



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 31 July 2006

Public Authority: London Borough of Hammersmith and Fulham

**Address: Town Hall
King Street
London
W6 9JU**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has dealt with the complainant's request in accordance with Part I of the Act.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

2. The Complaint

2.1 The complainant has advised that, on 4 January 2005, the following request for information was submitted to the public authority in accordance with section 1 of the Act:

"I wish to know the Council's policy relating to the towing of vehicles under parking regulation (i.e. which factors are taken into consideration in the decision of when and when not to use the limited resources of the borough's towing vehicles)".

2.2 On 1 February 2005 the London Borough of Hammersmith and Fulham (LBHF) advised the complainant that their policy in relation to the towing away of vehicles was to target their resources against what they considered to be the most anti-social types of illegal parking. Their letter gave a number of examples of such

parking. LBHF said that they possessed a more detailed list of priorities (although noting that there was no requirement in law to actually have such a policy) but that this information was exempt under section 31 of the Act as disclosure of it would be likely, in their view, to prejudice their parking enforcement functions. LBHF had applied the public interest test to the more detailed information and had taken the view that disclosure of it would be likely to encourage unlawful parking in areas of low priority, which would not be in the public interest.



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- 2.3 The complainant asked for that decision to be reviewed. LBHF replied on 24 February 2005, upholding the earlier decision. LBHF pointed out that the law allowed the removal of any vehicle parked in contravention of a legal traffic order and confirmed that their approach was intended to deter breaches of the relevant regulations through fear of the consequences of such breaches. The complainant then requested a further review (as permitted by LBHF's complaints procedures). She took the view that section 31 was not meant to apply in the case of relatively minor infringements of the law and disputed the view that publication of the information would encourage illegal parking in low priority areas as, even in those areas, the sanction of a penalty charge still remained. She thought that the non-availability of the information put the public at a disadvantage when contesting an alleged breach of the regulations. LBHF replied on 28 April, confirming their original view.
- 2.4. On 17 May 2005 the complainant referred the matter to the Commissioner. In subsequent discussion with the Commissioner's staff, LBHF expressed a willingness to release to the complainant that part of the more detailed document headed 'Background'.

3. Relevant Statutory Obligations under the Act

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 31 provides that –

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders ...”



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4. Review of the case

During the course of his investigation of the complaint the Commissioner made enquiries of both parties and also had access to the information that had been withheld.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the public authority has dealt with the complainant's request in accordance with the requirements of Section (1) (1) of the Act.

The Exemption

- 5.2 Section 31 covers law enforcement and various forms of regulatory activity. Information can be withheld under this section if its release "would, or would be likely to" prejudice any of the purposes listed in the exemption.
- 5.3 The information sought by the complainant relates to LBHF's policies in relation to the towing away of illegally parked vehicles rather than to any specific investigation or particular case, which might more appropriately fall under section 30 of the Act. These policies exist in relation to LBHF's enforcement of current legislation in respect of parking offences. The Commissioner is therefore satisfied that the information is held for a purpose listed in section 31.
- 5.4 For the exemption to be engaged, disclosure must or must be likely to prejudice one of those purposes. LBHF have expressed the view that releasing the information requested would encourage illegal parking in those areas that are identifiable as low priority for the Council in terms of the towing away of vehicles, thus increasing the level of offending. The complainant has argued that it would not have that effect given that, even though someone parking illegally in a low priority area might not run the risk of their vehicle being towed away, they would still be subject to the general deterrent of a Penalty Notice Charge.
- 5.5 The Commissioner has noted that LBHF has already provided to the complainant a number of examples of illegal parking which will result in the removal of a vehicle. These examples, along with a number of others, are set out in the more detailed document that LBHF has withheld. It may therefore be argued that, by a process of deduction, the complainant (or anyone else) would be able to work out with a reasonable degree of accuracy from information already in the public domain the less blatant forms of illegal parking that, if identified, might attract only a Penalty

Notice Charge. As LBHF have recognized in correspondence, there no evidence to indicate what the impact on the levels of illegal parking might be if the full criteria informing LBHF's policy in this area were to be published. The complainant



argues, in other words, that disclosure would not or would not be likely to prejudice any of the purposes identified in the exemption.

- 5.6 Although the Commissioner recognises the logic of this argument, he does not accept its conclusion. It seems clear to the Commissioner that, were a full statement of LBHF's practices made public, that would create a legitimate expectation in the minds of motorists that it would seek to enforce the law in a restricted way: imposing fixed Penalty Notice Charge in defined cases and towing away vehicles in others. If, over a period of time, it became apparent that the LBHF had been following a rigid policy, it would become difficult for it to prosecute cases where it had chosen to act outside its policy even though that may represent a discretion given to it by Parliament. The Commissioner considers that for these reasons as much as because of the increased risk of illegal parking by those willing to accept the risk of Penalty Notice Charge the exemption is engaged.

The Public Interest

- 5.7 Section 31 is a qualified exemption. In the case of such exemptions, where the public interest in the release of information is equal to or greater than the public interest served by maintaining the exemption, then information must be disclosed despite its being exempt. The complainant's argument is that the public interest is best served by full information being made available as to LBHF's policy in this area and that motorists are at a disadvantage if they are not as fully informed as LBHF officers: this could lead to injustice for individuals, which would not be in the public interest. LBHF's argument is that full disclosure would only encourage motorists to park illegally in those circumstances where they knew they did not run the risk of their vehicle being towed away: LBHF has achieved a substantial reduction in the volume of illegal parking in recent years and it would not be in the public interest to take any action which would reverse that trend.
- 5.8 The Commissioner recognises that there is a public interest in understanding LBHF's approach to illegal parking which clearly has an impact upon residents, pedestrians and other road users and that this favours the release of the requested information. At the same time he recognises that LBHF wishes to continue to reduce the volume of illegal parking in the Borough and has taken significant steps towards achieving that goal. He also notes that some elements of the policy in relation to the towing away of vehicles have already been placed in the public domain. It may be argued that, in view of what has already been disclosed, release of the remaining information in the document he has examined would not cause prejudice of the kind described, particularly if it were to be released with an explanation of what the law permits in terms of the removal of vehicles.
- 5.9 In the final analysis, however, the Commissioner recognises that LBHF have a legitimate interest in the reduction of illegal parking and that this is in the public interest. While he recognises that there is a public interest in fully understanding



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LBHF's policies, he is satisfied that the most likely consequence of disclosure of the full policy would be to reduce the effectiveness of the attempt to reduce illegal parking both by assisting motorists prepared to risk a fine (but anxious to avoid the inconvenience of vehicles being towed away) and by placing an unnecessary limitation on the use of the enforcement powers currently available to it.

- 5.10 For the sake of completeness, the Commissioner does not accept the argument advanced by the complainant, namely that parking offences are relatively minor and that there is no strong public interest in keeping LBHF's policy regarding the towing away of vehicles secret. Nor does he accept that there is some inherent unfairness in those enforcing the law having guidance or policies at their disposal not known to those who may commit offences. A clear parallel may be drawn with speed cameras where it may be generally known that a camera may not be triggered by a vehicle travelling at, say, 1 mile per hour above the legal limit but where the actual trigger speed is not disclosed. He accepts, in other words, that he has therefore disregarded these arguments in considering the public interest in maintaining the exemption.

6. Action Required

- 6.1 in the light of the above considerations, there are no steps which the Commissioner requires to be taken.

7. Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk



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7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 31 day of July 2006

Signed

Phil Boyd
Assistant Commissioner

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Wycliffe House
Water Lane
Wilmslow
Cheshire
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