

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 November 2022

Public Authority: Doncaster Metropolitan Borough Council
Address: Civic Office
Waterdale
Doncaster DN1 3BU

Decision (including any steps ordered)

1. The complainant requested information relating to the International Herpetological Society's reptile shows at Doncaster race course. Doncaster Metropolitan Borough Council (the "council") withheld the information under the exemption for prejudice to the effective conduct of public affairs (section 36(2)(b) and section 36(2)(c)).
2. The Commissioner's decision is that the council was entitled to rely on section 36(2)(b) to refuse the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 18 November 2021, the complainant made the following request for information to Doncaster Metropolitan Borough Council (the "council"):

"I would like to apply under the F.O.I. for copy's of any correspondence between Doncaster council, the Doncaster Lord Mayor and any third party's regarding the International Herpetological Society's Reptile shows at Doncaster race course between January 2020 to date...."
5. The council's final position is that all the requested information is subject to the exemptions in section 36(2)(b) and section 36(2)(c) of the FOIA.

Reasons for decision

Section 36 – Prejudice to the effective conduct of public affairs

6. The following analysis sets out why the Commissioner has concluded that the council correctly applied section 36(2)(b) in this case.
7. Section 36 of FOIA states that information is exempt where, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, prejudice the effective conduct of public affairs.
8. The council has applied sections 36(2)(b)(i) and (ii) to withhold the requested information in its entirety. Arguments under these sections are usually based on the concept of a 'chilling effect'. The chilling effect argument is that disclosure of discussions would inhibit free and frank discussions in the future, and that the loss of frankness and candour would damage the quality of advice and deliberation and lead to poorer decision making.
9. The Commissioner's guidance on section 36¹ states that information may be exempt under sections 36(2)(b)(i) and (ii) if its disclosure would, or would be likely to, inhibit the ability of public authority staff, and others, to express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation.

¹ <https://ico.org.uk/media/for-organisations/documents/2260075/prejudice-to-the-effective-conduct-of-public-affairs-section-36-v31.pdf>

10. In this case, the council has argued that councillors and senior officers may be reluctant to share information and openly debate controversial matters if they cannot rely on a level of confidentiality in their discussions. It has argued that members of the council need to be able to discuss varying opinions on public events taking differing views into account.
11. In relation to the matter which is the subject of the request, namely the hosting of reptile shows at Doncaster Race Course, the council has confirmed that it continues to be an ongoing and highly controversial issue and there is a heightened need for senior officers and councillors to be able to debate such matters openly. The council has explained that the issue is very emotive and there are widely differing opinions from external parties, some of whom support reptile shows and some of whom regard them as cruel and outdated. The council considers that disclosing the information would inhibit discussions about this and prejudice its ability to make effective decisions.
12. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a qualified person. The Commissioner is satisfied that the council's Monitoring Officer is authorised as the qualified person under section 36(5) of FOIA and that he gave the opinion that the exemption was engaged. The Commissioner accepts that it was reasonable for the qualified person to consider that there was a need to protect the confidentiality of discussions and deliberations about this matter. He is also satisfied that the qualified person's opinion - that inhibition relevant to those subsections would be likely to occur through disclosure of the withheld information - is reasonable. The Commissioner is therefore satisfied that the exemption was engaged correctly.
13. When considering whether the public interest favours maintaining the exemption or disclosing the requested information, the Commissioner has taken account of the recent nature of the information and the fact that the question of the hosting of such events remains an ongoing, controversial issue. He accepts that these factors can carry weighting both in favour of disclosure and in favour of maintaining the exemption.
14. The Commissioner recognises that there is a public interest in understanding how decisions are made and that decisions are based on appropriate evidence and advice. He also accepts that parties will disagree with the decisions reached by the council and seek to challenge them. This is an entirely appropriate outcome of the democratic process.

15. However, the Commissioner considers that the exemption is designed to protect the safe space authorities need to consider a variety of views in reaching a decision. In this matter, he accepts that the council needs to be able consider advice from a variety of informed sources. He acknowledges that, if contributors were concerned that these discussions might be made public, the resultant loss of frankness and candour in the course of discussions and deliberations would be likely to damage the quality of advice to decision makers, and thus inhibit the council's ability to make informed decisions about such events.
16. The Commissioner considers the public interest in good decision-making by the council to be a compelling argument in favour of maintaining the exemption. He acknowledges that the public interest in transparency would be served if the information was disclosed and recognises that the complainant and other parties have a genuine interest in accessing the information. However, on balance, he finds the public interest in protecting the council's access to unfiltered and frank advice on this matter to be the stronger argument.
17. Consequently, he is satisfied that, in this case, the public interest favours maintaining the exemption. It follows that his decision is that the council was entitled to rely on sections 36(2)(b)(i) and (ii) of FOIA to refuse the request.
18. In light of this decision, he has not gone on to consider the council's application of section 36(2)(c) of FOIA.

Right of appeal

19. 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

20. 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.
21. 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

Christopher Williams
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Information Commissioner's Office
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