

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 October 2013

**Public Authority:** Denbighshire County Council  
**Address:** Council Offices  
Station Road  
Wynnstay Road  
Ruthin  
Clwyd  
LL15 1YN

#### Decision (including any steps ordered)

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1. The complainant requested various items of information in respect of persons with no permanent address being placed in hotels, guesthouses and hostels by Denbighshire County Council (DCC) for the period from 1 August 2011 to 31 December 2012. DCC provided some information but refused information relating to names and addresses of the accommodation by virtue of section 38(1)(a) of the FOIA. The Commissioner's decision is that DCC has correctly relied on section 38(1)(a) of the FOIA in this instance. He requires no steps to be taken.

#### Request and response

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2. On 6 March 2013, the complainant wrote to DCC and requested the following information:

*"1. During the period 1<sup>st</sup> August 2011 – 31<sup>st</sup> December 2012 did Denbighshire County Council place any persons with no (alternative) permanent residential address in any accommodation in Denbighshire?"*

*2 If so:*

- a. How many:*
- b. In each instance, for what period of time*
- c. In each instance, what was the type of accommodation in which the person was placed (e.g. Hotel or guesthouse or bed and breakfast accommodation or hostel or other)*

- d. where any hotel was used, what was the name and address of the hotel*
  - e. where any guesthouse was used, what was the name and address of the guesthouse*
  - f. Where any hostel was used, what was the name and address of the hostel."*
3. DCC responded on 27 March 2013. It provided the information in respect of questions 1, 2a and 2c of the complainant's request, cited section 12 of the FOIA in respect of 2b and refused to provide the information in respect of questions 2d-f by virtue of section 38(1)(a) of the FOIA.
4. The complainant was not satisfied with DCC's response to his questions 2d-f and following an internal review DCC wrote to the complainant on 2 May 2013. It upheld its original decision to refuse this information in reliance on section 38(1)(a) of the FOIA.

### **Scope of the case**

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5. The complainant's representative contacted the Commissioner on 20 May 2013 to complain about the way his client's request for information had been handled and providing some background information regarding the purpose of the request.
6. The Commissioner would highlight that he cannot take into consideration the purpose of the request as it has long been established that the FOIA is both applicant and purpose blind. Additionally, as any disclosure under the FOIA is considered to be in the public domain, the Commissioner can only consider whether the requested information is appropriate to be disclosed to the world at large.
7. The Commissioner notes that DCC provided information in respect of the complainant's questions 1, 2(a) and 2(c). He also notes that the complainant did not ask DCC to conduct an internal review of the information requested under question 2(b). These do not therefore fall within the scope of his investigation, which is restricted to DCC's reliance on section 38(1)(a) in respect of questions 2(d)-(f) of the request.

## Reasons for decision

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### Section 38 health and safety

8. Section 38(1) of the FOIA provides that:

*"Information is exempt information if its disclosure under this Act would, or would be likely to –*

*(a) endanger the physical or mental health of any individual, or*

*(b) endanger the safety of any individual."*

### The prejudice test

To determine whether the application of section 38(1) to the requested information was correct under the terms of the FOIA, the Commissioner has considered the 'prejudice test', in this case whether disclosure of the information would cause endangerment to the health or safety of one or more individuals.

9. Unlike the other exemptions in the FOIA subject to the prejudice test, the word 'endanger' is used in section 38 rather than the word 'prejudice'. However, the Commissioner does not consider that the use of the term 'endanger' represents a departure from the test of prejudice to which section 38 is subject.

10. In *Hogan v the Information Commissioner and Oxford City Council (EA/2005/0026 and 0030)* the Tribunal stated that:

*"The application of the 'prejudice' test should be considered as involving a number of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption ... Second, the nature of 'prejudice' being claimed must be considered... A third step for the decision-maker concerns the likelihood of occurrence of prejudice."*

#### *The applicable interest*

11. As section 38 of the FOIA provides that information relating to the endangerment of the health and safety of an individual can be withheld, the prejudice involved in the disclosure of the requested information must therefore relate specifically to the health or safety of one or more individuals.

12. In this case, the requested information is for the name and addresses of hotels, hostels and guesthouses in Denbighshire, where DCC has

provided accommodation for persons with no permanent residential address. DCC has argued that the applicable interest in this case is the homeless persons provided with accommodation by it.

13. Although not identified by DCC, the Commissioner also considers the applicable persons could also be the owners of the accommodation in Denbighshire where some of these individuals are provided with accommodation.

*The nature of the prejudice*

14. DCC has explained that it has a statutory duty under the Homeless Persons (Priority Need) (Wales) Order 2001/607 to provide accommodation to those who are homeless, eligible for assistance or in priority need. A significant number of the applicants who present as homeless are vulnerable, fleeing violence or are ex-offenders. DCC has further confirmed that in Wales, local authorities owe a homeless duty to those leaving prison. DCC believes that should the names and addresses of the accommodation of these individuals be widely available, that they would be vulnerable to both physical and mental threats from other individuals.
15. The Commissioner considers it would be artificial to draw a distinction between a threat to (a) the physical and mental health and (b) safety in this context. Further, the Commissioner accepts that where individuals are under threat of attacks on their physical health, this is likely to affect their mental health. Therefore where the Commissioner considers the exemption to be engaged, he considers both limbs of section 38(1) apply.
16. In relation to this approach, in *PETA v the Information Commissioner and the University of Oxford EA/2009/0076*, the Tribunal stated that:  
  
*"it was suggested by PETA [People for the Ethical Treatment of Animals] that for the Tribunal to be satisfied that there was a danger to mental health that positive evidence from e.g. a psychiatrist as to the clinical impact of the campaign upon the mental health of those affected would be necessary. The Tribunal rejected this contention and was satisfied that the level and nature of the physical threat was sufficient that on a balance of probabilities the effect upon the mental health of those involved would go beyond stress or worry and constitute an endangerment to their mental health."*

*The likelihood of prejudice*

17. The Commissioner's duty in this case is to consider whether disclosure of the requested information would be likely to pose a risk to the health and safety of the homeless individuals provided with accommodation by DCC. The Tribunal, in the case of *John Connor Press Associates Limited v Information Commissioner (EA/2005/0005)*, stated that "*the chance of prejudice being suffered should be more than a hypothetical possibility, there must have been a real and significant risk*" (Paragraph 15).
18. The Commissioner has interpreted this to mean that, in order for a public authority to satisfy him that disclosure of the requested information would be likely to endanger the health and safety of individuals, it must demonstrate that the risk of prejudice need not be more likely than not, but it must be substantially more than remote.
19. The Commissioner acknowledges that homeless individuals in general constitute vulnerable members of society. He also, considers that in the event of a violent ex-partner or a vigilante group discovering the whereabouts of some of these individuals, that there is a significant risk that this information would endanger, not only the physical and mental health and safety of the homeless individuals, but in some cases could endanger that of the hotel, guest house and hostel owners.
20. The Commissioner is therefore satisfied that section 38(1)(a) of the FOIA is engaged in relation to the requested information. As section 38 is a qualified exemption, the Commissioner also needs to consider the public interest test.

**Public interest factors in favour of disclosure**

21. DCC has acknowledged that there is a general public interest in the accountability and transparency of its decision making and the expenditure of public money.
22. The Commissioner would also point out the more specific public interest in accountability and transparency in DCC's compliance with the relevant legislation regarding homeless persons and ex-offenders.

**Public interest factors in favour of maintaining the exemption**

23. DCC considers that there is an obvious public interest in preventing the risk of harm to an individual and protecting the physical and mental wellbeing of individuals.
24. DCC has also argued that if the names and addresses of the accommodation it uses to house its homeless persons were in the public domain, that the commercial interests of the accommodation owners

could be prejudiced as mainstream guests may no longer be willing to use that accommodation.

25. Whilst the Commissioner acknowledges that this may be a likely consequence of the disclosure of the requested information, he does not consider it to be a valid public interest test argument.

**The balance of the public interest test**

26. The Commissioner has balanced the real and significant threat to the health and safety of the homeless individuals given accommodation by DCC in the various hotels, guesthouses and hostels which would be likely to result from the disclosure of this information, against the public interest arguments in favour of disclosure.
27. The Commissioner does not consider that the disclosure of information to demonstrate the transparency and accountability of DCC's decision making and expenditure, justifies the risk to the individuals' health and safety. The Commissioner has therefore concluded that DCC correctly relied on section 38(1)(a) of the FOIA in respect of this request for information.

## Right of appeal

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28. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

29. 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.
30. 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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**