

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2022

Public Authority: Conwy County Borough Council
Bodlonddeb
Conwy
LL32 8DU

Decision

1. The Commissioner's decision is Conwy County Borough Council is entitled to rely on section 41(2) of FOIA to neither confirm nor deny it holds the requested information.

Request and response

2. The complainant made the following information request to Conwy County Borough Council ('the Council'):

I should be grateful if you could advise whether:

1) [Redacted] in his capacity as monitoring officer and his associated statutory duties raised any 'code of conduct' concerns internally or with other councils in North Wales regarding current members (or ex members) of the PCP prior to, on departure, or post departure from the council?

2) Whether any other Conwy Council Borough Council member has, since 12th August 2021 raised any 'code of conduct' concerns about any member of the PCP or about any employees of Conwy County Borough Council who have/ has an association with the North Wales Police and Crime Panel."

3. The final position of the Council, outlined in correspondence of 9 February 2022, was to rely on section 41(2) of FOIA to neither confirm nor deny it holds the requested information.

Reasons for decision

4. This reasoning covers the Council's reliance on section 41(2) of FOIA.
5. Section 1 of FOIA places an obligation on a public authority to confirm whether it holds information that has been requested – 'the duty to confirm or deny'.
6. Under section 41(1), a public authority is entitled to withhold information it has confirmed it holds if (a) the information was obtained from another person and (b) disclosure would constitute a breach of confidence.
7. However, an authority can rely on section 41(2) in cases where even to confirm or deny that the public authority holds the requested information would constitute a breach of confidence.
8. In this case, the complainant has requested information about any 'code of conduct' concerns raised by the monitoring officer and Councillors about current or former members of the Police and Crime Panel (PCP) and/or Council employees.
9. With regard to section 41(1)(a), if the Council held the requested information, it would have obtained it from another person. That person would be the monitoring officer and/or a Councillor rather than the complainant, as they have argued.
10. With regard to section 41(1)(b), if held the information would have the necessary quality of confidence as it is not trivial or otherwise available; would have been imparted in circumstances importing an obligation of confidence because it concerns code of conduct concerns and finally, disclosing the information would be contrary to the confider(s) reasonable expectations and therefore cause a detriment to them.
11. To summarise, if the Council were to confirm or deny it holds the requested information it would, in effect, be confirming to the world at large whether or not the monitoring officer or Councillors had raised particular concerns about PCP panel members or Council employees.
12. Section 41 is an absolute exemption not subject to the public interest test. However the common law duty of confidence contains an inherent public interest test. With regard to section 41(2), this test assumes that

a public authority should not confirm or deny it holds the information unless the public interest in confirming or denying outweighs the public interest in maintaining the duty of confidence.

13. From their complaint to him, the Commissioner appreciates that the information, if held, is of interest to them. However, the information, if held, has little wider public interest such that it would warrant the Council breaking the obligation of confidence to confirm or deny it holds the information.
14. The Commissioner is therefore satisfied that, if held, the requested information would meet the conditions under section 41(1) and that the Council is therefore entitled to rely on section 41(2) to neither confirm nor deny it holds the information.

Other Matters

15. The Commissioner has reviewed the Council's initial response to the request and internal review response. He considers that neither provides sufficient reasoning as to why the Council relied on section 41(2). If the Council had more clearly explained why it was relying on this exemption, initially or in its review, the complainant may have accepted its position at the point of its response to the request, or not felt it necessary to complain to the Commissioner following the review.

Right of appeal

16. 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

17. 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.
18. 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

Cressida Woodall
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Wycliffe House
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Cheshire
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