

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 March 2022

**Public Authority:** London Borough of Hillingdon

**Address:** Civic Centre High Street

Uxbridge

Middlesex

UB8 1UW

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the London Borough of Hillingdon ("the council"), relating to Project Axis.
2. The council provided the complainant with some of the requested information, however it withheld some information on the basis of section 41 (information provided in confidence) of the FOIA
3. The Commissioner's decision is that the council correctly applied section 41 to the withheld information.
4. The Commissioner does not require the council to take any steps.

## Request and response

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5. On 17 December 2021 the complainant requested information from the council in the following terms:

“Under the Freedom of Information Act 2000 I am writing to ask for information on the use of Qlik Sense relating to the AXIS Project (numbering added by the ICO).

1. What types of data (structured or unstructured) are provided by your council for use in the system [for example but not limited to postcode, social media posts, school attendance etc].
  2. Where people’s personal data processed or used by the AXIS Project comes from. Please specify the particular sources, whether internal or external data.
  3. Where people’s personal data from social media is processed, how these accounts and personal data from them are identified and processed, and whether this is from public and/or private accounts.
  4. How data is processed and whether this includes the use of algorithmic data processing.
  5. Any data protection privacy assessments made in relation to the project.
  6. Where is people’s personal data processed by the Axis Project stored and is it transmitted to any authority outside of the council other than the Youth Offending Service, Children’s Social Care or police authorities.
  7. Where information is sent to the Youth Offending Service, Children’s Social Care or police authorities, what is the justification relied on to hold and process this data, and/or any data protection privacy assessments made.
  8. How long is personal data retained by these authorities?
  9. Is people’s personal data transmitted to any private body including Catalyst IT?
  10. How many individual’s data is held by the system and a demographic breakdown of individual’s held.
  11. Please provide all documents, equality impact assessments, training documents, privacy policies, audits, performance reviews and similar on your council’s use of Qlik Sense and the Axis Project.
  12. Please provide all documents relating to and including the monthly Axis bulletins created, including analytics relating to slang terms.”
6. The council responded on 19 January 2021, it:
- provided answers to the questions 1-10.

- referred to the council's online privacy notice, and provided a copy of the AXIS annual review in response to question 11.
  - refused to provide the documents requested in question 12 and cited the exemption at section 41 (information provided in confidence) of the FOIA, as its basis for the refusal.
7. The complainant requested an internal review on 21 January 2021. In relation to the following questions they:
- 4. disputed the response, asking: "Could you clarify whether any algorithmic processing occurs in the course of the Axis project"
  - 5. identified that the question was not answered and provided clarification: "Would you be able to attach and send any DPIAs in relation to Axis?"
  - 12. Disputing whether the exemption at section 41 is engaged.
8. The council provided the outcome of an internal review on 17 February 2021. In terms of each request question it:
- 4. stated that algorithmic processing does not occur.
  - 5. stated that a DPIA was not carried out, therefore no information is held.
  - 12. revised its position to withhold the information on the basis of section 41, section 31 (law enforcement) and section 38 (health and safety) of the FOIA.
9. On 11 March 2022, the council wrote to the complainant with a revised position for question 12. It provided the complainant with copies of the Data Sharing Agreement and the Service Framework for Project Axis. It advised that the Project Axis bulletins remained withheld on the basis of section 41, section 31, and section 38 because it is not in the public interest to disclose this information.

## Scope of the case

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10. The complainant contacted the Commissioner on 18 February 2021 to complain about the way their request for information had been handled. Specifically that the council are withholding information in scope of request question 12.
11. The scope of the case is to determine whether the council is correct to withhold the information in scope of question 12, being the Project Axis Bulletins ("the Bulletins"), on the basis of sections 41, 31 and 38 of the FOIA.

## Reasons for decision

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### Section 41(1) – Information provided in confidence

12. Section 41(1) of the FOIA states that information is exempt from disclosure if –
- (a) It was obtained by the public authority from any other person (including another public authority), and
  - (b) The disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
13. The council advised the Commissioner of the purpose of Project Axis, taken from the “Axis Service Framework”:

“To provide a comprehensive response to the local authority and its partners; including providing a direct preventative response to children and young people at risk in the community. The service has a focus on four areas - children and young people’s involvement or risk of involvement in Serious Youth Violence (SYV), the associated offence of Possession with Intent to Supply (PWIT), Child Sexual Exploitation (both victims and perpetrators), any other forms of exploitation and missing children. The information gathered within the Borough of Hillingdon can then be used to inform strategic, operational and case level responses to reduce the number of children and young people at risk”

### Information obtained from another person

14. Section 41(1)(a) requires that the requested information must have been given to the authority by another person. In this context the term ‘person’ means a ‘legal person’. This could be an individual, a company, another public authority or any other type of legal entity.
15. It follows that the exemption will not cover information the authority has generated itself, although it may cover documents (or parts of documents) generated by the public authority if these record information provided in confidence by another person.
16. Project Axis is a project coordinated by the council which was established to support children and young people at risk. The withheld information is the Bulletins which the council generates using data and intelligence provided to it by external bodies such as the police, the NHS and the probation service and other partner organisations as well as services within the council involved with young people.

17. The council analyses the information gathered from the external bodies in order to generate the monthly Bulletins. The Bulletins are then shared with these bodies in accordance with the "Safer Hillingdon Partnership Information Sharing Protocol".
18. The Commissioner accepts that the Bulletins are generated using records obtained from other parties, even though the information is generated by the council. The Commissioner is therefore satisfied that the information meets the criteria of having been obtained from another person.
19. The Commissioner's guidance on section 41<sup>1</sup> states that a public authority wishing to rely on this exemption should consider the test of confidence set out by Judge Megarry in "Coco v A N Clark (Engineers) Limited [1968] FSR 415" in assessing whether a disclosure would constitute an actionable breach of confidence.
20. Judge Megarry suggested that three elements were usually required to bring an action for a breach of confidence:
  - the information must have the necessary quality of confidence,
  - it must have been imparted in circumstances importing an obligation of confidence, and
  - there must have been an unauthorised use of the information to the detriment of the confider.

### **The necessary quality of confidence**

21. The Commissioner's guidance sets out that information will possess the necessary quality of confidence if it is more than trivial and not otherwise accessible.
22. The Bulletins share intelligence collected and analysed by the Axis Project. The council advises that each Bulletin expressly states: "the information in this email has been shared with the recipient only. Information contained in this email should not be shared without express consent of the Axis Project".

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf>

23. The Commissioner has viewed samples of the information contained within a number of the Bulletins. He can confirm that the information is sensitive and includes intelligence which, if disclosed, could undermine the efforts and operations of the council, partner organisations and the statutory bodies, aimed at reducing risk to young people. Other information, if released, could have the detrimental effect of advertising and generating interest in those exploitative issues identified by the Axis Project, which it seeks to protect young people from. The Commissioner also viewed some other information which could lead to the identification of individuals and put them at risk.
24. The Commissioner is therefore satisfied that the information contained within the Bulletins has the necessary quality of confidence because it is not trivial and it is not information that would otherwise be available to the public.

### **Circumstances importing an obligation of confidence**

25. The second limb of Judge Meggarty's test is concerned with the circumstances in which the confider of information passed it on. There are essentially two circumstances in which an obligation of confidence may apply:
  - The confider has attached explicit conditions to any subsequent use or disclosure of the information (for example in the form of a contractual term or the wording of a letter); or
  - The confider hasn't set any explicit conditions, but the restrictions on use are obvious or implicit from the circumstances.
26. The council advises that the Information Sharing Protocol deals with both personal and non-personal data. All signatories have agreed that personal data will only be disclosed (without the consent of the data subject) in very limited circumstances where there is an overriding public interest or other extraordinary situation. The protocol also recognises the risks that can arise if de-personalised data is shared, such as criminal information particularly with the wider public. The council states that parties have agreed in the protocol to keep all information confidential which includes the intelligence gathered and the information that is generated by Project Axis.
27. The Commissioner has considered the council's explanation in regard to the Information Sharing Protocol, and the confidentiality statement included with the Bulletins. He has also considered the nature of the intelligence shared in the Bulletins, and the circumstances in which the information is shared. The Commissioner is therefore satisfied that the

information was imparted in circumstances importing an obligation of confidence.

### **Detriment to the confider**

28. Although Judge Megarry's ruling in *Coco V Clark* included consideration of the 'detriment' test, it left open the question of whether detriment to the confider is a necessary prerequisite in every breach of confidence case.
29. From the examples viewed by the Commissioner, sharing of the information would be detrimental to the strategies and operations of the bodies involved in Project Axis. Furthermore it would potentially increase criminal activities and other risks to young people thus creating more issues for the bodies involved in the project to deal with.
30. The Commissioner therefore considers that the detriment test is satisfied, sharing of the information would be detrimental to the confiders involved in Project Axis.

### **The action for breach of confidence must be likely to succeed**

31. The Commissioner's guidance states that section 41 is an absolute exemption, so there is no public interest test to be carried out under FOIA. However, the authority will need to carry out a test to determine whether it would have a public interest defence for the breach of confidence.
32. This test does not function in the same way as the public interest test for qualified exemptions, where the information must be disclosed unless the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption. Rather, the reverse is the case in relation to section 41. The test assumes that the confidentiality must be maintained unless the public interest in disclosure outweighs the public interest in maintaining the confidence.
33. The complainant raised public interest arguments for disclosure in terms of the council's duties of transparency and accountability.
34. In defence of maintaining the confidence the Commissioner has identified:
  - Any breach of trust would inevitably diminish the flow of information into Project Axis. This would impact the ability of all partners in the project to identify and carry out interventions aimed at keeping young people safe which would not be in the public interest.

- Disclosure could lead to the identification of individuals. In addition to privacy considerations, there could also be criminal implications. There is a strong public interest in protecting individuals and their privacy.
  - Disclosure of confidential police intelligence could impact planned operations and increase criminal activity. There is a strong public interest in maintaining the safety of the communities served by the police.
35. Having considered all the circumstances of this case, the Commissioner has concluded that there is a stronger public interest in maintaining the obligation of confidence than in disclosing the information. Therefore the Commissioner finds that the information was correctly withheld under section 41 of the FOIA.
36. As the Commissioner finds that section 41 is engaged, he has not needed to consider the other exemptions that were cited by the council.



## Right of appeal

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37. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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 .....**

**Janet Wyles**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**