

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

### **Decision notice**

**Date:** 17 February 2023

**Public Authority:** Warrington Borough Council  
East Annexe  
Town Hall  
Sankey Street  
Warrington  
WA1 1UH

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

---

1. The complainant has requested information relating to specific premises in Warrington.
2. Warrington Borough Council ('the Council') refused to provide the requested information, originally citing section 43(2) (commercial interests) of FOIA and then regulation 12(5)(e) (commercial or industrial information) of the EIR.
3. The Commissioner's decision is that the information is exempt from disclosure under section 43(2).
4. The Commissioner does not require the public authority to take any steps.

## **Request and response**

---

5. On 7 December 2022, the complainant wrote to the Council and requested the following information:

“Can you please confirm if the Premises known as the Botanist, who are the Council’s tenants, have started paying their rent to the Council yet? And if they have what date did they start paying please?”
6. The Council responded on 12 December 2022. It refused to provide the requested information, citing section 43(2) of FOIA.
7. The complainant requested an internal review on 13 December 2022. They expressed concern that ‘We have not asked for the amount of rent paid, we simply ask if rent has been paid to the Council by one of its tenants and the date rent commenced.’
8. The Council provided the outcome to its internal review on 14 December 2022. It upheld its original position.
9. During this investigation, the Council wrote to the complainant, and the Commissioner and confirmed its final position to be that the information is exempt from disclosure under regulation 12(5)(e) (commercial or industrial information) of the EIR.

## **Reasons for decision**

---

### **Is the requested information environmental**

10. Firstly, the Commissioner will address the complainant’s concern that the information is not environmental. Any information that is environmental must be dealt with under the EIR, rather than FOIA.
11. Any information that relates to the landscape is, for the purposes of the EIR, environmental. A landscape can be natural or urban, for example, the Time Square development in Warrington, which is a £142 million development funded by the Council. The premises with which the complainant is concerned is part of this development.
12. Whilst the construction and the expansion of the Time Square development itself has a direct effect upon the landscape, the Commissioner is not convinced that tenancy and lease information, for the businesses with the development itself, represent environmental information. Therefore, he has considered this case under FOIA.

## **Section 43(2) – Commercial interests**

13. Section 43(2) states:

'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).'

14. The Commissioner's guidance<sup>1</sup> 'Section 43 - Commercial interests' states 'A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.'
15. The withheld information relates to the rental agreement between the Council and its tenant. To reiterate, there are two pieces of information being withheld here: whether the Botanist has started to pay rent to the Council and, if so, when. The Commissioner is satisfied this represents commercial information.
16. From the Commissioner's research he has discovered that, in response to an FOI request that it received in 2020, the Council confirmed that 'The Botanist have the benefit of a rent-free period which is currently in force.' Again, it refused to disclose the duration of this rent-free period because it was commercially sensitive.
17. In its correspondence to the complainant and the Commissioner, the Council argued 'Whether and when rent has been paid is not in the public domain and relates to the trading positions of the Council as landlord and the tenant who have not consented to disclosure.'
18. The fact that the Botanist is a tenant at Time Square, which has been developed and funded by the Council, is in the public domain.<sup>2</sup> The relationship between the Council as the landlord, and the Botanist as the tenant, is evident from the request itself, the Council's explanation above and information in the public domain. However, the Commissioner agrees with the Council that whether the Botanist's rent-free period has ended, and whether it has started to pay rent and if so, when, is not in the public domain.
19. The Council has explained that the withheld information would prejudice the commercial interests of the Time Square development, which still

---

<sup>1</sup> [Section 43 - Commercial interests | ICO](#)

<sup>2</sup> [Time Square brochure-jul-22.pdf \(timesquarewarrington.co.uk\)](#)

has vacant units within it. For example, if details of the Botanist's rent-free period were made public, it would give prospective tenants a starting point upon which to base negotiations with the Council.

20. Furthermore, the Council is also concerned that this information would compromise its relationship with current tenants, which includes more restaurants, a cinema, university sites and offices, who may perceive that they were offered less favourable terms than the Botanist.
21. The Council is concerned that, should the requested information be disclosed, this would also allow rival commercial property providers to amend their offers in competition with the Council.
22. The Council acknowledges that FOI, and the EIR, is applicant blind, however, notes that the complainant in this instance is affiliated with a private company which lets real estate in the Warrington area – so this is clearly not just a hypothetical risk.
23. The Council is also concerned that disclosure 'would be harmful if there was a precedent for the Council disclosing information which was considered to be commercially sensitive.' The Commissioner has rejected this argument. Each request that the Council receives under FOIA, or the EIR, must be taken on a case-by-case basis. Whether information can be withheld in response to a particular request for information should not, in general, affect the way in which it handles future requests.
24. With the above in mind, the Commissioner is satisfied that disclosure would be likely to prejudice the commercial interests of the Council. The Commissioner will therefore go onto consider whether the public interest lies in disclosure or in maintaining the exemption.
25. The Council acknowledges that 'there is a strong public interest to demonstrate openness, transparency and accountability in the management of public funds and assets.' The Council believes that this public interest is met by the auditing of its accounts. However, the Commissioner isn't persuaded that this process meets the public interest in this particular information. He acknowledges that disclosure would inform the public on the arrangements between the Council and its tenants in the Time Square development.
26. In favour of maintaining the exemption, the Council has stated 'There is a strong public interest in allowing public authorities to operate commercially with business in the best interests of the community. Disclosure would impact on fair and competitive processes during any commercial negotiations.'
27. It has also highlighted that 'There is also a public interest in private businesses being able to trade without undue scrutiny though it is of

course accepted that when they trade with a public authority that there is a greater public interest in disclosure of their information.'

28. On balance, the Commissioner agrees with the Council that the public interest favours maintaining the exemption. In making the decision, the Commissioner is mindful of the cost of Time Square development. It is not within the public interest to hinder the Council in recouping these costs by maximising the rental income it can achieve.

### **Other matters**

29. In the Council's refusal notice and internal review, it failed to explain **how** it considered section 43(2). Once this case was investigated, the Council provided further explanation to the complainant regarding regulation 12(5)(e). However, in none of the Council's correspondence to the complainant did the Council explain that the Botanist had been granted a rent-free period. Had it done so, the Council's position would have been much clearer to the complainant and a complaint to the Commissioner may have been avoided.

## Right of appeal

---

30. 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)

31. 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.
32. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**