

Mr Jon Irwin

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Date: 21st June 2019

Dear Mr Irwin

FOI Request: 17 September 2018 (2018/17656)
Response to request: 18 April 2019
Request for a review: 23 May 2019

Review of Response

I have been requested by the London Borough of Wandsworth (the Council) to carry out a review of the response you received on 18 April 2019 to your Freedom of Information (FOI) request of 17 September 2018.

On 17 September 2018, you sent an email to the Council's FOI team with the following request:

Earlier this year, the coroner's report following their investigation into the death of Lucia Ciccioli in 2016 was published in a redacted format. A copy is available via this link:

[12]<https://www.judiciary.uk/publications/lucia-ciccioli/>

Copies were sent to the relevant highways authorities including Wandsworth Council.

Please provide a copy of the response sent to the Coroner detailing the actions that Wandsworth Council as a relevant highways authority for the roads surrounding those managed by Transport for London intends to take in

Paul Evans

Assistant Director of Corporate Governance London Borough of Merton

1

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light of the report.

On 18 April 2019, you received the following response from one of the FOI Officers:

Please note that the information that you have requested is confidential and not intended for the public. We therefore consider that it is exempt from disclosure under Section 41 – Information Provided in Confidence of the Freedom of Information Act 2000. Under paragraph 1(b) of Section 41 of the FOI Act, information is exempt information if its disclosure to the public would constitute a breach of confidence actionable by any person. Consequently, given the very sensitive information contained in the report, the Council believes that disclosure would clearly constitute an actionable breach of confidence. Under the terms of the Act, this email acts as a refusal notice.

On 23 May 2019, you emailed the Council's FOI Team and requested a review of the decision. You stated:

I have written to the ICO and they hold the view that I have not exhausted the internal review procedure for this complaint.

Since inquests are public inquiries, it might be expected that responses by public and other bodies should be published wherever possible. The requested response report would surely focus on prevention of similar incidents and so not have personal details as a central element. I believe that any report which looks to reduce harm on our roads following serious injury or death is a public good. Indeed, proposals to reduce the risk of harm for future events need to be subjected to public scrutiny in my opinion.

If reports such as the one requested can be put into the public domain, then this could pave the way for similar systemic improvements to be made in the same way that the Air/Rail/Sea Accident Investigation Bureaux recommend following incidents that they investigate.

Please could you take another look into this and let me know what the outcome is.

Review

In carrying out this review, I have contacted the Council's FOI Team, I've also read the following documents:

1. The published Regulation 28: Report to Prevent Future Deaths dated 16 May 2018. The report was prepared by HM Assistant Coroner, Russell Caller who

conducted an Inquest on 26 January 2018, into the death of Lucia Ciccioli which occurred on 24 October 2016.

2. The published Regulation 29 response by Transport for London dated 25 July 2018
3. Unpublished Regulation 29 response by the London Borough of Wandsworth dated 25 July 2018 and submitted to the Coroner's office on 26 July 2018.

The Coroners (Investigations) Regulations 2013

The Coroner's report was submitted pursuant to Regulation 28 of the 2013 Regulations. Paragraph 9 of the report, informs organisations intending to submit a response, that the Chief Coroner may publish it and send a copy to any person who he believes may find it useful or of interest. The Coroner's statement regarding the publication of responses to the report is made pursuant to powers under Regulation 29 of the 2013 Regulations.

Regulation 29 also enables those submitting a response to the Regulation 28 report, to submit representations to the Coroner regarding its publication or release. The Chief Coroner is required to consider those representations before deciding whether there should be any restrictions on the release or publication of the response.

I've noted that the Coroner has not published the Council's response but has published the one received from Transport for London. I also note that no representations were submitted by the Council regarding restrictions on the release or publications of its response

Application of section 41 of the Freedom of Information Act 2000

Section 41 of the Act addresses how information provided in confidence should be considered when responding to a Freedom of Information request.

Information provided in confidence.

(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

The Council's response to the request received on 17/9/2018

Your request for disclosure of the Council's response which was sent to the Coroner on 26 July 2018 was refused on the grounds that the section 41 exemption applied.

Paul Evans

Assistant Director of Corporate Governance London Borough of Merton 3

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The Council's response to the Coroner's report was, however, very similar to that submitted by Transport for London and did not include any information which was obtained from a third party in confidence. The Council and Transport for London confirmed that the responsibility for managing roads in the area is set out in various statutes and is shared between the two organisations. Both responses confirmed that they are working together to address the concerns expressed by the Coroner and actions they intend to take.

As stated above, the Chief Coroner had and retains the right to publish any response received to the Regulation 28 Report.

Conclusion

In my opinion the response sent to you on 18 April 2019, did not comply with the requirements of the Freedom of Information Act 2000. The section 41 Exemption did not apply to the Regulation 29 response which was submitted to the Coroner. The response did not include information that, if disclosed to the public, would constitute a breach of confidence. Information obtained from Transport for London which may have been relied upon by the Council and referred to in the response, was not given in confidence with the expectation that it would not be disclosed to the public.

As stated above, the Chief Coroner has the right to decide to publish the response and could have published the response from the Council as well as that received from Transport for London.

I, therefore, consider that the Council's response to the Coroner's Regulation 28 report was disclosable in response to your FOI request. I enclose a copy of the response with this letter.

If you are dissatisfied with my decision, then you may take the matter to the Information Commissioner's Office at:

Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
Fax: 01625 524 510
<https://ico.org.uk>

Please quote our reference given at the head of this letter in all correspondence

Yours faithfully



Pamela Clarke
for Assistant Director Corporate Governance
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