

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 November 2024

**Public Authority:** Dorset Council

**Address:** County Hall  
Collitan Park  
Dorchester  
Dorset  
DT1 1XT

#### Decision (including any steps ordered)

---

1. The complainant requested various information in respect of the Space Youth Project Training materials from Dorset Council (the Council). The Council provided a response to the first part of the request but refused the second part on the basis of section 43(2) (commercial interests) of the FOIA. The Commissioner's decision is that the Council was entitled to apply section 43(2) to the withheld information. The Commissioner does not require any steps.

#### Request and response

---

2. On 10 March 2024, the complainant wrote to the Council and requested the following information in relation to a previous request:

"As you included a copy of the Space Youth Project training Materials into Dorset Council's Stonewall WEI submission in September 2023, please can you confirm:-

- a) if the training contained in the Dorset Council's Stonewall WEI submission is the same training materials use[d] by PDSCP in their Gender Identity/Trans Awareness Training (booked via Dorset Nexus)

b) if not, then please can you provide me with a copy of the training materials used in the PDSCP in their Gender Identity/Trans Awareness Training sessions.

The reason for refusal with the previous request is probably null and void now due to your submission to Stonewall and hence their training materials now ending up in the public domain.”

3. The Council responded on 5 April 2024. It provided a response in respect of item (a) but refused item (b) on the basis of section 43(2) of the FOIA.
4. Following an internal review the Council wrote to the complainant on 25 April 2024. It provided more detailed reasons for its reliance on section 43(2) but upheld its original decision to refuse part (b) of the request on the basis of the exemption specified.

### **Scope of the case**

---

5. The complainant contacted the Commissioner on 29 April 2024 to complain about the way their request for information had been handled. They were not satisfied with the Council’s refusal of their request and disagreed that section 43(2) is engaged for the requested information.
6. The complainant further stated that they were complaining on behalf of the Women of Dorset Group as they did not believe that the Council had adequately addressed its refusal to share its training course titled “gender identity/Trans Awareness” with parents and residents of Dorset.
7. The scope of the Commissioner’s investigation is to consider whether the Council was entitled to rely on section 43(2) to refuse item (b) of the request.

### **Reasons for decision**

---

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

8. 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).”

9. 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.

Does the information relate to a person's commercial interests?

10. In its response to the complainant, the Council argued that the disclosure of the withheld information would prejudice the commercial interests of the training provider Space Youth Project (SYP) on the basis that it would allow other training providers to use the material to deliver competing services which would in turn be likely to impact on the income of the training provider.
11. 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."

---

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

12. In this case, the withheld information constitutes a copy of the training materials provided by SYP and used by the Pan-Dorset Safeguarding Children Partnership (PDSCP).
13. The Council contacted SYP for its views on the disclosure of the full training slides. SYP stated that:

“We are not willing to provide the training content because other organisations and training providers could use that content to deliver their own training, and this would impact our income. We are a non profit charity and rely on this income to support our work with vulnerable people in the LGBT+ community across Dorset ”
14. The Council added that if the training materials were to be disclosed, it would result in the income of a not-for-profit charity being adversely affected, which would in turn impact on its ability to provide support for vulnerable young people.
15. It further stated that given the risk of harming the income of a not-for-profit charity, it considers the prejudice claimed to be real, actual and of substance.
16. The Council also confirmed to the Commissioner that it considers its own commercial interests would be prejudiced by the disclosure of the information, on the basis that releasing the full training slides without the consent of SYP could cause them to consider that trading with the Council presents too high a risk to their intellectual property rights, prejudicing the Council's ability to negotiate favourable terms and pricing.
17. It added that it would also be likely to have a negative effect on how other third parties negotiate with the Council if they were aware that it had disclosed information without the consent of SYP.
18. The Commissioner accepts that the interests in question are the commercial interests of SYP and the Council.

#### The causal relationship

19. The Council informed the Commissioner that it considers there is a clear causal relationship between disclosure of the requested information and the prejudice outlined above.
20. In respect of the prejudice to the commercial interests of SYP, it informed the Commissioner that rival training providers/organisations do not currently have access to the full range of SYP's training content, therefore public disclosure under the FOIA would directly make this

information available to anyone, including other training providers which would create the risk of the training materials being copied and used by others, thereby impacting on SYP's commercial interests.

21. The Council provided details of other training providers with links to some form of Diversity, Equality and or Inclusion training including, Inclusion Training, Over the Rainbow, 2BU, and Community Action Network.
22. The complainant disagreed that disclosure would prejudice the commercial interests of SYP stating that:  
  
    "... the country is awash with gender identity training courses..."
23. The complainant alleged that the course in question is based on the what they perceive as the discredited "gender bread person" and "sex is on a spectrum" training courses. They further alleged that SYP does not produce much of its own materials, arguing that it is very unlikely that anyone would want to want to copy their materials. However, the complainant provided no evidence in support of this allegation.
24. In its response, the Council informed the complainant that the training materials are not in the public domain as a result of being included as evidence for the Stonewall Workplace Equality Index (WEI) submission. It confirmed that the submission did not contain a full copy of the slides or training content, and permission was given by the training provider to provide a synopsis of the case.
25. Based on the above, the Commissioner is satisfied that a causal relationship exists between the disclosure of the full training slides and the prejudice to the commercial interests of both SYP and the Council.

#### The likelihood of the prejudice occurring

26. The Council confirmed that it considers that the disclosure of the information 'would be likely' to cause the prejudice specified. The Commissioner has therefore considered whether the chance of prejudice occurring meets the threshold of there being a real and significant risk as a result of disclosure of the requested information.
27. The Commissioner has considered the commercial interests of both relevant parties.
28. The Commissioner is mindful that disclosure of the full training material in response to an FOIA request is essentially a disclosure into the public domain.

29. The Commissioner accepts that SYP is one of a number of organisations/charities offering training in this field and it is therefore operating and competing in a competitive market.
30. The Commissioner also accepts that disclosure of this information by the Council against the consent of SYP, would be likely to result in SYP deciding that that trading with the Council presents too high a risk to their intellectual property rights. He also accepts that this could prejudice the Council's ability to negotiate favourable terms and pricing, not just with SYP but other third parties.
31. The Commissioner considers both SYP and the Council's arguments persuasive. He has therefore decided that the Council was correct to rely on the section 43(2) exemption to refuse this request, on the basis that disclosure would be likely to result in prejudice to the commercial interests of both the Council and SYP. Since section 43(2) is a qualified exemption, he has therefore go on to consider the public interest test required by section 2 of the FOIA.

### **Public interest test**

32. Even where information may harm commercial interests, it must still be disclosed, unless the balance of the public interest favours maintaining the exemption.

### Factors in favour of disclosure

33. The Council has acknowledged the public interest in openness and transparency in general.
34. In this particular case the Council has highlighted that disclosure of the requested information would allow scrutiny of the training delivered to its workforce.
35. The Council has also stated that the training provider may be able to rely on its intellectual property rights to prevent competitors from exploiting the information for their own commercial gain.
36. The complainant considers that it is in the public interest that parents and tax payers of Dorset have access to view the training course which will be disseminated to their children. The complainant has alleged that based on the synopsis provided to Stonewall in the Council's latest WEI submission, that the training course is not compliant with government policy, the draft school's guidance on gender questioning children or the Education Act 1996 which the Council must adhere to.

Factors in favour of maintaining the exemption

37. The Council has repeated the arguments in support of section 43(2) being engaged discussed earlier in this notice as factors in favour of maintaining the exemption. The Commissioner accepts that there is a public interest in avoiding the prejudice to commercial interests that he has accepted would be likely to occur as a result of disclosure, particularly those of the Council.

The balance of the public interest test

38. The Commissioner has considered the arguments both for and against disclosure of the requested information.

39. The Commissioner recognises the general public interest in openness and transparency. He also acknowledges the more specific public interest in ensuring that public sector training courses represent value for money and are compliant with legislation and government policy.

40. More specifically, the Commissioner accepts that there is a public interest in the disclosure of information around gender related education to see how Council funds are used in relation to this controversial issue.

41. However, the Commissioner also accepts that there is a public interest in protecting the commercial interests of a charity.

42. The Commissioner is also mindful that numerous public authorities use third parties to deliver some of their training needs and benefit from the specialisms of those providers. There is a strong public interest in allowing those third parties to offer their services to the public sector – which they are unlikely to do if they fear losing their rights to keep control of their intellectual property.

43. The Commissioner also considers that there a strong public interest in ensuring that public authorities are able to negotiate favourable terms and prices for their training, which would not be the case if third parties offering training were reluctant to trade with the Council on the basis that it could not be trusted to protect their training material.

44. Having considered the matter carefully therefore, the Commissioner is not persuaded that the weight of the public interest in disclosure is sufficient to match that in maintaining the exemption in the circumstances of this case. He has therefore concluded that the Council was entitled to refuse the request on the basis of section 43(2) of the FOIA.

## **Right of appeal**

---

45. 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)

46. 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.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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