding whether a council PCN should be cancelled, any other training material (such as generic council training, health and safety, GDPR or training related to other roles or functions) is not within the scope of this request.

Again for the avoidance of doubt, both queries above cover policies and training material available to council officers who deal with informal representations, formal representations and appeals to the tribunal."

6. The Council responded on 1 September 2020. In response to the first query the Council disclosed some information in the form of the "Doncaster Parking Enforcement Policy with Bus Lanes". It also listed the legislation and guidance documents which it stated were available for the general public as well as Council staff. It stated that officers access these legislations and guidance via the internet and it therefore did not hold hardcopy versions of this information.
7. The Council stated that it was withholding some information under section 31(1)(a) of the FOIA (prevention or detection of crime). The information withheld related to the request at query 1 for "any internal council guidance or policy that is only available internally to council staff (such as any internal policy that outlines in what circumstances the council may exercise its discretionary powers to cancel a PCN)." The Council disclosed the information requested under query 2.

8. The complainant requested an internal review on 2 September 2020. He stated that he considered that the Council had not explained why the exemption at section 31(1)(a) applied. He also stated that the Council's refusal notice did not comply with section 17(1)(c) of the FOIA. The complainant also drew the Council's attention to previous ICO decision notices regarding the same information request that the complainant had requested from other public authorities.¹
9. On 30 September 2020 the Council provided its internal review decision. The Council provided further explanation as to its application of section 31(1)(a). It stated:

"I can explain that the Council felt the exemption applied to the information due to the potential for a person to make a fraudulent claim regarding their appeal. This could result in a PCN being waived incorrectly. If the internal cancellation guidance was provided as part of a Freedom of Information request, this information would be able to be used fraudulently in some appeal cases.

An internet search indicates there are many articles/websites offering advice on this issue, with links to articles/publications that charge users for providing this advice. Therefore, by providing this information it will enable appellants to consider alternative grounds for appeal rather than providing the circumstances of the alleged contravention."

Scope of the case

10. The complainant contacted the Commissioner on 30 September 2020 to complain about the way his request for information had been handled.
11. In bringing this complaint to the ICO he argued:

"The authority has not explained how the prejudice test is satisfied, nor has the revised refusal notice provided any details of the public interest considerations that have been applied. The public authority has not explained why the prejudice is 'real,

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618032/fs50867388.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618030/fs50847772.pdf>

actual or of substance' and it has not shown a 'causal link' between the disclosure and the prejudice claimed. The ICO's guidance explains that

'The authority must be able to show how the disclosure of the specific information requested would or would be likely to lead to the prejudice',

As the refusal notice fails explain how the disclosure of the information would be likely to lead to the prejudice alleged, I have no choice but to ask for the ICO's intervention.

In particular, the revised refusal notice does not explain why or how disclosure would aid an individual in making a fraudulent claim in their appeal. The revised refusal notice also says nothing at all about the 'likelihood of the occurrence of prejudice', so it is unclear what considerations (if any) have been made by the authority regarding this point. In the original response the public interest test quotes, as factors weighing against disclosure,

'contributing to the sum of criminal knowledge' and 'Prevention of criminal activity in relation to the circumstances to which the Council will use its discretion and waive a penalty charge notice'.

It is not clear what the council means by 'Contributing to the sum of criminal knowledge' and in relation to the second point, it is not clear exactly what criminal activity the council has in mind. The Commissioner's attention is drawn to the fact that the information requested relates to an enforcement regime that is, by its very nature, decriminalised. I further refer the ICO to decision notices FS50867388 and FS50847772, where she ordered disclosure of similar information, and also to decision notice FS50857816, which has been appealed against and which the ICO solicitor has conceded in full."

12. The scope of this notice is to determine whether the Council is entitled to rely on section 31(1)(a) of the FOIA in order to withhold the requested information.

Reasons for decision

Section 31(1)(a) – (prejudice to the prevention or detection of crime)

13. Section 31(1)(a) 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"

14. In order for prejudice based exemptions, such as section 31(1)(a), to be engaged prejudice must be at least likely to occur to the interest that the exemption is designed to protect. The Commissioner considers that three criteria must be met:
- Firstly, 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;
 - Secondly, 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
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. whether disclosure "would be likely" to result in prejudice or disclosure "would" result in prejudice. In relation to the lower threshold (would be likely), 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; the public authority must show that the anticipated prejudice would be more likely than not to occur as a result of disclosure of the requested information.
15. Consideration of section 31(1)(a) of the FOIA is a two-stage process; even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

The Council's position

16. The Council confirmed that the subsection it had relied on was 31(1)(a), which provides an exemption where disclosure would, or would be likely to, prejudice the prevention or detection of crime.
17. In its internal review decision the Council explained that it had applied section 31(1)(a) as it considered that if the information was disclosed, there would be potential for a person to make a fraudulent claim

regarding their appeal. It stated that this could result in a PCN being waived incorrectly. It said that if the internal cancellation guidance was disclosed then it would be able to be used fraudulently in some appeal cases.

18. The Commissioner wrote to the Council and asked it to provide submissions regarding its application of section 31(1)(a). The Council revisited the matter and confirmed that it does not hold a policy document regarding cancellation of PCNs. It stated that the document referred to in its initial response was, "*a list of all possible cancellation considerations which was produced for a software development company who were developing software for the council for this purpose*". It explained that this document is not used by Council staff to make decisions regarding the cancellation of PCNs. It added that the only staff aware of this document's existence were those who had been involved in the software development. The Council stated that it maintained that this information should be withheld under section 31(1)(a).
19. While the Commissioner notes the Council's argument regarding the intended audience of the document, having considered the withheld information she is of the view that it does fall within the scope of the request. It does appear to be guidance that has been prepared for Council officers when considering whether to cancel a PCN. Therefore, the step at paragraph three of this notice pertains to this information.

The applicable interest

20. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the prevention or detection of crime.
21. In its submission to the Commissioner, the Council explained that release of the requested information could encourage criminal activity such as fraudulent appeals and circumventing parking controls.
22. The Commissioner is satisfied that the prejudice the Council is envisaging in this case, is relevant to the particular interests which section 31(1)(a) is designed to protect. Accordingly, the first limb of the three part test outlined above is met.

The nature of the prejudice

23. The Commissioner considered whether the Council demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that section 31(1)(a) of the FOIA is designed to protect.

24. With regard to harm being caused by disclosure, having viewed the withheld information, the Commissioner is satisfied that some harm would be caused. This is because the withheld information consists of examples of circumstances which drivers may describe and evidence which would be required in order to cancel a PCN. It provides a list of possible reasons for the cancellation of a PCN. If disclosed, this could aid criminal activity by assisting in the submitting of fraudulent appeals by giving details of the situations in which it is likely a PCN would be cancelled, which would amount to a detrimental impact on the prevention or detection of crime. The Commissioner is satisfied that the resultant prejudice can be correctly categorised as real and of substance.
25. The Commissioner is also satisfied that there is a causal relationship between the disclosure of the requested information and the prejudice which the exemption is designed to protect against.

Likelihood of prejudice

26. The Council confirmed to the Commissioner that it considered disclosure of the withheld information "would" have a prejudicial effect.

Is the exemption engaged?

27. It is not sufficient for the information to relate to an interest protected by section 31(1)(a) of the FOIA. Its disclosure must also be at least likely to prejudice that interest. The onus is on the public authority to explain how that prejudice would arise and why it would occur.
28. The Council has argued that disclosing the withheld information would incite criminal behaviour, for example the information could be used to submit fraudulent appeals and circumvent normal parking controls.
29. Ultimately, the Commissioner does not accept the Council's arguments that disclosing the information would incite criminal behaviour. This is because the Commissioner notes the significant amount of similar information already in the public domain. Several websites have published details about the official grounds for appealing a PCN, such as the Money Saving Expert website². One local authority, Calderdale Council, has published information about the official grounds for

² <https://www.moneysavingexpert.com/reclaim/parking-ticket-appeals/>

appealing a PCN³. This includes details of the circumstances within which Calderdale Council may accept or reject representations in order to cancel a PCN, including details of the evidence that would be required in each instance.

30. Of particular relevance to this information request, the Commissioner notes that Calderdale Council has also published a list of 44 mitigating circumstances, outside of the 8 statutory grounds, upon which you can submit an appeal against a PCN⁴. As stated above at paragraph 18, the withheld information in this complaint is "*a list of all possible cancellation considerations*" in relation to PCNs. The Commissioner has considered the degree of similarity between the information published on Calderdale Council's website and the content of the withheld information. The Commissioner considers the information between them to be very similar although not identical. However in light of the degree of similarity between the information already in the public domain and the withheld information, the Commissioner does not accept the Council's argument about the likelihood of prejudice occurring.
31. In light of the above, the Commissioner does not consider that disclosure of the information in question would be likely to result in a real and significant risk of prejudice to the prevention or detection of crime. The Commissioner's conclusion is, therefore, that the exemption provided by section 31(1)(a) of the FOIA is not engaged.
32. As the Commissioner has found the exemption not engaged, it is not necessary to go on to consider the public interest test. The Council is now required to disclose the withheld information as per paragraph three of this notice.

Section 17 – Refusal Notice requirements

33. Section 17(1) of the Act states:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information

³ <https://calderdale.gov.uk/v2/residents/transport-and-streets/parking/parking-fines/challenging-parking-ticket/8-statutory-grounds>

⁴ <https://calderdale.gov.uk/v2/residents/transport-and-streets/parking/parking-fines/challenging-parking-ticket/mitigating>

must, within the time for complying with section 1(1), give the applicant a notice which—

*(a) states that fact,
(b) specifies the exemption in question, and
(c) states (if that would not otherwise be apparent) why the exemption applies.”*

34. The Council did not explain why it had applied the exemption in its refusal notice.
35. The Commissioner therefore considers that the Council is in breach of section 17(1)(c) of the FOIA.

Right of appeal

36. 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

37. 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.
38. 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

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