

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

### **Decision notice**

**Date:** 22 June 2023

**Public Authority:** Bristol City Council  
**Address:** The Council House  
College Green  
Bristol  
BS1 5TR

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

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1. The complainant has requested information from Bristol City Council (Council) regarding non-disclosure agreements (NDAs), donations and loans.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 31 August 2022, the complainant wrote to the Council and requested information in the following terms:  
  
"1) Are councillors expected to sign NDAs when it comes to certain planning matters involving certain developers that could harm any of the council's interests?  
  
2) Could I have a named list of the donations and loans with the amounts given to the council by a corporate developer in Clifton and Redland since 2019 - 2022?"
5. The Council responded on 24 November 2022. It stated that the requested information was not held.

6. Following an internal review, the Council wrote to the complainant on 4 April 2023. It stated that it was upholding its original decision.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 4 May 2023 to complain about the way their request for information had been handled.
8. The complainant advised the Commissioner that they were only concerned with the handling of the first part of the request for information.
9. The Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, the Council holds any information within the scope of the request.

### **Reasons for decision**

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#### **Section 1 FOIA - determining whether information is held**

10. Section 1 of FOIA says that a public authority is required to confirm or deny that it holds the requested information, and disclose relevant information that it holds, unless an exemption or exclusion applies. If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.
11. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, ie, the balance of probabilities. In order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request.
12. The Council advised the Commissioner it did two different searches for the requested information. It searched the Council's share point online and outlook using terms such as 'NDA, planning and councillor'. The search did not return any results. The Council also conducted a search specifically for any policies which relates to NDAs, it used the search terms of 'NDA' and 'non-disclosure agreement' on its central corporate site. It confirmed that these searches also did not locate any information within the scope of the request.
13. The Council advised that its democratic service manager was consulted alongside the head of development manager and the major projects

team manager to determine if there had been any NDAs being signed by councillors or if the Council held any policy relating to NDAs. All managers confirmed that that they had no knowledge of NDAs being used or any policy that exists relating to such things.

14. The Council explained that the democratic service manager manages the relationship between the Council and its elected members, and as such would likely be aware of such agreements being made. The head of development manager oversees the planning application process within the Council, and as such would likely be aware of such agreements being made. Finally, the major project team manager deals with large scale planning applications of the type that councillors are more likely to become involved in, and as such would likely be aware of such agreements being made.
15. The democratic service manager also reviewed the declaration of interests register which would include all conflicts which had been submitted by all councillors. The Council advised the Commissioner, that it is a requirement that any potential conflict of interest is declared by councillors. The declarations of interests register is the only place where such information would be stored by the Council.
16. The complainant provided the Commissioner with a website link which reported that a Council employee had asked a member of the public to sign "a makeshift NDA". The complainant's view is that this demonstrates that the Council operates a system of NDAs with planning management.

### **The Commissioner's decision**

17. The Commissioner recognises that the website link provided by the complainant, does suggest that a Council employee may have previously requested an individual sign a makeshift NDA. However he is not satisfied that, on the balance of probabilities, that this shows the council must therefore hold information of the type described in this request.
18. Further to this, the Commissioner is satisfied that the searches conducted by the Council were adequate and if the requested information was held, it would have been identified in these searches.

### **Procedural matters**

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19. The Council breached section 10 by failing to respond to the request within 20 working days.

## **Other matters**

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20. The Commissioner would like to take this time to remind the Council, that while there is no legal requirement to conduct an internal review under FOIA, it is still considered to be good practice.
21. The Freedom of Information section 45 Code of Practice<sup>1</sup> recommends that an internal review should be completed within 20 working days but under no circumstance take more than 40 working days. In the circumstances of this case, the Council did not complete the internal review until over 4 months later.

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<sup>1</sup> [Freedom of Information Code of Practice - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

## Right of appeal

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22. 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)

23. 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.
24. 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 .....**

**Laura Tomkinson**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**