

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 April 2024

**Public Authority:** Cornwall Council  
**Address:** New County Hall  
Truro  
Cornwall  
TR1 3AY

#### **Decision (including any steps ordered)**

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1. The complainant requested from Cornwall County Council ("the council"), information relating to grant money paid to Bayspace, a Community Interest Company ('a CIC'). The council disclosed information but withheld some of the specific costs, applying section 40(2) (personal data), and section 43(2) (commercial interests) to withhold the information. The complainant argued that the exemptions were incorrectly applied and that further information should be held by the council.
2. The Commissioner's decision is that the council was correct to apply section 43(2) to withhold the information. He has also decided that, on a balance of probabilities, no further information is held by the council falling within the scope of the complainant's request for information. He has, however, decided that the council did not comply with the requirements of section 10 as it did not provide its initial response within 20 working days.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 8 May 2023, the complainant wrote to the council and requested information in the following terms:

“Bayspace Fernlea Terrace St. Ives Cornwall. This project was funded by grants etc using public monies. I would like a complete breakdown of costs which were funded by public monies.”
5. On 1 June 2023, the complainant clarified his request to include:

“What I would like to know is the amounts of public money spent and to whom. i.e., property purchase and associated costs, wages and salaries paid and to whom, construction costs and associated fees paid and to whom.”
6. The council provided its response on 31 July 2023. It disclosed a breakdown of some of the costs at a high level. It also disclosed totalled amounts where a number of payments had been made to specific contractors. However, it withheld details of individual payments made to specific contractors under the exemption in section 40(2) of FOIA.
7. Following an internal review council wrote to the complainant on 25 August 2023. It amended its position to withhold information under section 40(2) (personal data) and section 43(2) (commercial interests).

## Scope of the case

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8. The complainant contacted the Commissioner on 28 August 2023 to complain about the way their request for information had been handled. The complainant argues that the council has not complied with the request for information as its response does not establish how £2,984,000 of the public money provided to Bayspace has been spent.
9. The scope of the Commissioner's investigation is therefore to consider whether the council holds further information in regard to its obligations under section 1 of FOIA. He will also consider whether the council was correct to apply section 43(2) and section 40(2) of FOIA to withhold the information. He will also consider whether the council's response met with the requirements of section 10 of FOIA.

## Reasons for decision

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### **Section 1(1) – is further information held by the council**

10. Section 1(1) of FOIA requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
11. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.
13. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to search for relevant information, and will take into account any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

### The complainant's position

14. The complainant argues that the council will hold further information falling within the scope of the request for information. The complainant points out that the council's response fails to explain how £2,984,000 of the public money provided to Bayspace was spent.

### The council's position

15. In its response to the complainant's request, the council explained that grant payments had been made to Bayspace in three tranches. It said that it only holds information falling within the scope of the complainant's request in respect of tranche one. This has been disclosed where no exemptions have been applied. It said that grant payments for tranches two and three were made directly to Bayspace. It does not hold details for payments subsequently paid from these tranches as Bayspace used the money directly.

16. The council said that it therefore does not hold any information falling within the scope of the complainant's request as regards how grant money was spent by Bayspace as regards tranches two and three.

The Commissioner's analysis

17. As is usual in such cases, the Commissioner asked the council a series of questions regarding the searches which the council made to locate information relevant to the request. He also asked it to provide any other reasons why it would not hold the requested information.
18. The council clarified that it is responsible, as the accountable body, for distributing and overseeing the payment of grant money awarded to Bayspace by the Department for Communities and Local Government (DCLG). Broadly, the council, in its capacity as the accountable body, made payments of grant money from the DCLG to Bayspace in accordance with a Grant Disbursement Agreement.
19. The council argues that it only holds information in relation to the direct payments which it paid to contractors in tranche one. It said that it made these payments as Bayspace did not have the capacity to make the payments itself at that time. It said that following this, the following tranche payments were paid directly to Bayspace and it does not hold any information in relation to how this was spent (i.e., a breakdown of costs, as requested).
20. In respect of the searches it has carried out, the council confirmed that it had asked the council's Lead Officer for the Community Capacity Programme, the Localism Manager, and the Head of Resilient Communities to carry out relevant searches. It said that it also carried out further searches with its information holders, in its accounts, and in relation to direct payments it has made. Information was only found in respect of tranche one.
21. The Commissioner therefore asked the council to confirm whether it had provided grant money to Bayspace as regards tranches two and three without requiring it to provide any feedback as to how that money has been used. The council said that the Grant Disbursement Agreement agreed between it and Bayspace requires Bayspace to maintain stakeholder reporting. It said that Bayspace therefore publishes information about its progress on its website, and it also files accounts as required. It confirmed, therefore, that it does not hold a specific breakdown of costs as to how the money from tranches two and three were spent by Bayspace.

### The Commissioner's conclusions

22. The Commissioner has considered the arguments of both parties. The complainant argues that further information will be held by the council, however, the council has described how the second and third tranches of the grant were paid directly to Bayspace for it to use.
23. The feedback system in place requires Bayspace to make information public about its progress, however the council clarified that it does not hold a breakdown of costs as regards money spent from the grant payments made in tranches two and three as these were made directly by Bayspace.
24. The council has therefore explained why it does not hold any further information falling within the scope of the complainant's request as regards tranches two and three.
25. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
26. On this basis, the Commissioner has concluded that, on the balance of probabilities, no further information is held by the council falling within the scope of the complainant's request for the purposes of section 1 of FOIA.

### **Section 43(2) – prejudice to commercial interests**

27. The following analyses whether the council was correct to apply section 43(2) to withhold information falling within the scope of the request.
28. Section 43(2) provides that – “Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”
29. In order for a prejudice-based exemption, such as section 43, to be engaged the Commissioner considers that three criteria must be met:
  - a) Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information were disclosed has to relate to the applicable interests within the relevant exemption;
  - b) 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

c) Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

(a) Does the information relate to a person's commercial interests?

30. The withheld information provides details of the money paid for services purchased from various parties. It highlights the prices agreed for the specific services by the council on behalf of Bayspace as regards tranche one. The information therefore relates to the commercial interests of the council, Bayspace and contractors who have provided services to the project.

(b) Does a causal relationship exist between the potential disclosure and the prejudice which the exemption is designed to protect

31. The council has disclosed some information in respect of the payments made from tranche one. Where a number of payments were made to the same person/organisation, it has totalled these together and disclosed the total amounts paid. However, it said that it has withheld information where a single amount has been paid to a contractor on the basis that this would provide commercially sensitive information; i.e., the direct price of the individual service provided by the service provider.

32. The council said that it had consulted with the service providers concerned and some had agreed to the disclosure of sum details (subsequently disclosed by it). Others had already put relevant information into the public domain. It said, however, that no supplier had consented to the disclosure of information at the level of detail requested by the complainant.

33. The council argues that a disclosure of the withheld information would provide competitors to the parties with details of the specific prices they charged to provide specified services to the council/Bayspace. It argued that disclosing the cost of specified services would provide an unfair advantage to other suppliers and negatively affect Bayspace's ability to negotiate future fair prices with suppliers. It argued that a disclosure at this level of detail would show other suppliers the capability, pricing, and methodology of service providers without them having to disclose their own, and this would provide the suppliers with an unfair advantage when competing for business in the future.

34. The council also argued that disclosing the agreed price between Bayspace and the provider would also inhibit the future ability of Bayspace to negotiate a fair price with suppliers in the future. The Commissioner understands this argument to be that a disclosure of the information could affect quotes or bids which the council or Bayspace receives to obtain similar services in the future. It may cause bids to level around the price previously accepted by them for previous similar work.
35. The council also argued that a disclosure of the information would damage ongoing or future relationships between Bayspace, the council and providers as commercially sensitive information would be disclosed. This would be likely to result in service providers not wanting to work with Bayspace or the council due to the commercial damage that a subsequent disclosure might cause to them. If less service providers compete for contracts, this would be likely to reduce the ability of Bayspace and the council to achieve value for money.
36. The Commissioner considers that contractors will recognise from the outset that the council is subject to the requirements of FOIA and other legislation which require it to be transparent about its use of public money. However, a disclosure of commercially sensitive information which would have an ongoing detrimental effect on a service provider may ultimately dissuade some suppliers from providing services to the council. If their ability to compete fairly within the wider marketplace would be undermined as compared to other providers of the same services, they may decide not to contract with the council in the future.

(c) What is the likelihood of the prejudice occurring if the information were to be disclosed?

37. The council argued that a disclosure of the withheld information 'would be likely' to prejudice the commercial interest of the parties concerned.
38. The Commissioner recognises that the council, and Bayspace are likely to continue to require quotes or bids for similar work again in the future. He therefore accepts that a disclosure would be likely to have the prejudicial affect highlighted.

The Commissioner's conclusions

39. The Commissioner has concluded that all three limbs of the test have been met. He has therefore decided that section 43(2) of the Act is engaged by the withheld information.

40. The Commissioner must therefore carry out a public interest test as required by section 2(2)(b) of FOIA. The test is whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**Public interest test.**

The public interest in the information being disclosed

41. Bayspace is a CIC, created to provide office and property space which can be hired by individuals in order to allow them to work or conduct their own business. The council describes a CIC as *"a special form of non-charitable limited company, which exists primarily to benefit a community or with a view to pursuing a social purpose."*
42. Bayspace received the grant, under the Coastal Communities round 4 grants, from the DCLG. The funds were transferred to the council, and then to the Bayspace in tranches. The council is the accountable body for those grant payments.
43. There is a general public interest in the actions and decisions of the council being disclosed. It has paid grant money to Bayspace, and, as the accountable body, there is a public interest in it being transparent as possible about the use of that public money.
44. The Commissioner notes that contractors working with public authorities must have some degree of expectation that, due to FOI and other transparency requirements, contracts with local authorities may require details of the prices they have charged to be disclosed. For instance, the Commissioner notes the requirements for the council to publish details of expenditure exceeding £500 under the Local Government Transparency Code<sup>1</sup>. Where the services procured in respect of the first tranche exceeded this figure, the council confirmed that it has published those figures<sup>2</sup>. However, it noted that the request was for a complete breakdown of costs. The council argues that it has met the public interest in transparency by disclosing the totalled information where it was able, or required, to do so.

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<sup>1</sup> <https://www.gov.uk/government/publications/local-government-transparency-code-2015/local-government-transparency-code-2015>

<sup>2</sup> <https://www.cornwall.gov.uk/the-council-and-democracy/council-spending-and-finance/payments-to-suppliers-where-the-invoiced-payments-are-greater-than-or-equal-to-500/>



45. There is a public interest in disclosure in order that the public can reassure itself that the council has used tax payers' money appropriately and that that money was well spent. In this case the Commissioner notes that the council has not provided an in-depth overview of the use of public money regarding Bayspace due to the grants being paid directly to it for the last two tranche payments. Nevertheless, a disclosure of the information it holds as regards the first tranche payments would clarify the sorts of services which public money has been used for.

The public interest in the exemption being maintained

46. The Commissioner notes that the council has already disclosed some information in relation to the costs of the project to the council. The disclosed information provides insight into the payments made by the council within the first tranche.
47. The Commissioner notes the complainant's central concern is that they are not able to see how the majority of the grant money was spent. A disclosure of the withheld information would provide little additional information in relation to this given the information which has already been disclosed, and given that the council does not hold information on how Bayspace spent grant money from tranches two and three.
48. The Commissioner recognises that there is a public interest in allowing the parties to achieve best value on the development of a community project. A disclosure of the information would be likely to lead to commercial harm being caused to Bayspace and the council in that it would place the prices paid for specific services into the public domain.
49. There is a strong public interest in a CIC obtaining the best value when negotiating with service providers. There is also a strong public interest in protecting the council's ability to negotiate work at best value.
50. As noted, a disclosure of the information would also harm the companies which contracted with Bayspace. Competitors to these companies could lower their prices to better compete with them within a competitive market. There is a very strong public interest in allowing prices to be dictated by market forces at the time rather than by prices previously agreed. A disclosure of the information would ultimately make it less likely that the council or Bayspace could obtain best value in its future procurement of such services.

### Conclusion of the public interest test

51. The Commissioner has considered both the complainant's and the council's arguments, along with the withheld information. A disclosure of the withheld information would clarify how public money was spent at an individual service level for parts of the first tranche of payments of the grant. However, this would be likely to lead to commercial harm being caused to contractors and make it harder for Bayspace and/or the council to achieve best value when procuring similar services in the future. It would also not meet the complainant's wishes and clarify how all of the public money from the grant was spent on the project.
52. Whilst there is always a public interest in public authorities being open and transparent regarding the spending of public money, in this case the Commissioner is not persuaded that a disclosure of the withheld information would be in the public interest. He is not satisfied that it would significantly clarify the spending of public money beyond that already provided through the information already disclosed, or through the information already published as regards the first tranche.
53. Further, he finds that there is a wider public interest in service providers being able to maintain their commercial positions without risk of harm caused by a disclosure of the withheld information to the level of detail requested by the complainant.
54. On balance, therefore, the Commissioner considers that the public interest in this case rests in exemption in section 43(2) being maintained. The Commissioner's decision is therefore that the council was correct to withhold the information under section 43(2) of FOIA.

### **Section 40(2) personal information**

55. As the Commissioner has found that the council was correct to apply section 43(2) to withhold the information from disclosure, he has not found it necessary to go on to consider the application of section 40(2).

### **Section 10 - Time for Compliance**

56. Section 10 of FOIA requires that a public authority responds to a request for information as required by section 1 of FOIA within 20 working days.
57. The council received the request for information on 8 May 2023. The complainant clarified his request on 1 June 2023. The council did not respond to the request until 31 July 2023. This falls outside of the 20 working days to respond as required by section 10 of FOIA.
58. The Commissioner's decision is that the council did not comply with the requirements of section 10 of FOIA.

## **Right of appeal**

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59. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

60. 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.
61. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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