

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 September 2018

Public Authority: Plymouth City Council

Address: Ballard House

West Hoe Road

Plymouth

PL1 3BJ

Decision (including any steps ordered)

1. The complainant has requested information with regards to the Bianca Statue outside the Theatre Royal, Plymouth. Plymouth City Council (the council) provided the information it held. The Complainant considered that the council had not provided everything requested.
2. The Commissioner's decision is that the council has provided all the information it holds relevant to the request.

Request and response

3. On 30 January 2018, after providing some background information, the complainant made an information request with regards to the Bianca Statue outside the Theatre Royal, Plymouth.
4. The request was made up of five main parts:
 1. *"What approvals been given to alter/amend the planning application as a result of public protests, and move the statue some 8 Metres from its original location (previously defined in the 11 October 2016 statement by the CEO of the Theatre Royal Board, and reinforced in the 16/02248/FUL report). If none, what is the explanation for the discrepancies between the Fire Inspection and the reports considered by the Planning Committee?"*
 2. *(a) In the erection of this Public Statue, namely one representing a Courtesan/Prostitute from a Shakespearean play what interpretation of local history is being met? Is it the Public Statue,*

sitting on a street in Plymouth, that is being approved, or the Theatre Royal.

(b) In terms of impact on listed buildings, the owners Urban Splash previously indicated they intend to extend the existing Civic Centre buildings across the car park. How will this listed building development be reconciled with the presence of a 23ft statue next to it? Enquiries with Urban Splash have identified they have not been consulted. What impact is anticipated by PCC in respect of this development, and what are the implications for this important development?

3. *(a) At a time of severe budget restraints, with cutbacks to public services, (including libraries and services to vulnerable people), were Plymouth Council aware of the level of reserves held by the Theatre Royal, sufficient to pay £450,000 for a statue attributed to a courtesan/prostitute?*

(b) What enquiries were made to establish the financial status of the Theatre Royal prior to making a £2 Million grant?

(c) Were Plymouth Council ever engaged in any discussions with the Theatre Royal in terms of the funding the statue of Bianca?

(d) Excluding Business Rates Relief, during the period 20011/2015 some £3,150,000 of Revenue/Capital was given to the Theatre Royal. Did Plymouth Council ever allow any revenues/capital support, provided previously, to be used to fund this statue?

4. *Have the conditions specified in Planning Report 16/02248/FUL stated that within 3 months of the Planning Approval the applicant shall submit and have approved in writing a detailed lighting and interpretation scheme above been met? If so, what was the date of submission and the date of approval by Plymouth Council?*

5. *(a) who would be responsible for the cost of ongoing maintenance of the statue,*
(b) who would be responsible for cost of repairs in the event of vandalism,
(c) who would be responsible for costs of the overall security of the statue, and
(d) who would be responsible for the cost of lighting the public statue."

5. The council provided its response on the 12 February 2018. The complainant requested an internal review on the 14 February 2018

highlighting sections of his request that he considered had not been responded to.

6. On the 21 March 2018 the council provided its internal review responding to the points raised in the internal review request and concluded that it was satisfied its original response had answered the request in full.

Scope of the case

7. The complainant contacted the Commissioner on 21 March 2018 dissatisfied with the council's response to the request.
8. The Commissioner considers the scope of the case is to determine whether the council has provided the information it holds to this request.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

9. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
10. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
11. The complainant has highlighted to the Commissioner the following points to his request that he considers remain unresolved:
 - i. The complainant says that the council's response stated that £5 million was contributed by the Theatre Royal – He considered this to be untrue and that the money came from the Arts Council who confirmed this in a press release.
 - ii. The complainant has told the Commissioner that specific questions were lodged in order to get an explanation on the discrepancies

between the joint press release, the planning report and the Fire Officer report. He considers this has been ignored by the council.

- iii. The complainant has told the Commissioner that no explanation has been given on the issue of what "...*interpretation of local history*" relevant to Plymouth was achieved by the erection of a public statue of a prostitute from Othello.
 - iv. The complainant lastly, has told the Commissioner that he is trying to ascertain the timeframe for when the protective lighting will be installed but this has not been provided.
12. The Commissioner has focused on the above points with regards to her investigation as to whether the council has provided all the information it holds within the scope of the request.
 13. With regards to 'i' above, the Commissioner asked the council what recorded information it used in order to advise the complainant that the £5million was contributed by the Theatre Royal, as the complainant's view, from a press release, is that the money came from the Arts Council.
 14. The council has responded to the Commissioner stating that the original request asked '*What enquiries were made to establish the financial status of the Theatre Royal prior to making the £2 Million grant?*' and the council responded:

"Finance reviewed the business case for the refurbishment of the Theatre Royal which is owned by Plymouth City Council. The £2 Million was spent on Plymouth City Council's asset and surrounding Public realm area and has increased the value of its own assets. The tenant is Plymouth Theatre Royal who contributed £5m to the development and this has also increased the value of PCC's asset."

15. The council has explained to the Commissioner that in order for it to answer this question, it referred to the original finance information and the cabinet report¹ which recommended a contribution of council funds to the Theatre Royal redevelopment.

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<http://democracy.plymouth.gov.uk/documents/s40874/Theatre%20Royal%20Cabinet%20Report%20FINAL.pdf>

16. The council considers it was correct in stating that it was Plymouth Theatre Royal who contributed £5 million to the development and the fact they obtained this from the Arts Council is not relevant to the question as it was not asked where Theatre Royal obtained the funding.
17. The Commissioner is satisfied that the explanation given by the council clears up why the council stated the money came from the Theatre Royal and why it did not mention the Arts Council.
18. With regards to parts 'ii' and 'iii' above, the Commissioner has advised the complainant that the FOIA does not require public authorities to create information or give explanations in order to satisfy a request. However, recorded information might be held that would offer an 'explanation'. Therefore, in relation to these two points, the Commissioner asked the council whether it holds any other recorded information that would fall within the scope of what the complainant is trying to obtain.
19. The council has told the Commissioner that, in reference to point 'ii', the council does not hold any information on the referenced Fire Officer's report, as this was commissioned personally by the complainant and it did not form any part of the planning application for the statue, nor was it officially requested by the council.
20. The council has stated to the Commissioner that extracts from the Fire Officer's report were sent to the its planning officer as part of comments opposing the planning application, however it has not been sent a full copy of the report and therefore will not hold any recorded information on discrepancies between this report and any other information. The means of access to the entrance of the Theatre Royal was not an 'integral' part of the committee report, and it was not deemed necessary to commission a fire officers report for a bronze statute situated in an open public space.
21. With regards to point 'iii', where no explanation has been given on the issue of what "...*interpretation of local history*" relevant to Plymouth was achieved by the erection of a public statue of a character from Othello, the council has told the Commissioner that the issue of interpretation of local history is not a planning requirement and so is not a material planning consideration. The council therefore did not record any information on this.
22. The council has however told the Commissioner that the committee report and the addendum did touch upon public art and the Theatre Royal did provided a supporting statement with the application, which was made available to the public.

23. With regards to 'iv' above, details on a timeframe for the installation of the protective lighting, the council has stated to the Commissioner that there is a planning condition for the installation of protective lighting which states:

"Within three months of the date of this decision notice the applicant shall submit to and have approved in writing by the Local Planning Authority a detailed lighting and interpretation scheme. The scheme shall provide information on how the statue will be illuminated as well as details of an information programme that will help to interpret the development for the public. The works shall confirm to the approved details."

24. The council has advised the Commissioner that the decision notice relating to the planning condition was issued on the 20 February 2017 and this information would normally have been submitted to the council by now, however, officers have agreed with the applicant that it would not enforce this condition until the statue commission has been completed and therefore the impact of the illumination on the statue can be fully interpreted. The council points out that the installation has not reached this stage in its implementation and it does not hold any information of the timescales for this lighting.
25. In addition to addressing the points 'i' to 'iv', the Commissioner asked the council to detail the searches it carried out in order to establish the information it held with regards to the request.
26. The council has told the Commissioner that most of the information requested is in the public domain and forms part of the public record for the planning application².
27. It also referred to the cabinet report on the redevelopment and stated that because most of the information requested was about the Theatre Royal, which is an independent company, the council would not hold any information relating to the operations or strategies of the theatre.
28. The council has stated to the Commissioner that is contacted the following of its employees as they were directly involved with the planning case and the Theatre Royal redevelopment: Planning Technical Support Officer, Planning Case Officer, Head of Development

² <https://planning.plymouth.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=ZZZR3MMXE831>

Management, Service Director for Strategic Planning and Infrastructure, Senior Lawyer, Head of Land and Property, Service Director for Economic Development, Information Governance Manager.

29. The council has confirmed to the Commissioner that it has provided the information that it holds and that no information relevant to the scope of the request has been deleted or destroyed.
30. The Commissioner on review of the council's responses considers it has provided comprehensive responses to the points raised in 'i' to 'iv' and she is also satisfied that the searches it has carried out have been the most relevant for this request.
31. On this basis the Commissioner finds that, on the balance of probabilities, no further information is held by the council relevant to the request.

Right of appeal

32. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Andrew White
Group Manager
Information Commissioner's Office
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