

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2023

Public Authority: Fermanagh and Omagh District Council
Address: Townhall
2 Townhall Street
Enniskillen
Co Fermanagh
BT74 7BA

Decision (including any steps ordered)

1. The complainant submitted a request to Fermanagh and Omagh District Council (the Council) for information relating to the job evaluation scheme and score sheets for three named posts.
2. The Commissioner's decision is that the Council was not entitled to rely on section 43(2) of FOIA to withhold the requested information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information in relation to question two of the request (with personal data redacted).
4. The public authority must take these steps 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

5. On 10 March 2023, the complainant wrote to the Council and requested information in the following terms:

“Under the Freedom of Information Act 2000 I would like to request the following information in relation to recently advertised posts of Senior Licencing [sic] Officer, Senior Building Control Surveyor and Strule Arts Centre Manager.

1. What job evaluation scheme was adopted to evaluate these posts and who has the contract to carry out the evaluations for FODC?

2. I request a copy of the score sheet of the evaluation of the posts Senior Licencing Officer [sic], Senior Building Control Surveyor and Strule Arts Centre Manager by the contracted evaluator.”

6. A response was provided on 7 April 2023, in which the Council disclosed information in relation to question one and withheld the information, in relation to question two, under section 43(2) of FOIA.
7. Upon receiving this response, the complainant submitted an internal review request on 12 April 2023. The Council provided clarification on 19 April 2023, and asked if the complainant would still like to appeal. The complainant confirmed that they did, and on 18 May 2023, the Council provided its internal review response, in which it maintained its original position.

Reasons for decision

Section 43(2)

8. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would likely to, prejudice the commercial interests of any person, including the public authority holding it.
9. The Commissioner’s guidance¹ states that there are many circumstances in which a public authority might hold information with the potential to prejudice commercial interests.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-43-commercial-interests/>

10. In this case the withheld information consists of the score sheet of the evaluation of the three named posts, and the Council considers that disclosure of this information would prejudice the commercial interests of a third party, namely STAHR LTD (the company).
11. In highlighting harm, the Council explains that disclosure of the requested information would prejudice the commercial interests of the company in that "if shared it could be used to establish unfair competition by using their work results and copying the information which would adversely affect their business".
12. The Council has confirmed that it has consulted with the company, regarding disclosure of the requested information, and it has provided the Commissioner with a record of this consultation.
13. The Council explained that it is willing to have a shared process with the Trade Unions and that where there is a shared/joint process, it would include "responsibilities for the protection of the shared information".
14. The complainant argues that the job evaluation scheme involves measuring each job against the Greater London Provincial Council rules and checklist, and that they fail to see how provision of the scoring would be deemed "commercially sensitive to a third-party evaluator".

The Commissioner's decision

15. The Commissioner has considered the Council's arguments, the withheld information and specifically the claimed prejudice.
16. Having done so, the Commissioner is not convinced that disclosure of the information would cause the claimed prejudice. Whilst he does acknowledge that disclosing the information may cause reputational damage between the Council and the company, he does not consider that the Council, nor the company has sufficiently evidenced that there would be a causal affect between disclosure and the company's ability to compete competitively and fulfil its purpose.
17. Furthermore, the Commissioner would consider that recruitment, within the Council be subject to significant and expected transparency with regards to the job evaluation scheme and score sheet.

18. In decision notice IC-214678-H3K3², the public authority sought to rely on section 43(2) on the basis that disclosure would likely prejudice the commercial interest of a third party. As this decision has a similar context to the one of this notice, it is noted that the Commissioner ordered disclosure on the basis that the public authority had not provided compelling arguments that disclosure would cause prejudice to its commercial interests.
19. Having considered the above, the Commissioner has concluded that the Council was not entitled to apply section 43(2) to the withheld information. As the exemption is not engaged, the Commissioner does not need to consider the associated public interest.

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025390/ic-214678-h3k3.pdf>

Right of appeal

20. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

21. 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.
22. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF