

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

### **Decision notice**

**Date:** 16 October 2024

**Public Authority:** Nottinghamshire County Council  
**Address:** County Hall  
West Bridgford  
NG2 7QPX

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

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1. The complainant requested trading standards information associated with a specific kitchen provider. Nottinghamshire County Council (the "Council") confirmed that some information was not held and withheld other information under the exemption for commercial interests (section 43).
2. The Commissioner's decision is that the Council is entitled to withhold the information under the exemption for commercial interests.
3. The Commissioner does not require further steps.

## Request and response

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4. On 24 March 2024, the complainant wrote to Nottinghamshire County Council (the "Council") and requested a wide range of information relating to Nottingham County Council Trading Standards' engagement with Wren Kitchens Ltd. The full text of the request, which consists of multiple parts, is not reproduced in this decision notice. The parts of the request that are relevant to this notice are identified in paragraphs 13 and 14 below.
5. The Council responded on 18 April 2024. It addressed the complainant's queries and confirmed that some of the requested information was not held. It also withheld some information under the exemption for commercial interests (section 43).
6. Following an internal review the Council wrote to the complainant on 16 May 2024. The review addressed queries raised by the complainant and confirmed that the Council was maintaining its position in relation to the application of section 43.

## Scope of the case

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7. On 24 June 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that the scope of his investigation is to determine whether the Council correctly withheld under the exemption in section 43.

## Reasons for decision

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### Section 43 – commercial interests

9. Section 43 (2) of the FOIA states:

"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)."
10. In order for a prejudice based exemption such as section 43(2) to be engaged the Commissioner considers that it needs to be shown that any harm identified should relate to a commercial interest and that there should be a causal link between the disclosure of information and the harm occurring.

11. The request relates to a kitchen provided to a family member of the complainant by the named provider which the complainant considers to be defective.
12. The Council has confirmed that its Trading Standards ("TS") act as Primary Authority (PA) for Wren Kitchens ("Wren")<sup>1</sup> and a PA officer is based full time within the Wren Headquarters, primarily to support the Company's customer services response to complaints. The Council confirmed that the PA has read access to Wren systems and can provide Wren staff with independent detailed advice about specific customer complaints to help inform Wren's decision about their best appropriate response to resolve each complaint.
13. The relevant part of the complainant's request asked for the following information in relation to this arrangement:

"Recommendations/changes to Wren Business Practices to improve the quality of its products and if provide a description or a copy.

Tailored advice on complying with trading standards; what advice and why.

Quality control procedures any concerns.

Concern about the quality of finish, paintwork etc

Raised any concerns about breaches of the Consumer Rights Act 2015 and Sale of Goods Act"
14. The Council has confirmed that the information it holds which falls within the scope of the request relates to the years 2018 and 2019 and, from these records there are 3 records that relate to "Tailored advice on complying with trading standards: what advice and why" request. The Council confirmed that no records are relevant to the other 4 matters specified in the request.
15. The Council has argued that disclosure would be likely to prejudice to commercial interests of Wren and TS.
16. The Council has argued that for the PA process to be effective as a means towards improving compliance, PA businesses need to be able to

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<sup>1</sup> A Primary Authority "...is a means for businesses to receive assured and tailored advice on meeting regulations such as environmental health, trading standards or fire safety through a single point of contact."; For further details see here:  
<https://www.gov.uk/government/publications/primary-authority-overview>

trust that information shared with their PA partner authority about their procedures, processes and business practices remains commercially confidential. The Council has confirmed that, in general terms, this could include information about weaknesses and scope for improvements in these systems which would be commercially damaging if disclosed into the public domain.

17. In relation to its own commercial interests the Council has argued that disclosure would result in damage to the reputation of and the effectiveness of its Trading Standards function, which relies on obtaining commercially sensitive from business in order to provide confidential advice.
18. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the Council relates to the commercial interests which the exemption contained at section 43(2) is designed to protect.
19. The Commissioner is satisfied that the second criterion is met as disclosure of the information withheld on the basis of this exemption has the potential to harm the commercial interests of both parties as described above. The Commissioner considers that the likely prejudice could also be broadly interpreted as prejudicing the working relationship between TS and businesses involved in the PA scheme.
20. Having determined that the exemption is engaged the Commissioner has considered the public interest test in accordance with FOIA section 2(2)(b).

### **Public interest in disclosure**

21. The Commissioner recognises that the complainant has a strong interests in accessing the information as it relates to their grievance with Wren. Disclosure of the information may, therefore, assist the complainant in pursuing their concerns.
22. The complainant has also raised concerns that the close relationship between a PA officer and a business could produce a conflict of interests between the Council in its role as trading standards authority and in its provision of assistance to a business it may potentially need to enforce against.
23. The Council has acknowledged that there is a general public interest in demonstrating openness, transparency, and accountability to show citizens how public funds are spent and how activities are carried out by the Council on their behalf. The Council recognises that disclosure would facilitate better scrutiny by taxpayers

## **Public interest in maintaining the exemption**

24. The Council has argued that PA businesses invest time and money into Primary Authority partnerships with regulators because they have a desire to continually improve their compliance within the business. The Council considers that the public and economy benefit from the role PA plays in enabling PA businesses to grow and improve. In the Council's view, removing the commercial confidentiality and trust that PA businesses have in their PA partner authorities would damage the proper functioning of the PA system and in turn lessen those benefits to the public and the economy.
25. The Commissioner notes that the understanding that communications between parties under the PA scheme are treated in confidence is embedded in the terms and conditions of the agreement<sup>2</sup>.

## **Balance of the public interest**

26. The Commissioner recognises that there is a general public interest in transparency and accountability in relation to regulatory work carried out by public authorities, particularly where this relates to concerns about matters which have a direct impact on citizens. He has factored this into his consideration of the public interest balance in this case.
27. The Commissioner is mindful of the complainant's concerns in this matter and he accepts that they have a genuine personal interest in accessing the information. However, the public interest in the context of the FOIA relates to the broader public interest rather than to the interests of individuals. He recognises that these interests may sometimes overlap but he does not consider that they do in this case and he has, therefore, not attached much weight to the complainant's interests here. He is also mindful that other remedies for redressing their concerns are available to the complainant which do not require the global disclosure of information under the FOIA.
28. In accepting that the exemption is engaged, the Commissioner has acknowledged that disclosure of the information would be likely to harm the commercial interests of both parties. He considers that this, accordingly, contributes to the weighing in favour of maintaining the exemption. In addition, he is mindful that the PA scheme provides a mechanism for authorities and businesses to promote compliance with trading standards and to potentially avert the need for costly

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<sup>2</sup> <https://primary-authority.beis.gov.uk/par-terms-and-conditions#:~:text=Confidentiality,and%20will%20safeguard%20it%20accordingly.>

enforcement action. He does not consider it would be in the public interest to disclose information which would be likely to harm this process.

29. In view of the above, on balance, and in the particular circumstances of this case, the Commissioner is persuaded that the public interest lies in maintaining the exemption. He has, therefore, concluded that the Council was entitled to withhold the information under section 43(2).

## Right of appeal

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30. 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)

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**