

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

## **Decision notice**

**Date:** 10 January 2023

**Public Authority:** London Borough of Waltham Forest

**Address:** Waltham Forest Town Hall  
Forest Road  
Walthamstow  
E17 4JF

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

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1. The complainant has requested information from London Borough of Waltham Forest ("the Council") relating to food safety inspection reports for the canteen at a named primary school. The Council applied section 30(3) of FOIA.
2. The Commissioner's decision is that section 30(3) is engaged, however the public interest in confirming or denying whether the information is held outweighs the public interest in maintaining the non-confirmation or denial.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Either confirm or deny whether it holds information within the scope of the complainant's request. If held, the Commissioner requires it to provide either the information or a valid refusal notice.
4. The public authority 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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. The complainant requested information from the Council on 25 January 2021 in the following terms:-

"The [named primary school] received a 0 food rating on 07 October 2020.

Please can you send me a copy of the food safety officer's report on which this rating is based?

Can you please send me any subsequent follow up food safety inspection reports taken at [named primary school] (to see if standards have improved since October 2020)."

6. The Council responded to the complainant on 3 February 2021, stating only that the requested information was being withheld under FOIA. It did not provide any further explanation for this stance.
7. In its internal review response to the complainant on 16 February 2021 the Council stated that it could neither confirm nor deny whether it held the requested information, citing section 30(3) of FOIA as a basis for non-disclosure. Again, no reasoning whatsoever was provided for the Council's stance.
8. The Commissioner contacted the Council on 25 October 2021 to seek further submissions as to its application of section 30(3) to the requested information. The Council responded on 1 November 2021 providing some further detail.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 16 February 2022 to complain about the way their request for information had been handled.
10. The Commissioner has considered the Council's handling of the complainant's request, in particular its application of section 30 (3).

## Reasons for decision

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### Section 1(1)(a) – confirming or denying that information is held

11. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. However, there may be occasions when complying with the duty to confirm or deny under section 1(1)(a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the FOIA allows a public authority to respond by refusing to confirm or deny whether it holds the requested information.
12. The decision to use an NCND response will not be affected by whether a public authority does or does not in fact hold the requested information. The starting point, and main focus in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
13. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is, in fact, held.
14. It is sufficient to demonstrate that either a hypothetical confirmation, or a denial, would engage the exemption. In other words, it is not necessary to show that both confirming and denying information is held would engage the exemption from complying with section 1(1)(a) of FOIA.
15. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. However, there may be occasions when complying with the duty to confirm or deny under section 1(1)(a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, FOIA allows a public authority to respond by refusing to confirm or deny whether it holds the requested information.
16. The Council said that the information described in the request, if it was held, would be exempt from disclosure by virtue of section 30(1)(b).

## **Section 30 – Investigations and proceedings**

17. Section 30(3) of FOIA provides an exclusion from the duty to confirm or deny in relation to any information which, if it were held, would fall within any of the classes described in sections 30(1) or 30(2) of FOIA. The Council confirmed that, in this case, section 30(1)(b) was the appropriate limb of section 30.
18. Section 30(1)(b) of FOIA provides that information is exempt if it has at any time been held by the authority for the purposes of any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has the power to conduct.
19. The Commissioner considers the phrase “at any time” to mean that information can be exempt under section 30(1)(b) if it relates to a specific ongoing, closed or abandoned investigation. The information requested (if it were held) must be held for a specific or particular investigation and not for investigations in general.
20. Consideration of section 30(3) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test: whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.
21. The Council states that the requested information relates to an inspection carried out to consider food hygiene offences under the Food Safety and Hygiene (England) Regulations 2013 and the Food Safety Act 1990. As a local authority, the Council clearly has a duty and power to investigate offences and allegations of offences within its remit, such as offences under the above legislation.
22. Information held for the purposes of an investigation will generally fall within the description at section 30(1)(b) of FOIA. In this case, the complainant has requested any food safety officer’s report and subsequent inspection reports relating to the canteen at a named primary school which received a 0 food rating in October 2020.
23. The Commissioner accepts that the information described in the request, if it was held, would be held by the Council for the purposes of an investigation and so would fall within the class described in section 30(1)(b).
24. The Commissioner is therefore satisfied that the exemption provided by section 30(3) of FOIA by way of section 30(1) is engaged.

## **Public interest test**

25. Section 30(3) is a qualified exemption. This means that the Commissioner must consider the public interest test contained at section 2 of FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.
26. In accordance with his guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings.

## **Public interest arguments in favour of confirming whether or not the requested information is held**

27. There will always be a public interest in transparency and accountability in the decision-making processes of public authorities and the Council accepts this.
28. The complainant states that it would be in the public interest to know whether the school had been investigated and whether any food hygiene offences had been dealt with and rectified. He maintains that it is in the public interest to know that the food hygiene and safety standards of the school, which directly affect the health of any children receiving school meals, have been investigated and dealt with.

## **Public interest arguments against confirmation or denial**

29. The Council did not provide the Commissioner with any public interest arguments specifically in favour of NCND.

## **Balance of the public interest arguments**

30. The Commissioner's guidance states that section 30(3) can only be maintained in the public interest if confirmation or denial would interfere with the effective conduct of any investigation or proceedings. If no harm would arise, a public authority should not attempt to apply section 30(3).
31. As the Council has not demonstrated that confirmation or denial would specifically cause the harm outlined above, the Commissioner considers that the public interest lies in favour of confirming or denying whether the requested information is held.

## **Other matters**

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32. The Council failed to provide an adequate explanation as to why it was neither confirming nor denying whether it held the requested information. This was in both its initial response and internal review response and it was not until it replied to the Commissioner's investigation letter that it provided a fuller explanation.
33. The Commissioner would remind the Council of its obligations under FOIA and its accompanying Codes of Practice and trusts that a full explanatory response will be provided to any future FOIA request.

## Right of appeal

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34. 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)

35. 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.
36. 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 .....**

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