

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2024

Public Authority: Oxford City Council

Address: Town Hall
St Aldate's
Oxford
OX1 1BX

Decision (including any steps ordered)

1. The complainant has requested information held by Oxford City Council (the council) relating to the breakdown of the costs for the refurbishment of properties purchased for the purpose of accommodating Ukrainian and Afghan refugee families.
2. The council withheld the requested information, citing section 43(2) (commercial interests), and section 40(2) (personal information), of FOIA.
3. The Commissioner's decision is that the council was not correct to have cited section 40(2). However, he is satisfied that the council is entitled to rely on section 43(2) of FOIA as its basis for withholding all of the information relevant to the request.
4. The Commissioner does not require further steps.

Request and response

5. Since 20 January 2024, the complainant has submitted a number of requests for information held relating to properties purchased by the council to accommodate Ukrainian and Afghan nationals. In response, as well as confirming the number of properties purchased, the council provided the complainant with details of the number of bedrooms, the

purchase price, the costs of refurbishment, and the tenancy start date for each property.

6. On 24 April 2024, the complainant then requested the following information:

"Please provide a detailed breakdown of the cost of each property that was funded by the Council."
7. On 21 May 2024, the council responded, providing some information to the complainant.
8. On the same date, the complainant contacted the council to say that they had not received the information that they had requested, that being the breakdown of the cost for each refurbishment carried out.
9. The council considered the complainant's correspondence as an internal review request, and issued its response on 20 June 2024. The council provided the complainant with some updated information relating to the total cost of refurbishment of each property, and further details about the government grant it received to assist with financing the project.
10. The council also provided the complainant with a list of all the work items held that were associated with the refurbishment of each property. However, the council advised that it was withholding the costs associated with each of these work items under section 43(2) of FOIA. It confirmed that it had considered the public interest test and had decided that this favoured maintaining the exemption in this case.
11. The council also confirmed that it was withholding any information that could identify the property and any individuals under section 40(2) of FOIA.

Scope of the case

12. The council advised the complainant that it was refusing the request under section 40(2) and section 43(2) of FOIA. However, within the request of 24 April 2024, the complainant had only asked for the breakdown of the costs associated with the refurbishment of each property. They did not ask for any additional information, such as the address of each property or similar, which may have allowed for the identification of any individual living at, or associated with, the relevant properties. Therefore, the Commissioner does not consider that the council was correct to have cited the exemption as section 40(2) in its responses to the request.

13. Given the above, the Commissioner will only decide whether the council is entitled to rely on section 43(2) of FOIA as its basis for refusing to provide all of the withheld information that is relevant to the request.

Reasons for decision

Section 43(2) – commercial interests

14. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
15. When relying upon the exemption at section 43(2) to withhold information, the public authority must be able to demonstrate a clear link between disclosure and the prejudice to the commercial interests of either itself, a third party, or both. The risk of the prejudice to commercial interests occurring must be real and significant for the exemption to be engaged.
16. The exemption is subject to the public interest test. This means that even if the exemption is engaged, the Commissioner will need to decide whether it is in the public interest to release the information.

The complainant's position

17. The complainant has said that they believe that the breakdown of the refurbishment costs should be disclosed. They have argued that the information already released, which provides the breakdown of the actual work undertaken in each property, is sufficiently vague for the disclosure of the costs associated with such work to not be commercially sensitive.

The council's position

18. The council has said that whilst the complainant did not ask for details of the [contractor](#), this information is already in the public domain, and therefore it would have provided this, if requested. Given this, the council states that the withheld information can be directly linked to the specific contractor which was responsible for carrying out the works.
19. The council has said that it considers that the disclosure of the withheld information "would" have a prejudicial effect on the commercial interests of both itself, and the contractor. It has said that providing the costs would reveal pricing details relevant to specific jobs that were carried out in each of the properties. It says that given this, the disclosure of such information would prejudice the contractor's ability to remain

competitive and, in turn, its ability to offer competitive value for money pricing to the council as well as the cost to public funding.

20. The council has confirmed that at the internal review stage, it consulted with the contractor on the disclosure of the cost breakdown figures. It has provided the Commissioner with evidence of the contractor's response which raised concerns about the disclosure of information that would reveal the commercial rates applicable to its contract with the council to "the open market".
21. The council has said that it believes that the disclosure of the costs would cause harm to its relationship with the contractor. It argues that the contractor would no longer have confidence that the council will maintain the confidentiality of sensitive commercial information, special agreements or negotiations.
22. The council said it is also concerned that disclosure of the withheld information would cause harm to its own ability to demonstrate that it can offer value for money in this area when submitting bids for any future government or external funding opportunities. It also argues that releasing the information would prejudice its ability to ensure best value in terms of its expenditure.

The Commissioner's analysis

23. For section 43(2) 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 must relate to commercial interests;
 - 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 to those commercial interests; and,
 - Thirdly, it is necessary to establish whether the alleged prejudice would, or would be likely to, occur.
24. The Commissioner acknowledges that it is already known publicly that the contractor responsible for the refurbishment works is a company which is wholly owned by the council. The company is considered to be a public authority in its own right and, as well as providing services for the council for an agreed fee, it also competes in the wider marketplace for commercial contracts.

25. The Commissioner therefore accepts that the costs for the refurbishment work carried out by the contractor forms part of a formal commercial arrangement with the council, and he is satisfied that the first criterion set out within paragraph 23 of this decision notice is met.
26. When considering the second criterion of the three-limb test, the Commissioner must decide whether there is a clear link between the prejudice described by the council and the disclosure of the withheld information.
27. The Commissioner's published guidance on [section 43](#) states that not all commercial information will be subject to the exemption. A public authority must show a causal link between the disclosure of the commercial information requested and prejudice to either its commercial interests, or the commercial interests of third parties.
28. The Commissioner has considered the list provided to the complainant which contains details of the refurbishment work carried out at each property. He considers that some of the jobs are very specific, such as "electrical test and inspection" and "gas service and commission." In the Commissioner's opinion, to reveal the cost of such work would, in his view, reveal the contractor's charges for set jobs.
29. Furthermore, whilst accepting the complainant's argument that parts of the list contain broader descriptions of work carried out, such as "kitchen refurbishment" and "bathroom refurbishment", the Commissioner, having seen the withheld information, is satisfied that the disclosure of these costs would, in this case, also disclose details of the contractor's very specific pricing methodology.
30. The Commissioner considers that details of the costs charged by the contractor could, if disclosed, be scrutinised by competitors; they would then gain an unfair advantage over the contractor when competing for future work in the marketplace. In addition, if the rates agreed with the council are made publicly available, the contractor may then find it more difficult to negotiate price when offering its services to other local authorities or businesses.
31. The Commissioner is also satisfied that revealing details of the costs that the council is willing to pay for certain work would have a detrimental impact on its future bargaining position with other contractors.
32. The Commissioner also accepts that there is a real risk that contractors will be less willing to bid for contracts with the council, if they fear their own pricing strategy could be made available to the "world at large" via

information requests, and this would reduce the council's ability to get best value for money.

33. The Commissioner is therefore satisfied that the council's arguments are sufficient to demonstrate a causal link between the disclosure of the information and the described prejudice to the commercial interests of both the contractor and the council.
34. The Commissioner therefore finds that the second criterion of the three limb test is met in respect of the withheld information.
35. With regard to the third criterion, the council has advised that it considers that disclosure of the information "would" as opposed to "would be likely to" have a prejudicial effect on both its commercial interests, and the commercial interests of the contractor.
36. The Commissioner accepts that if the withheld information were to be disclosed there is more than a hypothetical risk of prejudice occurring; rather, there is a real and significant risk of this prejudice occurring. This is because he considers that disclosure would harm the bargaining position of the contractor when bidding for future contracts in the marketplace, and would also place the council at a disadvantage when negotiating similar contracts with other businesses.
37. The Commissioner therefore considers that the exemption at section 43(2) is engaged in respect of the withheld information, and will go on to consider the public interest test.

Public interest test

The council's position

38. The council has said that it acknowledges that there is a public interest in providing details of its expenditure. It says that it also recognises that there is a particular public interest in the expenditure on properties for refugees at a time when there are housing pressures generally. The council has said that, given this, where possible it has disclosed information in response to information requests it has received about the properties it has purchased. The council has said that it has also published information on its website about the funding and Cabinet approval of the housing project.
39. The council has said that it would not want to risk the costs for any future schemes increasing because the disclosure of pricing has meant that the council can no longer achieve a competitive price which provides value for money.

40. The council has also said that it would not wish to harm the contractor's ability to be able to compete successfully in a competitive market, and that there is a real risk that disclosure of the information would lead to their prices being undercut by competitors.
41. The council argues that it is in the public interest to make endeavours to keep housing costs low in terms of both its expenditure and that of central government. It says that it took into account that the properties were purchased to help offset the high costs of emergency, bridging, and temporary, accommodation and that the properties will, in the future, be utilised as much needed additional housing stock for eligible applicants. The council also argues that any concerns about costs to the tax payers of the purchase and refurbishment costs would be mitigated by the rental income it will receive for these properties.
42. The council has said that it considers that the public interest in withholding "granular details" of refurbishment expenditure in order to prioritise value for money, protect the public purse, and allow contractors to keep their commercial rates private from the open market, outweighs the public interest in disclosing further details of the refurbishment costs.

The balance of the public interest

43. The Commissioner accepts that there is a general public interest in the disclosure of information to provide transparency to the public about how public authorities manage their finances.
44. The Commissioner also recognises that, given the general shortage of social housing nationwide, there is a greater public interest in understanding a council's activities in relation to the costs associated with the purchase, management and allocation of any additional housing stock.
45. However, in the Commissioner's view, the information which is already in the public domain goes some way in meeting the public interest in transparency regarding the council's activities and expenditure of public money in relation to the relevant housing project.
46. The Commissioner has already accepted that the release of the withheld information would undermine both the ability of the council and the contractor to compete fairly in the market place, and that there is also a real risk that contractors would be deterred from bidding for future contracts with the council. The Commissioner considers that such outcomes would have a significant impact on the council's ability to get best value for money, which would not be in the public interest.

47. In addition, the Commissioner understands that the contractor is a company that is wholly owned by the council, and therefore the council benefits from any profit the contractor makes from its commercial activities by way of dividends paid annually. Given this, if the contractor's ability to be competitive in the marketplace were to be harmed as a result of the disclosure of the withheld information, this would affect the dividends it pays, and therefore the income which the council has available for use in the provision of its public services.
48. The Commissioner considers the harm which would be caused to both the commercial and financial position of the council, and also the contractor, to carry significant weight in favour of withholding information.
49. In addition, in the Commissioner's view, there is a very strong and inherent public interest in ensuring fairness of competition and it would be firmly against the public interest if a company's commercial interests were harmed because they have had a public service contract.
50. The Commissioner therefore concludes that the public interest in maintaining the exemption at section 43(2) in respect of the breakdown of costs outweighs the public interest in disclosure in the circumstances of this case.

Right of appeal

51. 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

52. 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.
53. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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