

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2024

Public Authority: Plymouth City Council
Address: Ballard House
West Hoe Road
Plymouth
PL1 3BJ

Decision (including any steps ordered)

1. The complainant requested information held by Plymouth City Council (the council) about Special Safety Certificates issued for the Muse concert and Rod Stewart concert which took place at Plymouth Argyle's football stadium, Home Park, in May and June 2023.
2. The council provided the complainant with some information in response to their request, and advised that it considered the remaining information to be exempt from disclosure under section 38(1)(b) (endangerment to the safety of any individual) of FOIA.
3. The complainant raised concerns with the Commissioner about the council's decision to withhold the documents attached to Appendix 1 of the Special Safety Certificate for the Muse concert. The council agreed to review this information and then released some additional information to the complainant. The council confirmed it had made some redactions to the documents released under section 38(1)(b), and section 40 (third party personal information) of FOIA.
4. The complainant has not contested the council's decision to apply section 40 of FOIA to third party personal information.

5. The Commissioner's decision is that the council is only entitled to rely on the exemption at section 38(1)(b) in respect of part of the remaining withheld information.
6. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Release the information highlighted in green set out within the confidential annex attached to this decision notice.
7. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

8. On 26 June 2023, the complainant wrote to the council and requested the following information:
 - "1. Documentation (including emails, reports, plans, certificates, applications, minutes of meetings, Plymouth City Council (PCC) inspection reports etc) relating to granting/monitoring the Special Safety Certificates for both Muse and Rod Stewart concerts in 2023.
 2. Job titles and safety qualifications of PCC staff involved in Special Safety Certificate processes including monitoring."
9. On 21 July 2023, the council provided the complainant with some information in response to their request. This included a copy of the Special Safety Certificate issued for each of the concerts, which the council confirmed was already publicly available.
10. The council also advised the complainant that it had withheld some information under section 38(1)(b) of FOIA, as it considered that the release of such information would "endanger the safety of any individual."
11. The council maintained its position at the internal review stage, and provided some further explanations in response to some of the points of concern that the complainant had raised.

Scope of the case

12. The complainant raised concerns with the Commissioner about the council's response to part one of their request. Specifically, they complained that the council had withheld all of the documents listed in Appendix 1 of the Special Safety Certificate issued for the Muse concert (Appendix 1).
13. The council confirmed to the Commissioner that it would be willing to reconsider the information referred to by the complainant, and then released copies of the relevant documents. However, the council advised that some of the information had been redacted before disclosure under section 40, and section 38, of FOIA.
14. The complainant has advised the Commissioner that they believe that the council may have incorrectly applied section 38 to some of the redacted information recently provided to them. The complainant has also said that they are concerned that the council may not have identified and released all of the documents relevant to Appendix 1.
15. The complainant has not contested the council's decision to apply section 40 to the names and contact details of third parties within the information recently provided to them.
16. The Commissioner will therefore only decide whether the council is entitled to withhold that information that was attached to Appendix 1 that it claims to be exempt from disclosure under section 38(1)(b) of FOIA.
17. The Commissioner will also decide whether, on the balance of probabilities, the council has identified all of the information held that is relevant to Appendix 1.

Reasons for decision

Section 1 - right of access to information

18. When a public authority receives a request under FOIA, its obligation under section 1(1) is to provide the information that it holds in recorded form. It is not required to create or acquire information in order to satisfy a request.
19. In this case, the Commissioner is only considering the information which the complainant has raised specific concerns about in their complaint, that being the information held that was attached to Appendix 1.

20. The complainant has said that they may not have received all of the information held that is relevant to the list set out within Appendix 1 and that where information has been provided it has not been titled appropriately, or correctly numbered. They have said that this has led to difficulty identifying which documents are relevant to each part of the list. The complainant has also said that this has increased their concern that some information may be missing, or that they have not been provided with the final version of some documents.
21. The Commissioner considers some of the information that the complainant considers might be held, such as post event reports, do not form part of the list of information contained within Appendix 1.
22. The Commissioner accepts that it might have been helpful to the complainant if the council had included some additional information which confirmed which of the documents recently released applied to each part of Appendix 1. However, the council is not required to supply additional information in response to a request, where it is not already held.
23. Having considered the content of the documents that have been released, the Commissioner is satisfied that information does appear to have been supplied that relates to all of the headings listed in Appendix 1. He has also found no evidence which would indicate that any documents are missing, that further information would be held, or that the documents that were provided were not the final version.
24. Given the above, the Commissioner is satisfied that, on the balance of probabilities, the council has identified and provided all of the documents held that are relevant to the list set out in Appendix 1.

Section 38 – health and safety

25. Section 38 of FOIA states:

“(1) Information is exempt information if its disclosure under this Act would be likely to –

- (a) Endanger the physical or mental health of any individual, or
- (b) Endanger the safety of any individual.”

26. In order for section 38 to be engaged, a public authority must show that there is a causal link between the endangerment and the disclosure of the requested information. The public authority must also show that disclosure would, or would be likely to, endanger the safety of any individual.

27. As section 38 is a qualified exemption, even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
28. The council has said that, having consulted with a Police Inspector - Counter Terrorism Security Coordinator, it considers it appropriate to withhold certain information that provides details of "ingress/egress" (entry and exit) locations and capacities and emergency planning procedures for Home Park stadium (the stadium).
29. The council argues that the withheld information could be used for "hostile reconnaissance" purposes by persons or organisations seeking to sabotage future events at the stadium, such as regular football matches or future planned concerts, and, or, to cause severe harm or death to persons attending the stadium, through criminal acts and terrorism.
30. The council has said that the withheld information provides a full picture of all operations, and would allow an individual to establish the levels of security across the site, the number of staff in each area, options for entry and exit, and how these are being controlled. The council goes on to say that these details could be used to evade or overcome all safety and security measures, to disrupt emergency services attending an incident, or to intercept or disrupt vital communications. The council has also said that if an individual was intent on using fire to cause harm, the withheld information could be used to plan disruption and damage to emergency fire measures that are in place.
31. The Commissioner recognises that a public authority will not necessarily be able to provide evidence in support of a causal link, because the endangerment relates to events that have not occurred. However, there must be more than a mere assertion or belief that disclosure would lead to endangerment; there must be a logical connection between the disclosure and the endangerment in order to engage the exemption.
32. The complainant has said that they are concerned that the council may have incorrectly applied section 38 to at least some of the withheld information which, if released, would not cause endangerment. They say that they believe that some information is already similar to that which is already in the public domain, and has referred to the redaction of the figure for "standard" turnstile capacity by way of example, stating that this type of information is already published in relation to "normal" events held at the stadium.
33. With regard to information that is already known, or could be easily accessible, to the public, the Commissioner accepts that individuals who attend events at the stadium would be able to see some of the security

measures that are in place. However, the Commissioner's [guidance](#) states that when considering if information is in the public domain you need to consider whether "a hypothetical member of the general public can realistically and easily access the information".

34. The Commissioner considers that special efforts, that being attendance at the stadium, would be required to obtain any information about the security and safety measures. Even then, this would be extremely limited and of little value in isolation.
35. Whilst the Commissioner therefore considers that the majority of the withheld information is not in the public domain, he has found that the redacted "standard" figure for the maximum turnstile capacity is published routinely [online](#) within guidance made available by the Sports Ground Safety Authority. The Commissioner also considers it to be of some relevance that this is the "standard" maximum capacity for safety, and does not reveal the actual turnstile flows expected at any set time for the concert at the stadium.
36. The Commissioner has also found that certain redacted information which relates to the crowd capacity at the stadium is also available online. Furthermore, very similar information has been released to the complainant in response to their request.
37. Finally, the Commissioner has identified one small set of redacted information which, in his view, does not relate to the safety and security of any individual.
38. It is the Commissioner's view that the withheld information described within paragraphs 35 to 37 of this decision notice would not be useful to any person intent on causing disruption or harm to anyone attending an event at the stadium. He has therefore been unable to establish a causal link between this information and the endangerment described by the council.
39. Given that the council has failed to show a causal link between the information set out within paragraphs 35 to 37 of this decision notice and the endangerment it has described, the Commissioner has determined that the exemption at section 38(1)(b) is not engaged in respect of this information.
40. With regard to the remaining withheld information, the Commissioner considers there to be a strong likelihood that the same, or very similar, details regarding safety and security will be used at future events held at the stadium. The Commissioner accepts that such information would provide extremely useful intelligence to any person or group planning on

carrying out a terrorist attack, or similar, at the stadium in order to cause disruption and harm to individuals.

41. The Commissioner is therefore satisfied that there is a causal link between the remaining withheld information and endangerment to any individual's health and safety, for the reasons given by the council.
42. The council has confirmed that it is relying on section 38(1)(b) as it considers that endangerment "would be likely to" occur, if the withheld information were to be disclosed. This means that the council must be able to show that there is a real and significant risk of the endangerment described, even though the probability of it occurring is less than 50%.
43. The council has said that when assessing whether the release of the withheld information would be likely to result in an attack on persons attending the stadium it has taken into account the fact that, at the time of the request, the national threat level (according to Protect UK) was "Substantial – an attack is likely."
44. The council has also said that the stadium is considered a "high capacity publicly accessible place" in the "enhanced tier" of the UK government's emerging "[Martyn's Law](#)". The council says that the stadium is one of the largest capacity venues in the sub-region and therefore at a heightened risk of a terrorist attack. It has also said that football matches take place on a regular basis throughout the season and further concerts are planned for summer 2024, and subsequent years, and that the withheld information could greatly assist in the planning of an attack on the stadium, both now, and in the future.
45. The Commissioner is aware that the guidance published by the Sports Grounds Safety Authority says that counter terrorism plans should be included within operational manuals at sports grounds to provide protective security appropriate to the national threat level. In his view, this supports the council's claim that it is recognised that stadiums are a potential target for a terrorist attack, or similar. He also considers it pertinent that the national threat level was, and still is, set at "substantial", and that there is evidence which suggests that areas and events that attract large groups of people are at a higher risk of a terrorist attack.
46. It is the Commissioner's view that the council has shown that there is a realistic possibility that the withheld information, which relates to security and safety arrangements, if made more widely available to the public in response to a FOIA request, could be utilised in the perpetration of a malicious act, and therefore endanger the safety of the staff and spectators at the stadium.

47. The Commissioner is satisfied that, with the exception of that information referred to in paragraphs 35 to 37 of this decision notice, the lower threshold of “would be likely to endanger” has been demonstrated. The Commissioner therefore concludes that section 38(1)(b) is engaged in respect of the withheld information.

The public interest test

48. The complainant has argued that there is a public interest in understanding the safety measures that are in place and being able to compare this with other events that are held at the stadium.
49. The council has said that it accepts that there is a public interest in transparency and accountability in order to promote public understanding and to safeguard democratic processes, and to ensure that there is good decision making by public authorities.
50. The council argues however, that the public interest in maintaining public safety outweighs the public interest in transparency and scrutiny of public decision making in this case.
51. The council says that it considers that the information is highly sensitive to the safe management of the stadium as it contains detailed plans, information and operational procedures relating to emergency exits, capacities for entry and various access routes, stewarding and security deployment, emergency communication procedures, emergency service response plans and counter-terrorism measures.
52. The council states that disclosure of such information would significantly assist any person intent on seeking to sabotage future events, putting the safety of large numbers of individuals at risk of harm, injury, or death. It says it also considers it important to take into account that the national threat level indicates that an attack is likely and that crowded places such as football stadiums are key targets for terrorism.
53. The Commissioner accepts that there is a significant public interest argument in favour of openness and transparency regarding health and safety issues, particularly in relation to a venue such as a stadium, where the protection and welfare of many individuals is paramount. It is important that the public are reassured that the measures that are in place are both adequate, and meet statutory requirements.
54. However, the Commissioner considers that stadiums which attract large capacity crowds are a target for those with malicious intent. He accepts that anything which would be likely to contribute to the perpetration of a malicious act which would risk the safety of individuals would not be in the public interest, and that given this, there is significant weight attached to maintaining the exemption.

55. The natural consequence of this is that disclosure under FOIA will only be justified where a compelling reason can be provided to support the decision.
56. In the circumstances of this case, the Commissioner considers that the strength of the arguments favouring disclosure are outweighed by the public interest in maintaining the exemption at section 38(1)(b), in order to safeguard the health and safety of individuals attending events at the stadium.

Right of appeal

57. 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

58. 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.
59. 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

Suzanne McKay
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