

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2023

Public Authority: Stratford-on-Avon District Council
Address: Elizabeth House
Church Street
Stratford upon Avon
Warwickshire
CV37 6HX

Decision (including any steps ordered)

1. The complainant has requested a copy of a report which was written following an investigation into the conduct of local councillors, from Stratford-on-Avon District Council (the "Council"). The Council refused to provide the report, citing sections 36(2)(c) (Prejudice to effective conduct of public affairs) and 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the Council was entitled to rely on section 36 to refuse to provide the requested information. No steps are required.

Request and response

3. On 5 March 2022, following on from earlier, related correspondence, the complainant made the following request for information:

"My request for the report authored by [name redacted] and given to [name redacted], I really do need to see and indeed why not?

So please action this under a Freedom of Information request".

4. The Council responded on 9 March 2022. It refused to provide the requested information citing sections 36(2)(a),(b)(i) and (ii), 36(c) and 40(2) of FOIA.

5. On 7 April 2022, following an internal review, the Council revised its position. It removed reliance on sections 36(2)(a),(b)(i) and (ii) of FOIA, but maintained reliance on sections 36(2)(c) and 40(2).

Scope of the case

6. The complainant contacted the Commissioner on 20 April 2022 to complain about the way his request for information had been handled. The Commissioner required further information from him which was provided. He also provided a significant amount of information that does not relate to the information request being considered here; the Commissioner is only considering the FOIA request outlined above.
7. The Commissioner will consider the application of exemptions to the requested report. He has read the 20 page report.

Reasons for decision

Section 36 – Prejudice to effective conduct of public affairs

8. The Commissioner understands that the requested report was undertaken by an auditor at Warwickshire County Council. It concerns complaints about the way an investigation relating to the Council was overseen, these complaints having been raised by the complainant in this case. The Council's Deputy Chief Executive held overall responsibility for the investigation concerned and the conclusions found. When the final investigation report was received, the Deputy Chief Executive considered the findings, accepted the conclusions and communicated these to the complainant, along with his rationale.
9. Section 36 of FOIA states that information is exempt where, in the reasonable opinion of a Qualified Person (QP), disclosure would, or would be likely to, prejudice the effective conduct of public affairs.
10. The Council has applied section 36(2)(c) to refuse to provide the requested report.
11. Section 36(2)(c) of FOIA states:

“(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs”

12. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a QP. The Commissioner is satisfied that the Council's Chief Executive was authorised as a QP under section 36(5) of FOIA at the relevant time and that the Council did ask for, and receive, his opinion; the Commissioner has had sight of that opinion.
13. The Commissioner accepts it was reasonable for the QP to consider that there was need to protect the effective conduct of public affairs by protecting the requested report. It was his opinion that disclosing the report would pose: "a risk of self-censorship if the officer(s) commissioned to conduct investigations' views were to become public, which could impede the quality of their advice and the operation of the councillor / officer complaints process".
14. The Commissioner is also satisfied that the QP's opinion, namely that an inhibition relevant to subsection 36(2)(c) would be likely to occur through disclosure of the report, is reasonable. He is therefore satisfied that the exemption was engaged correctly.

The public interest test

15. As section 36(2)(c) is a qualified exemption, and as the Commissioner is satisfied the exemption was applied correctly in this case, he has next considered the balance of the public interest test.

Arguments in favour of disclosure

16. The Council provided the following argument to the complainant:

"... there is great public interest in investigators being candid in their reports, to ensure the robust investigation of corporate complaints. I accept there is some public interest in yourself as the complainant in this case seeing the entirety of the investigation report so that you can be satisfied that your complaints were dealt with properly. In this case, however, I note that [the Deputy Chief Executive] provided you with a comprehensive summary of the report and explanation for his conclusions. I consider, therefore, that the public interest in maintaining the exemption outweighs the public interest in disclosure".

Arguments in favour of maintaining the exemption

17. The Council provided the following argument to the complainant:

"... disclosure of the report would be likely to inhibit the free and frank provision of advice or views for the purpose of deliberation, as the officer(s) commissioned to conduct investigations would be less likely to provide full and frank views in future cases, thereby

leading to a situation that affects the quality of the officer who commissioned the investigation's final decision.

Further, the Council consider that to disclose the file would be likely to prejudice the effective conduct of public affairs. This is because there is a risk of self-censorship if the officer(s) commissioned to conduct investigations' views were to become public, which could impede the quality of their advice and the operation of the councillor/officer complaints process.

Although there are some interests in disclosure relating to the individual (in this case, yourself) having confidence that their individual case has been processed in a manner consistent with published policies and procedures, in addition to public confidence that such arrangements are working properly, this is not considered to come at the expense of the investigating officer's very ability to conduct such investigations and produce their views/advice openly and fairly in the first place".

18. The Council also explained to the Commissioner that the investigation and report were undertaken by an independent person. Therefore, if the report was to be placed into the public domain, it could weaken future investigations if it is known that the findings will be disclosed in their entirety. It considered that there is a greater public interest in withholding the report as it allows independent persons to be honest in their reviews.

Commissioner's view

19. The Commissioner must assess whether, in all the circumstances of this case, the Council has properly applied section 36 and the associated public interest test.
20. Whilst the Commissioner accepts there is a general public interest in openness and transparency, he is mindful that the Council has already provided the complainant with its findings and rationale as to how these were reached.
21. The Commissioner acknowledges the complainant's view that disclosing the information would help establish if there was any wrongdoing on the part of the Council. However, the Commissioner has read the report and has seen no such evidence. Furthermore, the complainant has already been given the rationale and conclusions reached by the investigation. He has also been advised by the Council that, should he consider there has been maladministration, he is able to contact the Local Government & Social Care Ombudsman.

22. The Commissioner accepts that there is a very real possibility that disclosing the full report would undermine the investigative process and have the 'chilling effect' argued by the Council. This would not be in the public interest, as there is a need for complaints to be raised, investigated, and reported on, with candour. Public authorities need to have the space to investigate complaints fairly and without the fear that disclosure could undermine the provision of a full and frank report.
23. Without any strong countervailing arguments to the contrary, the Commissioner considers that the balance of the public interest favours maintaining the exemption in this case, given the likely future impact on the complaints process and the ability of the Council to investigate such allegations.
24. The Commissioner therefore finds that 36(2)(c) FOIA has been properly applied in this case.

Right of appeal

25. 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@hmcts.gsi.gov.uk

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

26. 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.
27. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF