

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2023

Public Authority: Leeds City Council
Address: PO Box 837
Leeds
LS1 9PZ

Decision (including any steps ordered)

1. The complainant has requested any minutes and notes relating to meetings held between the Council and a business. Leeds City Council ("the Council") withheld the information under section 43(2) (Commercial interests) of FOIA.
2. The Commissioner's decision is that the Council is entitled to withhold the information under section 43(2).
3. The Commissioner does not require further steps.

Request and response

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

"Please could you provide me with the minutes and notes taken of all meetings held between representatives of Leeds City Council and Victoria Gate Casino, between 12th October 2021 and 30th November 2022.

For clarity, this includes meetings held either face-to-face, online or over the phone."

5. The Council responded on 1 February 2023. It stated that some information was held, but was withheld under the exemption provided by section 43(2).
6. Following an internal review, the Council wrote to the complainant on 3 March 2023. It maintained the application of section 43(2).

Reasons for decision

Section 43(2) – Commercial interests

7. This reasoning covers whether the information could be withheld because it was commercially sensitive.
8. Information can be withheld under section 42(3) of FOIA if disclosure would prejudice the commercial interests of any person, including the public authority holding it.
9. The Council explained to the Commissioner that it considers disclosure of the information would prejudice the commercial interests of a third party, namely Victoria Gate Casino (“the business”).
10. The Council argues that the disclosure of the information would be likely to prejudice the business’ commercial interests through disclosure of its trading revenues and performance to competitor businesses.
11. The Council further argues that the information contains detailed information about current challenges being faced by the business. The disclosure of such information would impact upon the confidence of existing and potential customers, suppliers, and employees.
12. The Council has confirmed that it has consulted with the business, and that its arguments are based on the business’ concern. The Council has provided the Commissioner with a record of this consultation.
13. The Commissioner has considered the Council’s position, and the withheld information (which comprises one email). Having done so, he is satisfied that the information relates to the commercial activity of the business. The Commissioner is also satisfied that the disclosure of the information would prejudice the business’ commercial interests by revealing significant detail of its operation. The Commissioner has therefore concluded that section 43(2) is engaged and must go on to consider the public interest test.
14. The Commissioner recognises that there is public interest that the Council operates transparently and is accountable to the public for the

decisions it makes in relation to businesses within its authority. In the context of this case, the Commissioner understands that the information has been requested in relation to a variation of a 'Schedule 9 Agreement' between the Council and the business about annual financial contributions made by the business to the Council's 'Social Inclusion Fund' (as detailed on the Council's website^{1, 2}). Disclosure of the information would facilitate transparency about this and inform public debate.

15. However, the Commissioner also recognises that there is a public interest that the business to which the information relates is not commercially damaged, such as by having its competitive advantage eroded.
16. It is also relevant for the Commissioner to note that there is no evidence available to him that indicates that the Council is acting improperly in its handling of this matter, and which would increase the public interest in disclosure.
17. On balance therefore, the Commissioner finds that the public interest favours maintaining the section 43(2) exemption in this case.

¹ <https://democracy.leeds.gov.uk/mgIssueHistoryHome.aspx?IIId=110778&optionId=0>

² <https://democracy.leeds.gov.uk/mgIssueHistoryHome.aspx?IIId=118293&optionId=0>

Right of appeal

18. 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

19. 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.
20. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
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Water Lane
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