

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

### **Decision notice**

**Date:** 30 May 2025

**Public Authority:** Leeds City Council  
**Address:** Civic Hall  
Leeds  
LS1 1UR

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

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1. The complainant requested a copy of a report produced for Leeds City Council (the Council) by PWC. The Council has withheld the entire report under section 43(2) of FOIA (commercial interests). It has also withheld parts of the report under section 41 (information provided in confidence), section 40(2) (personal data), section 42 (legal professional privilege) and section 21 (information reasonably accessible to the applicant by other means).
2. The Commissioner's decision is that the Council is entitled to withhold the entire report under section 43(2). The Commissioner has therefore not gone on to consider the Council's application of the further exemptions cited.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 7 November 2024, the complainant wrote to the Council and requested information in the following terms:

"the full and final report from PWC for the work they carried out for SEND improvement."
5. The Council responded on 8 January 2025. It refused to provide the report citing section 43(2) of FOIA (commercial interests) as its basis for doing so.

6. The Commissioner informed the Council on 17 January 2025 that this case had been accepted for investigation without an internal review.

## **Scope of the case**

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7. As the Council has withheld the entire report under section 43(2), the Commissioner will first consider whether the Council is entitled to withhold all of the information in the report under this exemption. If he finds that the Council is not entitled to withhold information within the report under this exemption, he will then consider whether it is exempt from disclosure under another exemption cited.

## **Reasons for decision**

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### **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. The withheld information is a 104-page report entitled "Leeds SEND and Inclusion Improvement Programme Sprint 5" dated April 2024. The branding on the document is that of the Council, however, as stated in the request, it was produced by PricewaterhouseCoopers LLP ("PWC") for the Council. The Council has withheld the entire report under section 43(2) of FOIA.
11. The Council argues that disclosure of the report would prejudice both its own commercial interests and those of PWC.
12. The term 'commercial interests' is not defined in FOIA; however, the Commissioner has considered [his guidance on the application of section 43](#), 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."
13. With respect to the commercial interests of PWC the Council provided the following arguments:

"Our contract dated 23rd November 2023 with the Contractor (under the ESPO framework) covered the terms on which the Contractor produced the report. The contract set out the scope of what was agreed as being confidential with respect to the services and the report. The Master Contract Schedule makes it very clear that the parties considered that the following information shall be deemed Commercially Sensitive Information: "Pricing, and details of the outcome of the project."

The report does not contain reference to the Contractor's fees or the personally identifiable information of their staff. However, the Contractor has significant concerns that the methodology used, frameworks for analysis and recommendations for change contained within this report, if disclosed under the FOIA, will become available to the Contractor's competitors through publication.

The Contractor's second and related concern is that public release of the report would prejudice their commercial interests by diminishing their future market opportunities to provide similar services to other councils with SEND service challenges. Leeds City Council has paid the Contractor to jointly work through these issues and the deliverables contained within this report represent a blueprint that other councils could take and attempt to apply without supporting consultancy resource, thereby diminishing the Contractor's market opportunity."

14. The Council also provided the Commissioner with evidence of its consultation with PWC on this matter.
15. With respect to its own commercial interests the Council argues that:

"Recommendations and advice contained in the report, in terms of re-modelling the service, have not been fully implemented. There are a number of reasons for this, and these include the council's capacity to deliver financially and the council's ability to retain and recruit qualified staff to work within this area of the service. There is a national shortage of Educational Psychologists, and the council did not want to jeopardise this position by changing the range of statutory work as suggested in the report as well as manage cases already outside the statutory timescale. The final report requested for release does not present any context relating to the recommendations not implemented.

Like most local authorities in the UK Leeds City Council is struggling to meet statutory demands for Education Health and Care plans, and this is a national, regional and local area of concern (most recently outlined in 'Reforming SEND Finance' CIPFA Feb25). The request to release this report into the public domain we believe would prejudice the council's ability to meet our statutory timescales. The council is operating for most cases outside of the statutory timescales and we are already commissioning additional resources at a cost to the council to mitigate this.

In the context of the current financial challenges that Leeds City Council is facing, the council does not have the capacity, resources or funding to manage the engagement that would be likely to arise from the sharing of the final report. Such engagement will require refocusing resources from case management to deal with the incoming enquires/complaints. We have a complete understanding of our position and what needs to be changed, which is already outlined in a number of publicly available reports to meet our corporate governance requirements. We believe that contact would likely arise through parent/carers, schools and settings and elected members seeking to understand/interpret information that may no longer be accurate or relevant. It may also generate wider media interest leading to further required engagement.

The resourcing of this service is paramount to being able to deliver an efficient and effective service in line with our statutory requirements. We believe this report, which is now 10 months old, would likely to cause unnecessary anxiety to existing staff,

when communications with council employees throughout this program of change have already been given the appropriate due diligence and approval. We have already experienced educational psychologists leaving the council to move to other local authorities, and we do not want to create risk of this occurring as a direct result of staff feeling unsettled by information contained within this report that was written for the council's internal consideration only."

16. The Commissioner accepts that the interests in question are the commercial interests of the Council and PWC for the reasons given by the Council.

#### The causal relationship

17. The Commissioner will first consider the causal relationship between the disclosure of the report and the prejudice to PWC's commercial interests, before considering that between the disclosure of the report and the prejudice to the Council's own commercial interests.
18. As outlined above, the Council argues that disclosure of the report would prejudice PWC's commercial interests in two ways. Firstly, that disclosure of its methodology to its competitors would harm its commercial interests, presumably as competitors would use this information to compete to offer similar services. Secondly, that disclosure of the report would diminish their future market opportunities to provide similar services to other councils with special educational needs and disability (SEND) service challenges as other Councils may attempt to implement the improvements suggested in the report without contracting PWC to work with them directly on bespoke recommendations. As noted above, the Council has provided evidence that these arguments have been informed by consultation with PWC.
19. Having viewed the withheld report, the Commissioner is satisfied that a causal relationship exists between the disclosure of the report and the prejudice to the commercial interests of PWC that the Council has described. The Commissioner has carefully considered whether the prejudice relates to all of the information within the report, or only parts of the report. As the entire report is made up of PWC's methodology and the improvements it recommends, the Commissioner is satisfied that causal relationship exists between the disclosure of all of the information within the report and the prejudice described. The Commissioner has gone on to consider the likelihood of the prejudice occurring below.
20. As outlined above, the Council argues that disclosure of the report would prejudice its own commercial interests as it does not have the capacity, resources or funding to manage the engagement that it believes would

be likely to arise from the disclosure of the report. It further argues that disclosure of the report would be a risk to staff retention.

21. Having viewed the withheld report and considered the arguments made by the Council, the Commissioner is not satisfied that the Council has demonstrated that a causal relationship exists between the disclosure of the report and the prejudice to its own commercial interests. The Commissioner is unclear of the link between disclosure and the risk to staff retention given that relevant staff are already aware of the actual changes to be implemented. Regarding the Council's argument that disclosure of the withheld information would lead to engagement with the Council at a level that it does not have sufficient resources to manage, the Commissioner is not satisfied that this would be the case. A great deal of information about plans being implemented to improve the service is already in the public domain, while disclosure of the report may result in some additional enquiries or information access requests, the Commissioner does not consider this to be a real prejudice to the Council's commercial interests.

#### The likelihood of the prejudice occurring

22. In accepting that a causal relationship exists between disclosure of the report and the prejudice to the commercial interests of PWC the Commissioner has already accepted that the prejudice described by the Council is "real, actual or of substance". However, he must now consider the likelihood of this prejudice occurring.
23. The Council argues that a disclosure of the information "would" cause the prejudice to PWC's commercial interests that it has foreseen, that is to say that it considers that it is more probable than not that the prejudice it has described would occur should the withheld information be disclosed.
24. Having viewed the withheld information, the Commissioner is not satisfied that the likelihood of prejudice occurring is as strong as suggested by the Council.
25. The Commissioner has already accepted a causal link between disclosure and prejudice to PWC's commercial interest by revealing to its competitors how it has gone about this piece of work and by diminishing its future opportunities to provide similar services to other councils. However, he considers that while there is a real risk of this occurring, he does not consider this risk to be more likely than not.
26. He considers that, in most cases, if councils are looking to learn from the processes of other councils to make improvements, there is already information in the public domain from which they can learn (including

the information in the public domain about the changes being implemented by the Council). He therefore does not think that the number of councils that would potentially have been interested in paying for tailored support from PWC would be significantly reduced due to the disclosure of the report. However, he does accept that where other councils were considering this and consider that the challenges they face to be very similar to that of the Council, the disclosure of this very detailed report would allow them to attempt to replicate the improvement process without contracting PWC to provide its services.

27. With regards to competitors using the disclosure of this information to gain a competitive advantage, the Commissioner considers that, although this information would only be of real use to competitors if contracted by a client facing quite similar challenges, in these circumstances competitors could profit from the work carried out by PWC, therefore prejudicing the commercial interests of PWC.
28. The Commissioner therefore considers that the chance of prejudice occurring meets the lower threshold of "would be likely to" prejudice, as this is a real and significant risk.

#### The Commissioner's conclusions

29. The Commissioner has decided that the Council is correct in that section 43(2) is engaged by the withheld information. Since it is a qualified exemption, he must therefore go on to consider the public interest test required by section 2 of FOIA.

#### **The public interest**

30. The test, as set out in section 2(2)(b), is whether "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information".
31. The Council took into account the following public interest arguments in favour of disclosing the information:

"There is a strong public interest in openness in the council's affairs. The council have expended public funds on the procurement of research and consultancy services to address a need in Leeds for SEND improvement. Therefore there is a strong public interest in ensuring transparency and accountability for publicly spent money.

Where the public has a clear understanding of the outputs from the research, this would provide assurance about the council's ability to spend public money wisely, set against a backdrop of

the SEND area being an area requiring significant funding and improvement.

In terms of public interest we believe that the number of reports which have already been published by the council help members of the public understand the reasons behind the council's decisions and the outcomes which have been reached."

32. The Council took into account the following public interest arguments in favour of maintaining the exemption:

"There is already a considerable amount of information already in the public domain through reports considered at the council's Executive Board and Scrutiny Boards. These have had prior approval at a political and senior management level.

The council has a strong public interest in protecting the legitimate commercial interests of bidders for public sector contracts, and not exposing them to unfair practices by potential rival bidders. There is also a strong public interest in maintaining the integrity of public sector procurement exercises, and in prospective bidders not being discouraged by fear that they will not be on a level playing field with their competitors because of disclosures made in response to Freedom of Information requests.

If the council's reputation with external consultants and other commercial providers were to be adversely affected following the disclosure of this report, this could result in the less effective use of public money to undertake similar research of this kind in the future.

There is undoubtedly a public interest in allowing public authorities to withhold information which, if disclosed, would negatively affect their ability to meet their statutory obligations in respect of the delivery of the service. As previously advised, this would be likely to result in the inability to recruit or retain educational psychologists set against a national shortage of these qualified professionals and this would be likely to have a significant adverse impact on service delivery.

It is not in the public's interest to place additional demands on an area of the council that is already commissioning additional resources at a cost to the council to meet their statutory obligations. The council does not have capacity to manage the engagement that would be likely to arise from the sharing of the final report."

33. The Council provided the following information to the Commissioner regarding why it considers that, on balance, the public interest in

maintaining the exemption outweighs that in disclosing the withheld information:

"There is always a presumption in favour of disclosure. However, the council has taken the view based on the arguments provided above that the public interest in maintaining the exemption outweighs the public interest in disclosure. We believe that the council has met its obligations in relation to transparency and openness in the use of public funds, and that the withholding of this report does not shackle the right of the public to information under the Act. The council believes that the areas for improvement and actions taken to rectify any weaknesses identified in SEND provision have been appropriately shared with the public, and that the non-disclosure of advice and recommendations within the report, as not fully implemented, should be maintained."

#### The Commissioner's analysis

34. The Commissioner recognises that, in general, there is a strong public interest in the disclosure of information in order to provide transparency about how the Council has identified improvements that could be made to SEND support services, including Education Health and Care Plan (EHCP) arrangements, and its plans to implement those changes. This is due to the very significant impact that EHCPs (and SEND support services more broadly) have on the lives of the children and young people accessing the service and of their families and / or carers.
35. The Commissioner considers that in this case there is a public interest in maintaining the exemption so as not to deter private sector consultants from providing their services to public authorities due to concerns about disclosure of detailed reports such as this which would be likely to prejudice their commercial interests. This would not be in the public interest as it may prevent public authorities from accessing effective external advice regarding improving the services they provide to the public.
36. In many cases this public interest would be outweighed by the public interest in disclosure of information relating to SEND improvements and EHCP arrangements for the reasons set out in paragraph 34 of this notice. However, the Commissioner must consider the specific circumstances of this case.
37. An important circumstance of this case is that the improvement work supported by PWC to which the report relates, ran concurrently with an inquiry conducted by the Council's Children and Families Scrutiny Board into EHCPs. The inquiry ran from September 2023 to September 2024.

The withheld report relates to "sprint 5", which was an eight week period (weeks 13-20 of the twenty weeks in total covered by the five sprints supported by PWC) ending in April 2024. The request was made in November 2024. At the time of the request a significant amount of information about the inquiry was in the public domain. While the title of the work carried out by PWC, to which the withheld report relates, was broader than that of the inquiry, it is called the "SEND and Inclusion Improvement Programme", having viewed the report the Commissioner notes that the majority of the information within the report relates, in some way, to the EHCP process.

38. The Council has provided the following information about information in the public domain:

"The council's published information can be found using the following links; (the requestor already has been provided with these links except for the most recent Exec Board report, however we have resent these to him in our latest response.

[Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy) – Exec Board report 11/12/24 - Update report

[Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy) – Exec Board report 19/06/24 – Plan and activity Outlined

[Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy) – Exec Board report 13/12/23 – Update report

[Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy) – Exec Board report Oct 23

Scrutiny have also conducted an inquiry which started in Sept 23 and concluded with an agreed inquiry report in September 2024.

[Cover Inquiry Report Apr 24.pdf \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy)

[App 1 - EHCP Inquiry Report Final.pdf \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy)

Scrutiny February Inquiry Session

[Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy)

Scrutiny January Inquiry Session

[Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy)

Scrutiny October Inquiry Session

[Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy)

Scrutiny September Inquiry Terms of Reference

[Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy)

Scrutiny Board report from the 4th of September.

[EHCP Review Scrutiny Board final.pdf \(leeds.gov.uk\)](https://leeds.gov.uk/ehcp-review/scrutiny-board-final.pdf)”

39. The Commissioner notes that the first link on the list, which is the report that the Council refers to having provided to the complainant during the course of the Commissioner’s investigation, was neither held nor in the public domain at the time of the request as it relates to a meeting that occurred after the request was made. Although, due to the late response to the request, it was held by the Council and had been published by the time the Council responded to the request. The Commissioner is satisfied that the remaining information listed by the Council was in the public domain at the time of the request
40. The Commissioner’s view is that the detailed information in the public domain, as listed by the Council, goes a long way in meeting the public interest in transparency regarding improvements that the Council has identified should be made to the EHCP process and its plans for implementing these changes.
41. The information in the public domain includes considerable detail about improvements that the Council has identified should be made to the EHCP process and its plans for implementing these changes.
42. For this reason, he considers that in the circumstances of this case, the public interest in the exemption being maintained outweighs that in the report being disclosed.
43. The Council was not, therefore, obliged to disclose the requested information.

## **Right of appeal**

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44. 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)

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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