

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2025

Public Authority: Westmorland and Furness Council
Address: South Lakeland House
Lowther Street
Kendal
LA9 4UG

Decision (including any steps ordered)

1. The complainant has requested a copy of a draft report commissioned by Westmorland and Furness Council (the council) which contains strategic advice on the annual Appleby Horse Fair event.
2. The council issued a refusal notice, citing section 22 (information intended for future publication) of FOIA.
3. The Commissioner's decision is that the council is entitled to rely on section 22 as its basis for refusing the complainant's request.
4. The Commissioner does not require further steps.

Request and response

5. By way of background, the council and the Appleby Horse Fair Multi Agency Strategic Consultation Group (MASCG) commissioned a consultant to produce an independent report providing "Strategic Advice on Appleby Horse Fair" (the report). At the time of the complainant's request, the council held a draft copy of the report, dated August 2023. A complete and final report had not yet been published.

6. On 16 May 2024, the complainant wrote to the council and requested information in the following terms:

"At the MASCG meeting of the 26th January 2024 the Chair advised she had a draft copy of the ORS external consultant report in relation to Appleby Fair. The chair made reference to this report again at the MASCG meeting on the 20th February 2024."

Could you please provide a copy of this draft report, together with the reasons why this independent report was rejected or not finalised."

7. On 11 June 2024, the council provided its response. It said it was relying on the exemption at section 22 of FOIA as its basis for refusing the request, and confirmed that it intended to publish the report at a later date.
8. The council said that the draft report was incomplete and to release a copy in response to the request would provide an inaccurate picture. The council confirmed it would continue to investigate the issues relating to the draft report with a view to publishing accurate information "in due course."
9. The council also confirmed that it had considered the public interest and had decided that this favoured withholding the requested information.
10. The complainant requested an internal review. They argued that the content of the report was intended to be independent, and that given this, there was no reason why the council should make alterations to the draft. The complainant said that there should also be transparency over any amendments that are to be made.
11. The complainant questioned whether the council really intended to publish the report, stating that it had now been almost two years since it had confirmed it was to be commissioned.
12. On 1 July 2024, the council provided its internal review response, upholding its original position that the requested information should be withheld under section 22 of FOIA.

Reasons for decision

13. This reasoning covers whether the council is entitled to rely on section 22 of FOIA when refusing to comply with the complainant's request.

Section 22 – information intended for future publication

14. Section 22(1) of FOIA says that information is exempt information if:
- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - (b) the information was already held with a view to such publication at the time when the request for information was made, and
 - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
15. For the exemption at section 22 to apply, the public authority must, at the time that it received the request, have had a settled expectation that the information would be published at some future date. It is not necessary for a precise date to have been set for publication. Therefore, as long as the public authority has decided that it (or another person) will publish the information at some time in the future, the exemption may apply.
16. As section 22 is a qualified exemption, it is also subject to the public interest test.

The complainant's position

17. The complainant has said that the council has been in possession of the draft report since September 2023, and they believe that it does not have any intention to publish a final version. The complainant says that the "[Appleby Fair 2023 Learning Lessons and Action Plan](#)" (which they state was published in 2024) confirms that the finalised report was due by the end of January 2024, and that "successful delivery appears to be unachievable".

The council's position

18. The council has acknowledged that as a result of the difficulties experienced with the report there has been a significant delay in its completion, and this has meant that the time set for its publication has been subject to change.
19. The council says that it has always had an intention to publish the report, but only at a time when it could be presented as an accurate representation of the work that had been commissioned.

20. The council has confirmed to the Commissioner that it has now received a more accurate report from the consultant that appears to meet the brief. It has said that (at the time of its response to the Commissioner) it is reviewing the report "alongside" its MASCG partners, and hopes to be in a position to publish this final report by the end of January 2025.

The Commissioner's analysis

21. The complainant has referred to action point 4.2 set out in the [Appleby Fair 2023 Learning Lessons and Action Plan](#) in support of their claim that the council does not intend to publish the report; they have said that it confirms that its "successful delivery appears to be unachievable".
22. However, the Commissioner has interpreted point 4.2 of the Plan to have a different meaning to that set out by the complainant. In his view, it is suggesting that the "successful delivery" of proposals for licencing and ticketing of the Appleby Fair "appears to be unachievable" within the period 2024-2030, given the delays in receiving the report, rather than the delivery of the report itself being "unachievable".
23. Furthermore, the Commissioner, having considered additional information that has been published, including other reports, plans and minutes of meetings held about the Appleby Fair, has found no evidence which indicates that there were plans for the report to be abandoned.
24. Given the above, the Commissioner accepts the council's assertion that it has always been the intention to publish the report, once fully complete.
25. Under section 22, a public authority is also required to consider whether it is reasonable in all the circumstances to withhold the information until publication.
26. In this case, the council has said that the draft report does not adequately meet the terms of the brief. The council has confirmed that, at the time of the request, it was still waiting for the consultant to revisit the report and the brief.
27. The council has said that as the content of the draft report is incomplete and misleading, it has concerns about releasing information into the public domain before such issues have been addressed.
28. The Commissioner, having considered the arguments presented by the council, accepts that it was reasonable to withhold the requested information under section 22 of FOIA until the publication date.

29. As the Commissioner is satisfied that the exemption at section 22 was applied correctly in this case, he has next considered the balance of the public interest test.

Public interest test

The complainant's position

30. The complainant has said that as a consultant was commissioned to provide independent advice, the council should not be able to amend the report before publication as this would defeat its purpose. They have argued that it is therefore important that there is transparency about what amendments the council is making to the report.

The council's position

31. The council has said that it recognises that there is a general public interest in transparency. It accepts that it is not necessarily in the public interest to withhold information simply on the basis that it is incomplete or inaccurate.
32. However, the council has referred to ICO guidance, stating that if the withheld information forms part of information which a public authority is intended to publish at a later date, it is more likely that the public interest will favour withholding the information until it can be considered in context.
33. The council has said that, at the time of the request, the draft report produced by the consultant was inaccurate and did not meet the brief given. The council has said that given this, the consultant was asked to revisit the brief and the draft report, and they were still in the process of doing so at the time of the request.
34. The council states that it considers that as the draft report did not meet the brief, it is "fundamentally flawed", and is not "fit for purpose". It has argued that given this, at the time of the request, it would not have been useful to the public to have sight of the content.
35. The council has said that local opinion on the Appleby Horse Fair is divided, and it considers it is important to manage communications about the event sensitively.
36. The council has said that the public interest is not necessarily what interests the public, and that in its view, it was not in the public interest to publish the report prematurely, at a time when its content did not accurately meet the brief, was inadequate, and misleading.

The Commissioner's decision

37. The Commissioner accepts that there is a general public interest in openness and transparency.
38. The Commissioner notes that Appleby is a small town with around 2,500 residents. The [Appleby Fair website](#) states that the Fair "is believed to be the largest horse fair in Europe, attracting around 10,000 Gypsies and Travellers and over 30,000 other visitors each year." Given this, the Commissioner does not consider it unreasonable to assume that the event has a significant impact on local residents. In addition, the council has also confirmed that the event is a divisive issue amongst the local community.
39. Given the above, the Commissioner considers that there is a strong public interest in ensuring that the public are well informed about matters relating to the Appleby Fair, including both current and future strategy plans for the event.
40. However, the Commissioner considers that there is a substantive amount of information that is already made available to the public about the Appleby Fair. The Appleby Fair website sets out detailed information about all aspects of the event, including copies of previous reports, copies of minutes of meetings held by MASCG, and also details of community engagement. The council also [publishes](#) updates and statements about action it has taken in relation to Appleby Fair, and its plans for future events.
41. In the Commissioner's opinion, the public have been well informed about the decision to commission the relevant report, and its purpose. Whilst appreciating that there have been significant delays in its completion, the Commissioner finds that the report will be of most value to the public at the time that it is complete and ready for publication. Furthermore, it is the Commissioner's view that premature publication of the report would be unhelpful and misleading.
42. The complainant has said that they are concerned that the council is requesting amendments to a report which was intended to set out independent advice. However, in the Commissioner's view, there is no evidence to indicate that the report itself will not continue to present an independent view, or that the council is attempting to influence the views of an independent consultant; the council has been very clear and open in stating publicly that the issue is that the draft report is not "fit for purpose" as it does not fully meet the terms of the brief.
43. The Commissioner considers that there is a strong public interest in withholding details of the report until that point that it is complete,

meets the brief and is fit for purpose. This will then allow for effective public debate on its content.

44. Therefore, having considered all of the available information, the Commissioner considers that the balance of the public interest test favours maintaining the exemption at section 22 in this case.

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

Website: 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.

Suzanne McKay
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