

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2024

Public Authority: London Borough of Havering
Address: Town Hall
Main Road
Romford
RM1 3BB

Decision (including any steps ordered)

1. The complainant has requested the make and model of the CCTV enforcement camera utilised by the London Borough of Havering (the 'Council') at a specified location. Ultimately, the Council refused to provide the requested information, citing section 43(2) of FOIA – the exemption for commercial interests.
2. The Commissioner's decision is that section 43(2) of FOIA is not engaged for the reasons set out in this notice.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - Disclose the information requested by the complainant, namely the make and model of the CCTV enforcement camera used at the specified location.
4. The Council must take this step 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 22 July 2023, the complainant wrote to the Council and requested information in the following terms:

"The council has a bus lane CCTV enforcement camera on North Road at the junction with Riverside Close.

I would like to know the make and model of this camera."

6. The Council responded on 16 August 2023 and denied holding this information.
7. The complainant requested an internal review on 16 August 2023.
8. Following its internal review the Council wrote to the complainant on 15 September 2023. It revised its position and now stated that section 21 of FOIA applied – information accessible to applicant by other means - and provided the following URL.¹

Scope of the case

9. The complainant contacted the Commissioner on 15 September 2023 to complain about the way his request for information had been handled. He stated:

"In its internal review response the authority refers to the certificates published on gov.uk but those certificates simply refer to makes and models of cameras that have been approved. That is not the information sought, the information sought is the specific make and model of camera in use at this location. The camera might be of a type mentioned in those certificate [sic?], it might not be."

10. The complainant also provided the Commissioner with examples of how other public authorities had responded to this same request. Whilst this provides useful context, the Commissioner is obliged to consider each case on its own merits.
11. The Commissioner first examined the information at the URL, which details the makes and models of the cameras utilised by this Council (and others). He then, on 28 November 2023, asked the Council to explain how this information addresses the specific request.
12. The Council responded on 12 December 2023 and said:

¹ approved-devices-granted-to-local-authorities.ods (live.com)

"The requested information is deemed to be commercially sensitive and not available for the public or our competitors to have access to.

All components being used are subject to a "Certificate of Approved Device" and the details are provided to the Department of Transport (DfT) before the issuing of certification by The Secretary of State.

Should the member of the public (MOP) so wish, they can download all information from the Government's website: <https://www.gov.uk/government/publications/list-of-certifications-granted-for-approved-devices>"

13. The Commissioner notes that the information on this URL is the same as that initially provided to the complainant at internal review.
14. The Council said it was relying on section 43 of FOIA – the exemption for commercial interests – in relation to the make and model of the camera utilised at the location specified by the complainant in his request.
15. The Commissioner asked the Council to notify the complainant of its revised position which it did on 3 January 2024.
16. On 3 January 2024 the complainant contacted the Commissioner to express his dissatisfaction with the Council's reliance on section 43 of FOIA.
17. The Commissioner has considered whether the Council has properly relied on section 43(2) of FOIA to withhold the information requested in this case.

Reasons for decision

18. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
19. In order for section 43(2), to be engaged, three criteria must be met:
 - the harm which the public authority envisages must relate to someone's commercial interests;
 - the public authority must be able to demonstrate a causal relationship between disclosure and prejudice to those commercial interests. The resultant prejudice must be real, actual or of substance; and

- the level of likelihood of prejudice being relied upon by the public authority must be met (ie it must be shown that disclosure would, or would be likely to, result in prejudice occurring).

20. The Council has argued that:

"The third party has advised the requested information must not be released."

21. The Council has not provided any further explanation as to why it considers section 43(2) to be engaged. It has made reference within the public interest arguments that release of commercially sensitive information against the third party's wishes:

"... would break trust the Council has with the company and hinder the business relationship, as well as causing reputational damage".

22. However, before he can consider the public interest submissions the Commissioner must determine whether he considers section 43(2) of FOIA to be engaged.

23. In this case, the makes and models of the cameras utilised by the Council are publicly available at the URL it provided to the complainant.

24. From the arguments provided, the Commissioner is not persuaded that disclosure of which of these makes and models is utilised in the specified location would, or would be likely to prejudice the commercial interests of any party.

25. Having viewed the withheld information, the Commissioner is not satisfied that the Council has demonstrated that the harm it envisages relates to commercial interests; either its own or those of its supplier. As the first criterion is not met, the Commissioner finds that the Council has failed to explain why section 43(2) of FOIA is engaged. There is therefore no requirement for him to consider the public interest in this matter.

26. The Council is required to comply with the step set out at paragraph 3 of this notice.

Right of appeal

27. 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

28. 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.

29. 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
Cheshire
SK9 5AF