

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2023

Public Authority: Care Quality Commission
Address: Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

Decision (including any steps ordered)

1. The complainant has requested information relating to various drafts of a report which had yet to be published. The above public authority ("the public authority") relied on section 31 of FOIA (law enforcement) to withhold the requested information.
2. The Commissioner's decision is that the public authority has correctly applied section 31 of FOIA and that the balance of the public interest favours maintaining the exemption.
3. The Commissioner does not require further steps.

Request and response

4. On 9 September 2022, the complainant wrote to the public authority and, referring to a draft report following an inspection, requested information in the following terms:
"Please may you provide me with:
 1. Initial 1st draft of the report.
 2. The peer reviewed version of the draft report.
 3. The managers agreed version of the draft report.
 4. The minutes of the meeting held to determine and agree ratings for this inspection."

5. In the same correspondence, the complainant also sought the evidence considered in respect of various statements within a draft report.
6. The public authority responded on 15 September 2022. It relied on section 31 of FOIA to withhold the requested information – a position it upheld at internal review.

Reasons for decision

7. Section 31 of FOIA allows a public authority to withhold information whose disclosure might make it more difficult to enforce the law. The exemption does not just cover the criminal law: it will also apply to a wide range of regulatory bodies where disclosure would prejudice the ability of that body to regulate effectively.
8. The Commissioner recognises that the public authority has regulatory functions which are capable of being prejudiced in the manner envisaged by this exemption.
9. Following the lead of the Upper Tribunal’s decision in *Montague v Information Commissioner and Department for International Trade* [2022] UKUT 104 (AAC), the Commissioner considers that the likelihood and severity of prejudice falls to be assessed at the point at which the public authority responded to the request.
10. In decision notice IC-143310-Q7F6, the Commissioner set out why he considered that disclosing similar information would harm the public authority’s ability to regulate effectively.¹ The Commissioner adopts the same reasons as are set out in paragraphs 14-24 of that decision notice to explain why section 31 is engaged in this instance.
11. However, in the particular circumstances of this case, the Commissioner is satisfied that the higher bar of “would” prejudice the public authority’s regulatory functions is engaged. At the point at which the request was responded to, the public authority had yet to publish its final report and therefore it is more likely than not that the envisaged harms would occur.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022158/ic-143310-q7f6.pdf>

Public interest test

12. There is a clear public interest in allowing a regulator to conclude its investigation, consider the available evidence and produce a final report – having given the parties involved an appropriate opportunity to comment. Premature release of the “raw” information that has yet to be properly considered, commented on and further refined would be likely to damage both the public authority’s reputation as a regulator and, potentially the reputation of the regulated entity being inspected. In addition, disclosure is likely to bring all the negative consequences referred to above.
13. The Commissioner is satisfied that, in the circumstances of this case, the balance of the public interest favours maintaining the exemption.

Other matters

14. The Commissioner notes that the final version of the report was published after the request was responded to, but before the public authority had completed its internal review.
15. The public authority informed the Commissioner that it had considered the balance of the public interest afresh (ie. how things stand today) but remained of the view that the balance of the public interest would favour maintaining the exemption.
16. As has been set out above, the Commissioner considers that the timing of the request is key to balancing the public interest. That public interest balance is likely to be more favourable to disclosure if the request were responded to today.
17. The Commissioner makes no formal finding as to whether the balance of the public interest would now favour disclosure. His role, as per the Montague decision, is limited to assessing where the balance of the public interest stood at the point the request was responded to.

Right of appeal

18. 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

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

19. 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.
20. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF