

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

### **Decision notice**

**Date:** 01 August 2013

**Public Authority:** Hazlemere Parish Council  
**Address:** Cedar Barn  
Cedar Avenue  
Hazlemere  
Bucks  
HP15 7DQ

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

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1. The complainant has requested information relating to the Amersham Road Recreation Ground Task Team Report. Hazlemere Parish Council (the "council") refused the request citing the exemption for prejudice to commercial interests.
2. The Commissioner's decision is that Hazlemere Parish Council has failed to demonstrate that section 43(2) of the FOIA is engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the information to the complainant.
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**

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5. On 10 January 2013, the complainant wrote to the council and requested information in the following terms:

*"I am requesting Donald Sugg's (cllr) report and any associated documentation / attachments which pertain to the Amersham Road Recreation Ground Task Team Report as per item number 20 a (i) on the agenda as previously mentioned by David Brown (chair).*

*Also requested, as mentioned in Public Time, by David Brown (chair) a copy of the presentation given by HSA to full council."*

6. The council responded on 15 January 2013. It stated that it was refusing the request under the exemption for prejudice to commercial interests (section 43(2) of the FOIA).
7. Following an internal review the council wrote to the complainant on 14 March 2013. It stated that it was upholding its original decision to refuse the request.

## **Scope of the case**

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8. On 16 March 2013 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner confirmed with the complainant that his investigation would consider whether the council had correctly applied section 43(2) of the FOIA to refuse the request.

## **Reasons for decision**

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### **Section 43(2) – Prejudice to Commercial Interests**

10. Section 43(2) of the FOIA provides an exemption from disclosure of information which 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.

*Does the withheld information fall within the scope of the exemption?*

11. The term 'commercial interests' is not defined in the FOIA, however, the Commissioner has considered his awareness guidance on the application of section 43. This comments that:

*"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services."<sup>1</sup>*

12. The Commissioner notes that the withheld information relates to negotiations between the council and Hazlemere Sports Association (HSA) regarding new lease terms for its tenancy of the Ken Williams Memorial Pavilion. As the landlord of the property, the council clearly has a commercial interest in these matters. The Commissioner is, therefore, satisfied that the information falls within the scope of the exemption.

*Relevant interests*

13. In applying the exemption the council confirmed that it considered its own commercial interests would be likely to be prejudiced by disclosure.

*Likelihood of prejudice*

14. Section 43(2) consists of 2 limbs which clarify the probability of the prejudice arising from disclosure occurring. "Likely to prejudice" means that the possibility of prejudice should be real and significant, and certainly more than hypothetical or remote. "Would prejudice" places a much stronger evidential burden on the public authority and must be at least more probable than not.
15. In this instance the council confirmed to the Commissioner that it was relying on the "likely to prejudice" limb of the exemption.

*Nature of the prejudice*

16. The council has clarified that, at the time of the request, it was in negotiations with HAS over new lease terms. It stated that it considered

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<sup>1</sup> Published here:

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/AWARENESS\\_GUIDANCE\\_5\\_V3\\_07\\_03\\_08.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_5_V3_07_03_08.aspx)

that disclosure of the information could jeopardise the negotiations and inhibit the council from obtaining best value for parishioners.

17. The Commissioner considers that an evidential burden rests with public authorities to be able to show that some causal relationship exists between the potential disclosure and the prejudice and the prejudice is, real, actual or of substance. In the Commissioner's view, if a public authority is unable to discharge this burden satisfactorily, reliance on 'prejudice' should be rejected.
18. The Commissioner's view is that "prejudice" means not just that the disclosure of information must have some effect on the applicable interest, but that this effect must be detrimental or damaging in some real way. If a "trivial or insignificant" prejudice is claimed, such that it cannot be said to have any real detrimental or prejudicial effect, then the exemption should not be accepted.
19. The Commissioner considers that the council has not explained what specific form the prejudice would take; namely, it has not clarified what form the jeopardy to its negotiations with HSA would take and how disclosure of the information would produce this effect.
20. The Commissioner understands the generic point that disclosure of information relating to negotiations while such negotiations are "live" might have an impact. However, as noted above, the burden is on public authorities to demonstrate that any such impact is prejudicial within the terms of the exemption and to link disclosure of withheld information with specific prejudicial effects.
21. In cases where an authority has failed to explain the nature of an implied prejudice and failed to demonstrate the causal link between any such prejudice and the disclosure of information, the Commissioner is not obliged to generate relevant arguments on an authority's behalf.
22. Having considered the council's submissions, the Commissioner considers that its arguments are generic and do not explain the specific nature of the prejudice or make the necessary connection between the withheld information and any prejudice which disclosure is likely to cause.
23. In this instance, the Commissioner considers that the council has failed to explain the nature of the prejudice which would be likely to result from disclosure of the requested information. He has, therefore, concluded that the council has failed to demonstrate that the exemption is engaged. As he does not consider that the exemption applies, the Commissioner has not gone on to consider the public interest arguments.

## Right of appeal

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24. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

25. 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.
26. 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**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**