

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 May 2015

**Public Authority:** Plymouth City Council  
**Address:** Ballard House  
West Hoe Road  
Plymouth  
PL1 3BJ

#### Decision (including any steps ordered)

---

1. The complainant has requested score sheets from a firework display competition in 2013. Plymouth City Council (the "Council") advised him that it does not hold the requested information, as it is held by a third party in its own right. The Commissioner's decision is that the Council does not hold the requested information and he requires no steps to be taken.

#### Background

---

2. The request relates to The British Fireworks Championships<sup>1</sup> which takes place annually at Plymouth Hoe. According to its website:

*"The British Firework Championships were started in 1997 by The Event Services Association (TESA), a trade body representing the outdoor events industry in the UK..."*

*After considering a number of venues around the UK, Plymouth became the favoured location as it was felt to provide a natural amphitheatre where large scale pyrotechnics could be used safely and watched from a variety of points around the harbour and*

---

<sup>1</sup> <http://www.britishfireworks.co.uk/bang/>

*Sound. Following discussions with the City Council in the mid-1990s, a partnership agreement was formed to launch the event in 1997.*

*Since then the Championships have grown hugely and are now recognised as the premier annual display in the UK, attracting 10s of thousands to the City each August.*

*Each year six professional display companies are selected by draw to take part – three on each evening of the event -and every sixth year there is a Champions event when winners from the previous five years (plus the previous Champion-of-Champions winner) return to battle it out for the overall title Champion-of-Champions”.*

3. The event is organised by TESA<sup>2</sup>. On its website it advises:

*“The Event Services Association (TESA) was launched in May 1990 and represents organisers, promoters and suppliers involved in the event industry throughout the UK, particularly those involved with outdoor events.*

*The Association was established to promote good practice in the industry as well as to represent the interests of the industry and provide advice and information for those working in the sector. At the same time the Association has always recognized the importance of supporting its members by promoting their businesses and interests which it does in a number of ways...*

*TESA also organises and manages the British Firework Championships which take place each August in Plymouth and which is now one of the biggest annual public events in the South West”.*

4. TESA is not a public authority and is not subject to the FOIA.

## **Request and response**

---

5. Following an earlier successful request for information, on 26 November 2014 , the complainant wrote to the Council and requested information in the following terms:
- 

<sup>2</sup>[http://www.tesa.org.uk/go/index.php?option=com\\_content&view=article&id=117&Itemid=65](http://www.tesa.org.uk/go/index.php?option=com_content&view=article&id=117&Itemid=65)

*"Thank you for the information I asked for under the freedom of information act, the information was exactly what I required and has proved very informative.*

*As a follow up I now require the same information from last years event ~ the 2013 British Fireworks Championships, can you get this information using this request or do I need to put in a separate FOI request?"*

6. On 13 January 2014 PCC responded. It advised that it did not hold the data as it was held by TESA, a third party, and TESA would not agree to its provision and release.
7. Following an internal review the Council wrote to the complainant on 6 March 2015. It maintained its position.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 9 March 2015 to complain about the way his request for information had been handled. He asked the Commissioner to consider whether or not the requested information was held by the Council. He was particularly 'bewildered' by the Council's position as it had provided him with the same data for 2014 without any issue.
9. The Commissioner will consider whether or not the Council either holds the requested information itself or whether TESA holds it on behalf of the Council.

### **Reasons for decision**

---

#### **Section 1 – general right of access**

10. Section 1 of FOIA states that:

*"Any person making a request for information to a public authority is entitled: -*

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him".*

11. Section 3(2) states that –

*“For the purposes of this Act, information is held by a public authority if-*

*(a) it is held by the authority, otherwise than on behalf of another person, or*

*(b) it is held by another person on behalf of the authority.”*

12. The Commissioner asked the Council to explain on what basis it has concluded that it does not hold this information, bearing in mind that it has previously provided the same information to the complainant albeit for a different time period.

13. In respect of the earlier disclosure the Commissioner notes that when it was provided to the complainant at the time the Council stated:

*“This information has been provided to us from The Event Services Association who help co-ordinate the British Fireworks Championships with the council.”*

14. The Council has also provided the Commissioner with email chains which clearly show that it was necessary for it to contact TESA to obtain the information as it does not hold this information itself. The Commissioner is therefore satisfied that the information is not actually held by the Council.

15. Nevertheless, there is an exchange of public money between the Council and TESA in respect of hosting the event, and therefore the Commissioner will consider whether TESA holds the scoring information on behalf of the Council.

16. In respect of the relationship between the Council and TESA, the Council has advised the Commissioner that:

*“The British Firework Championships has been held in Plymouth for the previous 18 years. Plymouth City Council are the host venue of the British Firework Championships which is run by TESA. TESA manage the Firework Competition Element including the judging, adjudication, health and safety of the competitors, risk assessments etc. Plymouth City Council pay a fee to TESA as right holders of the championships, as well as a contribution towards the fireworks that the companies use and also the prize money. The firework championships attract over 100k people into Plymouth every August bringing over £4m into the local economy”.*

17. The Commissioner was also provided with a copy of a contract between the two parties which explains each party's responsibilities in respect of the event. This clearly shows the obligations for each party. In respect

of the participants and judging of the event it is apparent that TESA is solely responsible for selecting competitors, supervising the rules of the event, providing three specialists to act as judges and providing an adjudicator to monitor the event. Amongst other responsibilities, the Council provides funding towards competitor's materials and prizes, TESA's costs and judges' expenses.

18. It is clear to the Commissioner from the wording of the contact that the Council has no input into the actual judging of the event or the awarding of prizes. This is done solely by the judges who have been appointed by TESA. In addition, although the Council makes some payment to cover the judges' expenses, it does not have any direct involvement beyond this and it is not paying the judges *per se* to undertake any duties.
19. From the evidence provided, it is therefore the Commissioner's view that the judges' scores are held solely by TESA and not on behalf of the Council. As such they fall outside the remit of the FOIA.

### **Other matters**

---

20. The Commissioner notes that TESA previously agreed to provide the Council with the same information for the 2014 event for onward disclosure to the complainant. However, the Commissioner is satisfied that this was done as a 'goodwill gesture' and there was no requirement under the FOIA for TESA to pass this on.

## Right of appeal

---

21. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

22. 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.
23. 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** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**