

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 16 July 2013

Public Authority: West Berkshire Council
Address: Council Offices
Market Street
Newbury
Berkshire
RG14 5LD

Decision (including any steps ordered)

1. The complainant has requested information as to the political parties of all councillors who have been before the Standards Committee since May 2011. The Commissioner's decision is that West Berkshire Council has incorrectly applied the exemption where disclosure is prohibited under any enactment at section 44 of the FOIA.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
 - Disclose the requested information as specified to the Commissioner under point 4 of the council's letter of 2 July 2013.
3. The public authority 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

4. On 11 March 2012, the complainant wrote to West Berkshire Council ('the council') and requested information in the following terms:

"From 01/05/2011 I wish to know the names (and political parties where available) of all councillors who have been before the Standards Committee.

I wish to know the date of each hearing and the names (and political parties where available) of the committee members at each hearing/appeal.

This is to cover both Standards Committee hearings and subsequent appeals."

5. The council responded on 30 March 2012 and provided the dates of each hearing, the names of the committee members and the chair.

6. The complainant wrote to the council on 24 June 2012 stating that the document disclosed does not provide the political party of the councillor under scrutiny.

7. The council responded on 26 June 2012 and stated the following:

"Where the Decision is published and the councillor's name is known, this information may be checked on the Council's website, as political affiliation is public information.

Where the information is not published, and the councillor's name not known, the information falls within the S40 exemption, as explained in my email of 14th March."

8. On 27 June 2012 the complainant requested an internal review. He stated the following:

"As you have not stated the names of the councillors under scrutiny I fail to see how I can obtain their political party from the council website.

The political party of the councilor [sic] under scrutiny is not personal data if I have not been made aware of the name of the councillor."

9. The council provided its response to the internal review on 23 July 2012. It maintained that it was correct to withhold the information but considered that the exemption at section 44 of the FOIA was more

appropriately engaged. It explained that although the legislation governing the operation of councils' standards committees has recently changed, the regime under which complaints have previously been handled by the council were in line with those mandated in the Local Government Act 2000 ('the LGA'). It stated that section 63 of the LGA provides that any information obtained for the purposes of investigating complaints against councillors must not be disclosed unless certain conditions are met. It explained that the request does not meet any of the conditions required for release therefore if it was to release the requested information then officers from the council would be committing an offence.

Scope of the case

10. The complainant contacted the Commissioner on 25 August 2012 to complain about the way his request for information had been handled. He specifically stated that he is requesting the political party, not the name of the councillor or any other details, and that this is in no way confidential information.
11. The Commissioner has considered the council's application of section 44(1)(a) of the FOIA to the political party of councillors who have been before the Standards Committee but have not been subject to a published decision. He does not consider it necessary to consider the application of the exemption to the political party of councillors who have been before the Standards Committee and been subject to a published decision as this information is already available to the public.
13. For clarity, the Commissioner has not considered the council's application of section 40 of the FOIA because in its internal review it stated that section 44 was more appropriate and the complainant has confirmed that he requires the political party, not the name of the councillor.

Reasons for decision

14. Section 44(1)(a) of the FOIA provides that information is exempt if disclosure is prohibited by any enactment other than the FOIA. The Commissioner has therefore considered whether the disclosure of the information requested by the complainant is prohibited by law.
15. In this particular case, the council considers that the disclosure of the information is prohibited by virtue of section 63 of the LGA.

16. Section 63 of the LGA sets out restrictions on disclosure of information and states:

“63 Restrictions on disclosure of information

(1) Information obtained by ethical standards officers under section 61 or 62 must not be disclosed unless one or more of the following conditions is satisfied—

(a) the disclosure is made for the purposes of enabling the Standards Board for England, an ethical standards officer, the Commission for Local Administration in Wales, a Local Commissioner in Wales or the president, deputy president or any tribunal of either of the Adjudication Panels to perform their functions under this Part,

(b) the person to whom the information relates has consented to its disclosure,

(c) the information has previously been disclosed to the public with lawful authority,

(d) the disclosure is for the purposes of criminal proceedings in any part of the United Kingdom and the information in question was not obtained under section 62(2),

(e) the disclosure is made to the Audit Commission for the purposes of any functions of the Audit Commissioner or an auditor under the Audit Commission Act 1998.

...

(4) A person who discloses information or a document in contravention of subsection (1) is guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months, or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”

17. The council drew the Commissioner's attention to the fact that section 63(4) makes it an offence for any person to disclose information in breach of section 63(1).
18. The Commissioner has considered whether the information was 'obtained by' the Standards Committee for the purpose of an investigation under sections 61 and 62.

19. The council explained to the Commissioner that if the councillor concerned is a West Berkshire councillor then the council holds the political affiliation. It said it would be information known at the time the complaint was made and may even form part of the complainant's representation. In respect of Town and Parish council's, the council said that, where there is a political affiliation, that information will be available to the council and is usually passed to it as part of the complaint process.
20. The Commissioner understands that, in practice, Parish and Town Councillors are not usually affiliated to a particular political party but are not restricted from being so. He therefore considers that the requested information may not be held in all cases where a councillor has been investigated by the Standards Committee.
21. The Commissioner's view is that the statutory bar does not apply to information held by the council in its own right, for its own business purposes which in this case may or may not just happen to be relevant to a Standards Committee investigation. It is not information held specifically or only for the purposes of such an investigation.
22. Therefore, he has decided that the statutory prohibition set out in section 63 of the LGA does not apply and the information is not exempt by virtue of section 44(1)(a) of the FOIA.

Right of appeal

23. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF