

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

### **Decision notice**

**Date:** 23 July 2024

**Public Authority:** Belfast City Council  
**Address:** City Hall  
Belfast  
BT1 5GS

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

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1. The complainant requested from Belfast City Council (the Council) information regarding LGBTQIA+ Belfast Hub Feasibility Study report. The Council refused the request under section 43(2) (commercial interests) of FOIA.
2. The Commissioner's decision is that the Council was entitled to withhold the information under section 43(2) of FOIA and the public interest favours maintaining the exemption. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

#### **Background information**

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3. The Council provided the Commissioner with background information about LGBTQIA+ Belfast Hub Feasibility Study. It explained that the LGBTQIA+ Belfast Hub Feasibility Study was commissioned by Belfast City Council along with its four steering group members: Cara Friend, HERe NI, The Rainbow Project and Transgender NI between October 2022 and March 2023.
4. The Council stated the purpose of the study was four-fold:-  
  
Sourcing and shortlisting potential new sites for LGBTQIA+ hub in Belfast; defining the need for a new hub; determining the governance model for a new hub; and outlining how a new hub would be delivered and sustained.

5. The Council explained that the Feasibility Study has now concluded, and the Hub is one of a number of projects which form part of the Council's Local Action Plan which is an application/submission for Special EU Programmes Body ("SEUPB") PEACEPLUS<sup>1</sup> for funding. The Council further explained that "the application for funding includes the development of a LGBTQIA+ Hub in Belfast City Centre through the redevelopment of the first floor of 2 Royal Avenue, Belfast by 2027 to provide a dedicated space for organisations representing the LGBTQIA+."
6. The Council informed the Commissioner that its application was submitted in December 2023, and it still awaits a decision as to whether the funding has been secured. The Council said it expects formal notification of a decision in terms of the SEUPB PEACEPLUS funding application outcome by Autumn 2024.

### **Request and response**

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7. On 28 November 2023, the complainant wrote to the Council and requested information in the following terms:

"There was a consultation done into the feasibility of creating a new LGBTQQIA hub in Belfast. I'm looking to get hold of the feasibility study report."
8. On 22 December 2023 the Council responded and confirmed it holds the information, but withheld it under section 43(2) (commercial interests) of FOIA.
9. On the same day the complainant asked for an internal review.
10. On 22 February 2024 the Council provided its review response and maintained its original position.

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<sup>1</sup> PEACEPLUS is a cross-border funding Programme supported by the European Union, the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of Ireland, and the Northern Ireland administration. The Programme is designed to support peace and prosperity across Northern Ireland and the border counties of Ireland, building upon the work of the previous PEACE and INTERREG Programmes.

## Reasons for decision

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11. This reasoning covers why the Council was entitled to rely on section 43(2) of FOIA to refuse to provide the requested information.

### Section 43 – commercial interests

12. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.

13. The Commissioner has defined the meaning of the term “commercial interests” in his section 43 guidance<sup>2</sup> as follows:

“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.”

14. The Council relied on this exemption for withholding the information requested, as it considers disclosure would prejudice the Council’s commercial interests. It said the information has prevalence and is of critical importance to the Council’s commercial interests.

15. The Council explained that the information forms part of its submission to a live competitive funding process, namely, SEUPB PEACEPLUS and to disclose the information at this time, would undermine the integrity of the Council’s submission for funding. This, it said, would prejudice a process in which the Council is bidding for investment in the city, and specifically, in relation to the significant investment in a LGBTQIA+ Hub. The Council stated that in addition, the detail of the Feasibility Study has yet to be presented to the Council’s Strategic Policy and Resources Committee. The Council said the study will be presented to Elected Members, this is to provide and update in the context of a funding decision from SEUPB and to consider next steps.

16. The Council further explained that “the feasibility study also features as a relevant part of considerations to develop the overall site at 2 Royal Avenue, Belfast, not just the LGBTQIA+ Hub. There is currently a temporary third-party operator in the building pending a permanent decision-making in relation to the overall development of 2 Royal

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<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-43-commercial-interests/>

Avenue, Belfast..." Therefore, the Council believes disclosure of the information requested at this time, would prejudice the Council's wider commercial interests.

17. The Commissioner acknowledges that the Council is clearly operating within a competitive environment, and its interests in potential new sites for the project are commercial interests. He accepts that disclosing the information requested would result in commercial prejudice to the Council and third parties. He understands that the information (Feasibility Study report) is part of the Council's submission to a live competitive funding process. Therefore, the Commissioner believes that at the time of the request, it would not have been appropriate to disclose information relating to submission for funding, and also details of the Council's bidding for investment. The Commissioner appreciates that during a tendering process, the information submitted is likely to be commercially sensitive whilst the process is ongoing. However, he's aware that its sensitivity may diminish once the Council receives notification of a decision on the funding application outcome.
18. The Commissioner accepts that the risk of prejudice occurring is real and significant. He therefore finds the Council was entitled to apply section 43(2) of FOIA to the withheld information.

### **Public interest test**

19. As the Commissioner is satisfied the exemption is engaged in this case, he will consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosing the information**

20. The Council recognises that disclosure would promote accountability and transparency in relation to the Council's enquiries into the site selection for a LGBTQIA+ Hub. The Council accepts that it would allow for a more informed debate on the issue, this would allow the public to understand and challenge the matters which were taken into account relating to the Council's decision-making when choosing an appropriate location for the LGBTQIA+ Hub. The Council considered the age of the information, the timing of the request, the specific circumstances of the case and the content of the information held in relation to those circumstances. It also took into account whether any of the information was already in the public domain.

## **Public interest arguments in favour of maintaining the exemption**

21. The Council believes that the Feasibility Study, which was compiled between October 2022 and March 2023, is supporting documentation for the Council's application for SEUPB PEACEPLUS funding, which is a live competitive funding process. The Council said whilst it was preparing its submission to SEUPB PEACEPLUS, it received the complainant's information request. It stated the Feasibility Study was a critical piece of supporting information to assist the Council in its current application for the funding in question.
22. The Council argued that disclosure prior to a funding application decision and any potential procurement process, would significantly undermine the Council's commercial interests. The Council emphasised the information is central to its commercial interests because it is an important component of its funding submission to SEUPB PEACEPLUS. The Council said the outcome of the Feasibility Study has yet to be considered by the Council's Strategic Policy and Resources Committee, and that it will also feature in its considerations regarding the wider development of the overall site at 2 Royal Avenue, Belfast.
23. The Council argued that disclosing the Feasibility Study would undermine the integrity of the steering group and the Council's existing relationship with those organisations. It said, there is a need for the Council to maintain its credibility and working relationships with LGBTQIA+ groups that played an essential role in the development of the Feasibility Study. The steering group partners, the Council stated, provided commercial details integral to the Council's funding application (e.g. details of their administration costs and operating costs).
24. It must be noted that the application for funding had not been submitted at the date the information request was received.

## **Balance of the public interest test**

25. In balancing the public interest arguments, the Commissioner accepts that disclosure would to some extent, help to increase openness and transparency. The public would be better informed about the Council's enquiries into the site selection for a LGBTQIA+ Hub. The public would also have an understanding of the Council's decision-making when choosing an appropriate location for the site in question.
26. However, the Commissioner acknowledges the eventual availability of the Feasibility Study once the funding application outcome is reported to Committee. This reduces the weight of the public interest argument in favour of disclosure at the present time. Given the level of likelihood that commercial harm would occur should the requested information be

disclosed, the Commissioner finds that the balance of public interest favours maintaining the exemption.

**Conclusion**

27. The Commissioner considers the public interest in disclosure of the withheld information is outweighed by the public interest in maintaining the exemption. Therefore, section 43(2) of FOIA is engaged and the Council was entitled to rely on this exemption.

## Right of appeal

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28. 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)

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**