

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2018

Public Authority: Warwick Town Council
Address: Court House
Jury Street
Warwick
CV34 4EW

Decision (including any steps ordered)

1. The complainant requested from Warwick Town Council (the Council) information relating to Warwick in Bloom 2018.
2. The Commissioner's decision is that the Council has correctly cited section 43(2) (commercial interests) of the FOIA as the balance of the public interest favours maintaining the exemption. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

3. On 12 December 2017 the complainant wrote to the Council and requested information in the following terms:
"All documents, correspondence (inc. emails and SMS messages) minutes and copies of suppliers' responses / submissions which relate to Warwick in Bloom 2018 and beyond."
4. On 9 January 2018 the Council responded. It withheld the information and applied section 43(2) (commercial interests) of the FOIA to the request.
5. The Council explained that the exemption applies because the information requested includes information submitted to it as part of a competitive quotation process to supply seasonal planting for Warwick Town. The information was presented to it with an understanding of confidence.

6. On 15 January 2018 the complainant asked for an internal review. She argued that it was the Council's obligation to seek best value for money and to be open and transparent, and that this outweighed the Council's reasons for refusing to provide the information requested.
7. On 29 January 2018 the Council responded and maintained its position to withhold the requested information. The Council believed that it correctly refused to release the information under section 43(2) and also section 41(1) (information provided in confidence) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 22 February 2018 to complain about the way her request for information had been handled.
9. The following analysis focuses on whether the exemptions at sections 43(2) and 41(1) of the FOIA were cited correctly.

Reasons for decision

Section 43(2) – Commercial interests

10. Section 43(2) of the FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of any person, including the public authority holding it. This is a qualified exemption and is, therefore, subject to the public interest test.
11. The Commissioner states in her Section 43 – Commercial Interests Guidance¹:

"A commercial interest relates to a person's ability to participate competitively in a commercial activity. The underlying aim may be to make a profit however it could also be to cover costs or to simply remain solvent."
12. The withheld information in this case is relating to quotes that were presented to the Council for pricing in order to supply seasonal planting for Warwick Town (Warwick in Bloom 2018).

¹ <https://ico.org.uk/media/1178/commercial-interests-section-43-foia-guidance.pdf>

It also contains information regarding the Council's commendations (references) for the nurseries' planting work.

13. The Council has applied section 43(2) of the FOIA to pricing quotes to supply seasonal planting for Warwick in Bloom 2018 and to the Council's commendations regarding the nurseries' planting work. The Commissioner considers the information is commercial in nature as it relates to the commercial activity of selling plants and providing a planting service. Therefore, the requested information does fall within the remit of section 43(2) of the FOIA.
14. Having determined that the information is commercial in nature the Commissioner has gone onto consider the prejudice which disclosure would or would be likely to cause and the relevant party or parties that would be affected.

The nature and likelihood of the prejudice occurring

15. The Council explained that the information which was submitted from local businesses was part of a competitive quotation process and had been provided to the Council in an understanding of confidence.
16. The Council believed that to disclose the information would undermine this process and trust in the Council for a future procurement process of similar nature.
17. When asked to provide the Commissioner with an explanation to support the Council's position that disclosure of the withheld information would or would be likely to prejudice a party's commercial interests, the Council said that it did not want to cause commercial damage against the companies in question.
18. The Commissioner acknowledges that the Council's main arguments are that disclosing the information could cause commercial damage against the planting nurseries and it did not consider it beneficial for the public in knowing the information. The argument that disclosure may provide any party with a competitive advantage or disadvantage is one that the Commissioner accepts can be valid. However, the Commissioner must be convinced that disclosing the specific information in question would have this prejudicial result.
19. The Council's argument is that disclosing the information would reveal its quotation process in relation to the seasonal planting by the local nurseries. The Council considers that the information could cause a negative impact on the company that provided the quote if released into the public domain, specifically when other nurseries are competing to secure business with the Council.

20. The Commissioner has viewed the withheld information which contains commendations regarding the planting work of the nurseries and pricing quotes to supply seasonal planting for Warwick in Bloom 2018. The information reveals the Council's financial position and the sources of income it receives from the nurseries in relation to Warwick in Bloom 2018. The prejudice would occur to the nurseries and the Commissioner accepts that the prejudice identified would be likely to occur due to the fact that nurseries are competing to secure business with the Council and it would cause a negative impact on the nurseries if the information was released. The Commissioner is satisfied that the Council provided its arguments with the full knowledge of the position of the nurseries, as it had previously consulted with them on this issue.
21. The Commissioner is, however, unclear on how this information would place any of the nurseries at a competitive disadvantage. It is important to be able to demonstrate there would be a causal link between disclosure of the information requested and the argued prejudice to commercial interests. The Commissioner accepts that the information would show the Council's financial position and the sources of income it receives from the nurseries in relation to Warwick in Bloom 2018. It would also show the Council's commendations for the nurseries planting work who had tendered but it would not reveal anything further about the nurseries in question.
22. In order to accept the exemption is engaged, the Commissioner usually requires evidence of a causal link between the information in question and the alleged prejudice argued. This is usually easier to argue where an issue is ongoing, such as retendering or negotiating a new commercial contract or deal. Whilst the Council has not specifically provided evidence of this, the Commissioner considers it is reasonable to assume that, given the work of the Council, there is a frequent need to engage with local businesses. Therefore, it can be argued that disclosing the pricing quotes and the submitted references will have a likely impact on future negotiations. This may make the nurseries and other local companies more reluctant to offer favourable prices due to their competitive advantage being diminished.
23. The Commissioner therefore considers that section 43(2) of the FOIA was engaged as disclosure of the withheld information would have been likely to result in prejudice to the commercial interests of the Council and she has gone on to consider the public interest test in this case.

Public interest arguments in favour of disclosure

24. The Council recognises the public interest in promoting accountability and transparency in the spending of public money and the way the Council conducts its business. However, the Council argued that in this instance, there was no benefit to be gained in disclosing the information.
25. The complainant had raised arguments in favour of disclosure. She said that she did not believe *"that making the tenders available (and releasing the information requested) would adversely affect future tenders as there are only 3 nurseries in the area who do this sort of work."* The complainant argued that it was not a good use of public funds for the Council to use the current incumbent. She stated that she wanted the process of selection and appointment to be fair and transparent, with an outcome which was in the best interest of the town. Therefore the disclosure of information would, in the complainant's view, reveal the Council's use of public funds and its process of running Warwick in Bloom 2018.

Public interest arguments in favour of maintaining the exemption

26. The Council argues that there is a public interest in it being able to negotiate pricing on terms which secure the best value for the public purse without prejudicing its commercial interests or the commercial interests of services or projects it wishes to engage.
27. The Council considers the public interest sits with it being able to compete in a competitive marketplace and in respecting the commercial interests of both the Council and local businesses. The work that the Council does for the local community is inherently in the public interest and it is essential that it is able to carry on that work in the most effective and efficient way possible.
28. The Council believes that there was no benefit to the public in knowing the information requested and that there was nothing to be gained. It said that a concern was raised as to how the information may be subsequently used and stated that *"this was not a benefit."* The Commissioner considers that there is always a benefit to disclosure of information, at least through a general improvement in transparency. Therefore, the Commissioner does not agree with this particular concern as there is a public interest in openness and transparency when a public authority is utilising public money, including promoting public understanding of the processes used by the Council in its commercial activities.

Balance of the public interest arguments

29. The Commissioner recognises that there is a public interest in the disclosure of information which provides greater transparency in the spending of public money. In this case, disclosing the pricing quotes from competitors along with their references would give an insight into the Council's spending and its opinion of the work of the nurseries in question.
30. There is significant public interest in not prejudicing the commercial interests of the Council, not only in securing best value for public money but also in ensuring that the Council can operate efficiently in its role by relying on the services of local businesses it has a relationship with and at a reasonable cost.
31. The Commissioner is aware that there is a significant sum of public money involved in Warwick in Bloom 2018, however, there is no evidence of any questions having been raised about the running of this event.
32. The Commissioner also recognises that there is a strong and legitimate public interest in private companies being able to compete in a commercial market on a level playing field, and that disclosure of the withheld information, which would be likely to prejudice that ability to compete, would undermine that public interest. In this case, it would put the Council at a disadvantage when negotiating the spending of public money if the withheld information was disclosed.
33. On balance, the Commissioner considers that the public interest in disclosure of the withheld information is outweighed by the public interest in maintaining the section 43(2) exemption. The Council was not, therefore, obliged to disclose the requested information.
34. Having upheld the citing of section 43(2) for the entirety of the withheld information, it is not necessary for the Commissioner to go on to also consider the citing of section 41(1).

Right of appeal

35. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF