

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

### **Decision notice**

**Date:** 8 October 2024

**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 requested information from Bristol City Council (“the Council”) relating to the Think Family Database. The Council disclosed some of the information requested but has withheld some of the information under section 31(1)(a) of FOIA (law enforcement) and section 43(2) of FOIA (commercial interests). The complainant also believes that the Council holds further information within the scope of the request.
2. The Commissioner’s decision is that the Council is entitled to withhold the withheld information under section 43(2) and that, on the balance of probabilities, the Council does not hold any further information within the scope of the request.
3. The Commissioner does not require further steps.

## Request and response

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4. On 18 December 2023, the complainant wrote to the Council and requested information in the following terms:

"I would like to request the following information concerning Bristol's Think Family Database:

1) The most recent Privacy Impact Assessment report for the Think Family Database.

2) The most recent Think Family Risk Log.

3) All correspondence between Bristol Council and the Information Commissioners Office regarding the Think Family Database from 1 January 2020 to date.

4) The list of variables and their weights used in the three models: Risk of Sexual Exploitation Model, Child at Risk of Criminal Exploitation Model, and the Risk of NEET (Not in Education Employment or Training) Model, as well as the five sub-models of RON.

5) The most recent training data sets of target cohorts used to train the above models.

6) The source code for each of the above models, as well as the Think Family Database back-end.

7) A list of the data sources ingested in the Think Family 'data warehouse'

8) A list of which data require people's consent to be included in the 'data warehouse' as well as what procedure is in place to inform those people of the right to have their data withdrawn.

9) Any training materials, including manuals, briefing documents and presentation slides, used by the Council to train Council employees, officers, teachers, social workers, safeguarding leads and other children's professionals in the use of the Think Family Database.

10) Reports on consultations, evaluations and/or assessments of the Think Family Database's performance

11) Any policies or guidance (published or unpublished) for Council employees, officers, teachers, social workers, safeguarding leads and other children's professionals on the use

of scores provided by the Think Family Database in the course of their work”

5. The Council responded on 4 January 2024. It provided some information within the scope of the request, it also advised the complainant that the information requested in part 10 of the request would be likely to be published in March 2024. However, it denied holding the information requested in part 5 of the request and refused to provide the information requested in part 6 of the request, for “information security purposes”.
6. The complainant requested an internal review on 1 February 2024. When doing so, they stated that they believe the Council holds further information within the scope of parts 4 and 5 of the request. They also raised the fact that the Council had not cited an exemption as its basis for withholding the information requested in part 6 of the request.
7. Following an internal review the Council wrote to the complainant on 21 March 2024. It stated that it does not hold any further information within the scope of part 4 of the request, it does not hold any information within the scope of part 5 of the request and that its grounds for withholding the information requested in part 6 of the request are the exemption at section 31(1)(a) of FOIA (law enforcement).

### **Scope of the case**

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8. During the scope of the Commissioner’s investigation the Council stated that, in addition to section 31(1)(a), it also considers the information requested in part 6 of the request to be exempt from disclosure under section 43(2) of FOIA (commercial interests).
9. This notice will consider whether the Council is entitled to withhold the information requested in part 6 of the request under either section 31(1)(a) and/ or section 43(2). If the Commissioner finds that the Council is entitled to withhold all of this information under one of the two exemptions cited, he will not go on to consider the application of the other exemption.
10. This notice will also consider whether, on the balance of probabilities, the Council holds any further information within the scope of part 4 of the request and/or any information within the scope of part 5 of the request.

## Reasons for decision

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### Section 43(2) – prejudice to commercial interests

11. Section 43(2) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

12. In order for a prejudice-based exemption, such as section 43, to be engaged the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice, which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, i.e., disclosure ‘would be likely’ to result in prejudice or disclosure ‘would’ result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be a real and significant risk. With regard to the higher threshold, in the Commissioner’s view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

13. The Council argues that disclosure of the source code requested would prejudice its own commercial interests. It states that, as the creator of the requested source code, it has Intellectual Property (IP) control over how it is used, that the source code holds commercial value to the Council and that it has incurred significant costs in creating this code. It argues that disclosure would compromise its ability to recoup this investment through commercial activity as disclosure into the public domain would inhibit the Council’s future ability to license and generate income from the unique nature of the Think Family Database system.

14. The Council argues that if the requested SQL code were to be disclosed, it would reveal exactly how the system was created. It also states that

there are commercial companies attempting to produce what the Council has already produced and argues that disclosure would hand them the fundamentals of the system as, "it would be sharing information on how all systems join together, how people are matched, the variables within the NEET model and more". Considering these factors in combination, the Council considers that there is a more than 50% likelihood of disclosure causing prejudice to its commercial interests. It therefore considers the higher threshold of 'would' prejudice to be met.

15. The term 'commercial interests' is not defined in FOIA; however, the Commissioner has considered his guidance on the application of section 43<sup>1</sup>, which clarifies that: "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."
16. The Commissioner accepts that the interests in question are the commercial interests of the Council. He also accepts that disclosure of the withheld information would prejudice the Council's ability to recoup the costs incurred in the development of the Think Family Database system through future commercial licencing and that the likelihood of this prejudice occurring is more likely than not due to the level of detail that would be disclosed about how the system functions. As the Commissioner accepts that the exemption is engaged, he will now go on to consider the balance of the public interest.

#### Public interest test

17. The Council's view is that the public interest in maintaining the exemption outweighs that in disclosure.
18. The Council stated that it took the following factors in favour of disclosure into account:
  - "There is a public interest in transparency and accountability in aiding the understanding of Bristol City Council's development of the specialist source code for the Think Family Database, that has had lengthy development process."

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-43-commercial-interests/>

- “There is a public interest in providing full transparent insight into how the novel Think Family Database functions in relation to processing information on data subjects.”
19. The Council stated that it took the following factors in favour of maintaining the exemption into account:
- “There is a public interest in the council protecting the commercial value of its intellectual property where there is future potential to license it for use in a competitive market, to generate income to fund council services and to recoup the investment of staffing costs dedicated to its development.”
  - “There is a very strong inherent public interest in ensuring fairness of competition and it would be firmly against the public interest if the council’s commercial interests are harmed in the open market in future.”
  - “Bristol City Council, along with many other councils, is subject to immense financial pressure, disclosure of the information would serve to damage the council’s capacity to generate future income. This would not be in public interest.”
  - “There is a public interest in the council maintaining the integrity of its ‘safe space’ for developing specialist source code for the Think Family Database, with less need to procure the services of outside specialists at extra cost.”
  - “Disclosure to ‘the world at large’ could require the council to incur burdensome legal costs to litigate against individuals and organisations for breaches of its IP rights or for prejudicing its commercial interests, which would not be in the public interest.”
20. The complainant has stated in their complaint to the Commissioner that they believe the Council has not given sufficient weight to the public interest in full transparency regarding this type of novel processing of personal data. Specifically, they stated, “the Council’s public interest test has not considered the higher level of public interest in its use of predictive risking systems on children in schools, an extremely high-risk application requiring ultimate transparency”.
21. The Commissioner agrees that there is a need for high levels of transparency about the novel use of personal data, including that of children, in the Think Family Database system. However, he considers that this is already provided to a large degree by information in the

public domain<sup>2</sup> about the Think Family Database and the information disclosed in response to other parts of this request.

22. The Commissioner acknowledges that there is a public interest in the disclosure of the specific information that has been withheld as it would reveal more detail about exactly how the Think Family Database system works.
23. However, the Commissioner also considers that there is considerable public interest in ensuring that public authorities can invest in novel approaches designed to improve safeguarding with the intention of recouping the costs of developing the approach via future opportunities to make the approach available to other similar organisations via commercial means.
24. The Commissioner has already accepted that the Council's ability to recoup the costs of developing the Think Family Database system would be prejudiced by the disclosure of the withheld information. The Commissioner's view is that if this were to occur it would disincentivise, and in many cases prevent, the Council and other public authorities from investing in innovative approaches in the future and this would not be in the public interest.
25. The Commissioner's decision is that in this case the public interest in maintaining the exemption outweighs that in disclosure. The Council is therefore entitled to withhold the withheld information under section 43(2) of FOIA. As the Commissioner has determined the Council is entitled to withhold the information on this basis, he has not gone on to consider the Council's application of section 31(1)(a).

### **Section 1 – General right of access to information**

26. Section 1(1) of FOIA requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
27. 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

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<sup>2</sup> <https://www.bristol.gov.uk/residents/social-care-and-health/children-and-families/insight-bristol>

civil standard of the balance of probabilities, the public authority holds further information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.

28. The complainant believes that the Council holds further information within the scope of their request. Specifically, they believe that the Council holds further information within the scope of part 4 of the request (beyond that which it has already disclosed) and that it holds information within the scope of part 5 of the request.
29. The Council's position is that no further information is held and that the additional information the complainant is seeking is held by Avon and Somerset Police (the "Police"). The complainant disputes this.
30. The Council has provided the Commissioner with extensive details of the searches it carried out for further information. Having reviewed these the Commissioner notes that the searches appear reasonable, proportionate and would have been likely to have retrieved any additional information falling within the scope of the request.
31. The Commissioner has also considered whether relevant information is held by the Police on the Council's behalf.
32. Section 3(2)(b) of the FOIA confirms that information can be held by a public authority if it is held by another authority on its behalf.
33. The Commissioner's guidance sets out a number of factors for authorities to consider when determining whether information is held by virtue of section 3(2)(b). The focus of the determination is on the extent to which the information is accessible and the degree of control an authority exercises over it<sup>3</sup>.
34. In confirming that the Police does not hold relevant information on its behalf, the Council identified the following factors:
  - the list of variables and their weights used in the exploitation models (i.e. "Risk of Child Sexual Exploitation Model", and "Risk of Child Criminal Exploitation Model") were built on the Police system with only output (i.e. list of people the model believes to be at risk) sent to Insight Bristol / the Council so that those are at risk might benefit from targeted intervention and preventative measures. Therefore,

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<sup>3</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/information-you-hold-for-the-purposes-of-foia/#whatdoesholding>



any information/model build/held by Avon & Somerset Police on its system is not held on behalf of the Council.

- The exploitation models are no longer used by the Council and the Council cannot confirm whether the models are still used by Avon and Somerset.
  - the list of variables and their weights used in the NEET model (Not in Education Employment or Training) was built by Avon & Somerset Police. The Council has the code to produce the output, however, the actual model was held on the police systems and therefore static. Therefore, any information held on Avon and Somerset Police's systems is not held on behalf of the Council.
35. The Commissioner also asked the Council to confirm whether there is an information sharing agreement in place between the Police and the Council that covers the information requested in parts 4 and 5 of the request.
36. The Council confirmed that there is an information sharing agreement with the Police for the complete Avon and Somerset area, however, the agreement does not go into specific detail about the models as asked for in request parts 4 and 5.
37. Having considered the detailed submissions provided by the Council the Commissioner is satisfied that, on the balance of probabilities, it has correctly confirmed that it holds no further information falling within the scope of request parts 4 and 5. He is also satisfied that information is not held by Avon and Somerset Police on the Council's behalf. He has, therefore, concluded that the Council complied with section 1(1).

## **Right of appeal**

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38. 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)

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Victoria James**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**