

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2025

Public Authority: Penarth Town Council
Address: West House
Stanwell Road
Penarth
CF64 2YG

Decision (including any steps ordered)

1. The complainant requested information about the 2024 Downhill Derby. Penarth Town Council (the Council) originally refused to provide information in scope of the request citing section 43 of FOIA but reconsidered its position at internal review providing the information it held.
2. The Commissioner considers that on the balance of probabilities, the Council did not hold any further information in scope of the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 11 September 2024, the complainant wrote to the Council and requested information, they resent the request on 16 September 2024 as the Council had stated it was not obliged to provide information without further clarification:

"1. A copy of any agreement between the Town Council with any company or agent contracted to manage the Downhill Derby event on 13th July 2024.

2. A copy of any risk assessment undertaken by the Town Council or its agent regarding the Downhill Derby event on 13th July 2024.

3. A copy of any insurance policy relating to the Downhill Derby event on 13th July 2024 held by the Town Council or its agent."

5. The Council responded on 14 October 2024 stating no information was held for part one of the request and citing section 43 to withhold information for parts two and three of the request.
6. The complainant requested an internal review on 18 October 2024 outlining their reasons for dissatisfaction with the Council response.
7. Following the Commissioners case acceptance letter, the Council provided its internal review response on 14 January 2025, dropping its reliance on section 43 and providing the information it held in scope of the request.

Scope of the case

8. The complainant contacted the Commissioner on 6 December 2024 to complain about the way their request for information had been handled.
9. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of FOIA.
10. With respect to the concerns raised by the complainant which are the subject matter of this decision notice, the analysis below considers whether, on the balance of probabilities, the Council holds information in scope of the request.

Reasons for decision

Section 1 - general right of access to information held by public authorities

11. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.

The complainant's view

12. The complainant raised a number of points during the Commissioners investigation which they said had not been satisfactorily dealt with by the Council. Extracts of which are set out below:

"The 2024 Risk Assessment was drafted just 12 working days before the event, arguably too late to arrange mitigating actions or controls, and the accompanying 'table' is missing."

"The 2024 Risk Assessment rates any 'Kart collision' as Medium because of a 'kart inspection policy'. No evidence is available to substantiate the existence of a 'kart inspection policy'."

"The Public Liability insurance provided (3 out of 21pages) only addresses Environmental Protection cover, not injury or accident to the public. The portion of the policy provided does not 'relate to the said event'."

13. The Commissioner recognises that the complainant believes that the Council should hold information in scope of their request and that it had given an ambiguous response and failed to process their request in line with its obligations under FOIA.

The Council's view

14. In its internal review response to the complainant, the Council explained that it: "was the sole organiser of the event; therefore, no contract or agreement exists with a third party." And provided copies of the risk assessment and extracts from its public liability insurance related to the event.
15. Following the Commissioners case acceptance letter, the Council further explained that it had received correspondence from the complainant on 20 January 2025 stating that the review response: "does not constitute a satisfactory response." The Council wrote to the complainant on 21

January 2025 to ask for further details of the complainant's dissatisfaction with the review outcome in an attempt at resolving the issue. It stated no further response was received from the complainant.

16. During the Commissioners investigation, the Council explained that:

"The Risk Assessment for the Downhill Derby was supplied in its entirety. Critically, it was prepared prior to the event. A risk assessment would be considered close to the Derby Day in order to ensure it was accurate for the event. There are no missing tables within the risk assessment document. The final sheet (page 12) is headed up Notes: and is blank for the nominated representative on site on the day of the event to make notes, if necessary." And "The Kart Inspection Policy is not a written document/policy. It is a methodology. Fundamentally, there is a process which is carried out on the day by the volunteers organising the event. It involves a visual check that the Karts are ready to participate and do not have any obvious issues that may cause concerns or a problem."

17. The Council further explained regarding the pages extracted from the public liability insurance that:

"These were the pages of the Council's insurance cover that were relevant to the question being asked. Page 1 which indicates it is insurance cover for the Council, page 10 which highlights the public liability elements of the insurance policy schedule provided and does cover public liability (first page). The environmental elements, the complainant is referring to are in the exclusions part of the document this was page 11 and was included for completeness. There is no further detail on public liability to disclose. No specific event is stipulated in the Council's insurance policy. The Council did not have a policy specifically for the Downhill Derby, it was covered under the Council's main insurance policy as per the attached elements provided."

The Commissioner's view

18. In cases where there is some dispute about the information that a complainant believes might be held by a public authority, either directly or on behalf of another party, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

19. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a

judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

20. In reaching his decision in this case, the Commissioner has taken account of the views put forward by the complainant. He has also considered the explanation the Council provided as to why the information is not held.
21. Based on the evidence provided to him, the Commissioner is satisfied that, on the balance of probabilities, the Council did not hold any further recorded information falling within scope of the request.
22. He is therefore satisfied that the Council has complied with the requirements of section 1 of FOIA in this case.

Procedural issues

23. The Council's initial response and refusal to deal with the complainant's request of 11 September 2024 showed a lack of understanding with regard to the Council's obligations under FOIA. A lessons learned approach has been taken by the Council and a response compliant with FOIA was provided to the 16 September 2024 resubmission of the request.

Other matters

24. The Council failed to respond to the complainant's request for internal review on 18 October 2024 and only provided its response after it had received the Commissioner's case acceptance letter and guidance to carry out its review three months later. The Council overturned its reliance on section 43 to withhold information and disclosed information it held in scope of the request.
25. The Commissioner believes that the Council would benefit from utilising the wealth of information provided on the ICO's website¹ to help it understand its obligations to the legislation overseen by this office and to help steer it through responding to requests for information and making information proactively available through its publication scheme.

¹ [For organisations | ICO](#)

Right of appeal

26. 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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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