

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2022

Public Authority: London Borough of Camden
Address: Town Hall
Judd Street
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Camden (the Council) seeking information about compensation and legal cost payments made to residents of a particular development. The Council sought to withhold information on the basis of sections 31(1)(a) (law enforcement) and 36(2)(c) (effective conduct of public affairs) of FOIA. During the course of the Commissioner's investigations the Council provided the complainant with some information. The Commissioner is satisfied that the remaining information held by the Council is exempt from disclosure on the basis of the exemptions cited.
2. No steps are required.

Request and response

3. The complainant submitted a request seeking the following information to the Council on 29 December 2020:

'Compensation Payments and Recording of VAT of Legal Costs by Camden Council

Camden Council claimed £1,054,000 in compensation from construction firm Willmott Dixon, and eventually settled for £770,000 at some point in 2018-2020.

1. *Provide the total sum of compensation and the total sum of refunds of legal costs Camden Council paid to residents in connection with the work by Willmott Dixon.*
2. *List all the individual compensation payments, and separately all the individual refunds of legal costs Camden Council paid to residents (£-amounts only), from the highest payout down to the lowest payout.*
3. *According to Camden Council all solicitor firms providing legal advice to residents in above case had to register as suppliers before the cost of any legal fees could be refunded, "as VAT was involved".*
 1. *Provide a full list of all the solicitor firms that registered as suppliers, the date they were registered, and the supplier reference number.*
 2. *Provide the list of account names and account numbers in Camden Council's accounting system, which have been used to record the refund of the legal costs and the VAT.'*
4. The Council responded on 25 January 2021. It confirmed that it held the requested information but it considered the information sought by questions 1, 2 and 3.1 to be exempt from disclosure on the basis of section 42(1) of FOIA and the information sought by question 3.2 to be exempt from disclosure on the basis of section 31(1)(a) of FOIA.
5. The complainant contacted the Council on 31 January 2021 and challenged its decision to withhold the information sought by questions 1 and 3.2. In relation to question 1 he argued that:

'It is unacceptable that Camden Council refuses to publish the full cost of this newbuild scandal, including the total sum of compensation and legal costs it had to pay to residents. These formed a substantial part of the costs to the Council and ultimately tax payers, who have every right to know how their taxes are spent. "Legal Professional Privilege" is a cheap excuse not to disclose the total sum figure, which would not reveal individual payments to individual residents. Furthermore, the total sum would not impact in any shape or form any ongoing litigation. At any rate, the full and final settlements under the Part 36 of the Civil Procedure Rules have been completed with the 6-year claims limitation period having passed.'
6. And in relation to request 3.2 he argued that:

'Camden Council made the claim that the solicitors providing legal advice to residents had to register as suppliers as "VAT was involved", and used this as an excuse for the delay of refunds. It is unacceptable that Camden Council does not disclose the route of these VAT payments in its accounting system on concerns about fraudsters. It is

the Council itself that is here under suspicion of fraud. What is it the business of Camden Council to be concerned with the VAT portion of the legal costs of residents??

Account names are broadly standardised across accounting systems. If not the account numbers, provide at least the names or descriptions of the accounts that were involved when the refunds of the legal costs of residents were recorded.'

7. The Council informed him of the outcome of the internal review on 11 March 2021. The review concluded that the information sought by question 1 was not exempt from disclosure on the basis of section 42(1) but was exempt from FOIA on the basis of section 36(2)(c). The Council also maintained its position that the information sought by question 3.2 was exempt from disclosure on the basis of section 31(1)(a) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 2 May 2021 in order to complain about the Council's refusal to provide him with the information sought by questions 1 and 3.2.
9. During the course of his investigation, in an attempt to resolve the complaint about question 3.2 the Council provided the complainant with the following which indicated the type of account and who it was held by, rather than specifying the exact account name and number:

'There were two firms of solicitors instructed by residents, one of whom requested payment by cheque, the other requested payment electronically. Therefore the council holds one set of data in respect of this question. The solicitors were Blake Morgan LLP and the account reference related to their client account'
10. The complainant indicated that he was not satisfied with this response. During further subsequent discussions between the Commissioner and the Council as to whether question 3.2 also included details of the Council accounts from which money was paid, the Council identified a number of cost codes in relation to payments to which the request related. It explained that such codes were what the Council used to account for expenditure and income. At the Commissioner's request, the Council disclosed this information to the complainant.
11. The complainant subsequently explained that he was dissatisfied with this response.
12. Therefore this decision notice considers the Cabinet Office's response to both questions 1 and 3.2.

Reasons for decision

Question 1

Section 36 – the effective conduct of public affairs

13. The Council's position is that the information sought by question 1 is exempt from disclosure on the basis of section 36(2)(c) of FOIA. This states that:

'(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—...

...(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.'

14. In determining whether section 36(2)(c) is engaged the Commissioner must determine whether the qualified person's opinion was a reasonable one. In doing so the Commissioner has considered all of the relevant factors including:

- Whether the prejudice relates to the specific subsection of section 36(2) that is being claimed. If the prejudice or inhibition envisaged is not related to the specific subsection the opinion is unlikely to be reasonable.
- The nature of the information and the timing of the request, for example, whether the request concerns an important ongoing issue on which there needs to be a free and frank exchange of views or provision of advice.
- The qualified person's knowledge of, or involvement in, the issue.

15. Further, in determining whether the opinion is a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable. This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only not reasonable if it is an opinion that no reasonable person in the qualified person's position could hold. The qualified person's opinion does not have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.

16. With regard to the process of seeking this opinion, the Council sought the opinion of the qualified person, namely the Monitoring Office for the Council on 5 March 2021, with regard to whether section 36(2)(c) of FOIA was engaged. The qualified person was provided with a rationale as to why the exemption could apply, counter arguments to this position and copies of the withheld information. The qualified person provided their opinion that section 36(2)(c) was engaged on 5 March 2021 on the basis of the lower threshold of prejudice, ie would be likely. The Commissioner is satisfied that process by which the opinion was provided was clearly an appropriate one.
17. Turning to the substance of the opinion, the qualified person noted that the information requested concerned the total settlement and total legal costs paid to residents of the Chester Balmore development to settle a dispute and avoid litigation. The qualified person highlighted that this had been a difficult matter which had required months of negotiations. He noted that all of the settlements are pre-action settlements and none of the residents have issued Court proceedings against the Council, although some payments remain to be paid and not all matters have been settled. Therefore, the qualified person noted that the situation is still live and ongoing.
18. The qualified person argued that to have the requested information in the public domain would invite and encourage further enquiry and would be likely to lead to either the establishment, or near establishment, of the settlement figures. The qualified person argued that it was vital that tenants can negotiate with the Council and settle their claims freely without fear that others will use that data either against them, or the Council, to pursue their own agendas.
19. More specifically, the qualified person argued that disclosure would be likely to prejudice the effective conduct of public affairs because:
 - Knowledge of the sums paid to date would hinder the Council's attempts to settle any remaining outstanding claims. There were significant problems on the estate and a number of claims to settle. The matter gained significant publicity and political and local interest. It would prejudice public affairs to hamper the Council's ability to complete settlements of outstanding claims. It is in both the Council and the residents' interests that these claims are settled.
 - It is not conducive to the efficient and effective running of Council business, which includes cost-effective settling of difficult and contentious complex matters, for individual members of the public to potentially seek further information and thereby even inadvertently interfere with the process by ascertaining the individual sums paid to leaseholders and disseminating this

information to other leaseholders. Knowledge of individual sums paid and the pro-active seeking of that information, would hamper the Council's ability to settle the remaining cases because it would set artificial benchmarks and constrain its negotiating position. It may also be likely to lead other leaseholders who have reached a settlement to try and reopen negotiations to match higher sums agreed with other leaseholders. This would not be conducive to public affairs particularly in a time where all councils are facing financial pressures. In addition, given that those settlements are legally binding it would perhaps falsely raise expectations. The settlements were reached after careful negotiation and either with or without the ability to obtain independent legal advice.

- Knowledge of the total sum would allow the complainant (or others) to ascertain individual amounts paid. The qualified person noted that the complainant was aware of some settlement sums having been informed by other leaseholders. The qualified person argued that it was more probable than not that knowing the total sums would allow the complainant to ascertain the remaining sums paid through the mosaic effect and deduction. Such knowledge would be likely to reduce public confidence in the Council.
 - People reaching a pre-legal action settlement with the Council have a reasonable expectation that such matters will be kept confidential and not published to the world. Release under FOIA is publication to the whole world. The public should be confident that settlements reached with the Council on personal legal matters are treated with appropriate discretion and confidentiality. Going against this expectation would be likely to diminish the Council's reputation as a party that could be trusted in negotiations, and to keep confidential matters appropriately confidential. People may be warier of agreeing an out of court settlement if they feel the Council's word cannot be trusted. This would not be conducive to public affairs. It would damage the Council's reputation in negotiations, and lead to difficulties in agreeing out of court resolutions.
20. In his submissions to the Commissioner, the complainant challenged reasonableness of this opinion on the following grounds:
21. He disputed the qualified person's position that some payments remained to be paid and that not all matters have been settled. As result in his view, it was not correct to say that the situation was live and ongoing. In support of this position he argued that in January 2016 the Council sent a compensation offer to Chester Balmore residents to settle under Part 36 of the Civil Procedure Rules. Given the statutory limitation of 6 years for claims based on a breach of contract (and that

contracts to buy a leasehold or to rent were signed in late 2013 and in 2014), he argued that all residents have now received their compensation payments and received full refunds of their legal costs. He also emphasised that the Part 36 offer made it clear that this was a full and final settlement.

22. He therefore disagreed with the Council's position that disclosure would hinder attempts to settle any remaining claims, ie because no such claims remained outstanding.
23. The complainant also disputed that the Council's position that disclosure of the information would allow the negotiations to be reopened because the Part 36 offer settlements were full and final.
24. Furthermore, the complainant disagreed that disclosure of simply the total sum of compensation paid and total sum of legal costs refunded would allow him, or others, to ascertain individual amounts paid. In support of this position he argued that there were 53 flats in the development and that disclosure of the information requested would still make it impossible to ascertain individual settlement sums, even if you were aware of some of them.
25. In order to assist with his assessment as to whether the opinion was a reasonable one, in light of the complainant's counter arguments, the Commissioner asked the Council to respond to these points.
26. In response the Council explained that at the time of the complainant's request there were three cases which had not yet been settled. (The Council provided the Commissioner with evidence to confirm this.)
27. With regard to the complainant's point regarding the effect of Part 36, the Council explained that not all the Part 36 offers had been accepted.
28. Furthermore, with regard to how disclosure of the withheld information could be used to allow the payments made to individuals to be deduced, the Council referred the Commissioner to a letter dated 13 April 2020 and emails the complainant had sent to it on 19 May and 21 May 2019. The Council argued that these clearly illustrated that the complainant was a well informed individual in relation to matters at Chester Balmore, and in particular he knew the amount of compensation received by some of his neighbours and the amount of legal fees paid. The Council argued that there is nothing to prevent the complainant from seeking the information about compensation and legal fees from his other neighbours. The Council argued that knowing the total amount paid, combined with his knowledge of many other sums, would allow the complainant to make calculations and educated guesses as to the amounts remaining and the number of flats affected.

29. Taking into account the detailed nature of the qualified person's opinion, the circumstances of this case and the additional submissions provided to him during the course of his investigation, the Commissioner is satisfied that this was a reasonable opinion for the qualified person to come to. Section 36(2)(c) is therefore engaged.

Public interest test

30. Section 36 is a qualified exemption and in line with the requirements of section 2 of FOIA the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption cited outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the information

31. The Council acknowledged that disclosure of the withheld information would improve transparency and openness of its spending and it would allow the Council's decisions to be examined and held to account.
32. The complainant argued that there was a clear public interest in the disclosure of the information for the following reasons:

'In light of this newbuild scandal, the public has every right to know the total sum of taxpayers' money that was spent on compensating residents and on refunding the residents' costs for legal advice. Camden Council is notorious for its incompetence in managing housing projects and overseeing its contractors. Chester Balmore is a clear example of that, and the full cost of such incompetence should be made public'.

Public interest arguments in favour of withholding the information

33. The Council argued that there was no wider public interest in relation to this matter; rather the issues concerned the complainant's private interests and his personal dissatisfaction with the matter.
34. In contrast, the Council argued that it was in the public interest that parties can negotiate with the Council and settle their claims without fear that others will use that data either against them, or the Council, to pursue their own agendas.
35. Furthermore, the Council argued that it was in the public interest that the process of negotiation and settlement is not disrupted.
36. Finally, it argued that it is in the public interest to ensure that the Council's treatment of pre litigation settlements are accorded appropriate confidentiality and not released to the world to avoid public confidence in their handling of such matters being eroded.

Balance of the public interest arguments

37. In considering complaints regarding section 36, where the Commissioner finds that the qualified person's opinion was reasonable, he will consider the weight of that opinion in applying the public interest test. This means that the Commissioner accepts that a reasonable opinion has been expressed that prejudice or inhibition would, or would be likely to, occur but he will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming his own assessment of whether the public interest test dictates disclosure.
38. In the circumstances of this case, as set out above, the complainant has questioned the severity, extent and frequency of prejudice occurring. In the Commissioner's view the Council's replies to the complainant's submissions represent a compelling and convincing response. That is to say, on the basis of these the Commissioner is satisfied that at the time of the request there were still some compensation cases to be settled and therefore the matter was indeed one which was live and ongoing. Furthermore, the Commissioner is satisfied that there is sufficient evidence that access to the requested information would allow the complainant to make informed and educated guesses about the amounts of compensation and the legal fees paid to individuals. As a result, the Commissioner considers there to be a risk to the Council's reputation if the information were to be disclosed. Consequently, the Commissioner accepts that disclosure of the withheld information poses a genuine risk of interfering with the effective conduct of public affairs for the reasons outlined by the qualified person and that the severity and extent of such prejudice is genuine and real.
39. As result of this in the Commissioner's opinion there is a significant public interest maintaining the exemption. This is because in his view there is a clear public interest in the Council being able to conclude ongoing negotiations, particularly in respect of a long running and difficult matter such as this. Added to this, the Commissioner agrees that there is also a clear public interest in ensuring the Council's ability to handle such matters confidentially is not undermined.
40. With regard to the public interest factors in favour of disclosure, the Commissioner recognises that the issues with the development in question were serious ones, and moreover caused significant disruption and stress for the owners concerned. In view of this the Commissioner accepts that there is genuine public interest in the disclosure of the withheld information in order to inform the public about the costs incurred by the Council in respect of the issues with the development.
41. However, given the likelihood of impacting on (at the time of the request) the ongoing negotiations, allied to the impact on the Council's

reputation as a trusted partner more broadly, the Commissioner has concluded that the public interest favours maintaining the exemption.

Question 3.2

42. To re-cap, question 3.2 of the complainant's request sought the following information:

'Provide the list of account names and account numbers in Camden Council's accounting system, which have been used to record the refund of the legal costs and the VAT.'

43. As detailed above, during the course of the Commissioner's investigation the Council disclosed some information to the complainant in relation to this question. This consisted of the information quoted at paragraph 9 and the information described at paragraph 10. In addition, the Council holds the specific account name, number and sort code for a firm of solicitors to which some payments were made. It considered such information to be exempt from disclosure on the basis of section 31(1)(a) of FOIA.

44. Following these disclosures of information, the complainant raised concerns with the Council as to the nature and extent of information disclosed to him. More specifically, he argued that:

'if this is the full disclosure of the accounts that were used to record the refund of legal costs + VAT to Chester Balmore leaseholders and tenants, then are you aware that Camden Council made a blatantly false and misleading statement to the Housing Ombudsman Services when it investigated Camden's handling of the compensation?? Your list of accounts below only shows general expenditure and income accounts. NO VAT ACCOUNTS. Where are the VAT accounts if VAT was the reason my legal costs were not refunded within the contractually agreed 14 days?' (emphasis in original).

45. During the course of the Commissioner's investigation he liaised with the Council in respect of this question 3.2 and clarified that the scope of this request intended to cover both internal Council accounts and external accounts to which payments were made. This led to the disclosure of the information detailed above. The Council also confirmed to the Commissioner that it did not hold any additional information beyond that either disclosed to the complainant or withheld on the basis of section 31(1)(a). The Commissioner appreciates that the complainant has outstanding concerns regarding how the Council handled the VAT aspects of such payments. However, based on his engagement with the Council he is satisfied that Council does not hold any additional information falling within the scope of the request. With regard to the application of section 31(1)(a) this states that information is exempt

from disclosure if its disclosure would, or would be likely to, prejudice the prevention and detection of crime.

46. The Council argued that disclosure of the information which it had sought to withhold on the basis of this exemption would increase the likelihood of potential fraudsters using the information to commit financial crime in a way that criminals could use the details to pose as these suppliers and defraud the suppliers or the council. The Council suggested that this could be by, for example, spear phishing by companies pretending to be the Council and asking for refunds or attempting to change details with the Council for future payments. The Council also noted that it was common advice from financial institutions and law enforcement agencies not to provide bank account or other similar information to people other than those who have a good reason to use it.
47. In order for a prejudice based exemption such as section 31 to be engaged the Commissioner considers that three criteria must be met:
- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
48. With regard to the first criterion, the Commissioner is satisfied that the potential prejudice described by the Council clearly relates to the interests which the exemption contained at section 31(1)(a) is designed to protect. Furthermore the Commissioner is also satisfied that the second and third criteria are met. There is clearly a causal relationship between the potential disclosure of bank details and fraud occurring and moreover the Commissioner is satisfied that there is a real and significant risk of this occurring, hence the reason why as custom and

practice such information is not shared publicly. Section 31(1)(a) is therefore engaged.

Public interest test

49. Section 31 is a qualified exemption and the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption cited outweighs the public interest in disclosing the information.
50. The Council argued that there is an inherent public interest in crime prevention and that it is against the public interest to make it easier for fraud to be committed. Furthermore, the Council argued that it was not in the public interest to disclose information that would be likely to cause financial damage to a company. With regard to the complainant's allegations of VAT fraud (which the Council considered to be unsupported allegations and that there was no cogent evidence that the Council has committed any fraudulent acts), the Council argued that providing the information withheld on the basis of section 31(1)(a) would be of no assistance in dealing with any such fraud.
51. The Commissioner acknowledges that the complainant has concerns about how the payments made by the Council were administered. However, in his view disclosure of the withheld information would not assist with such concerns. In contrast, the Commissioner agrees with the Council that there is a significant public interest in ensuring that fraudulent activity does not take place and therefore the balance of the public interest favours maintaining the exemption.

Right of appeal

52. 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: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

53. 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.
54. 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

Jonathan Slee
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