

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 April 2025

Public Authority: Coventry City Council
Address: Council House
Coventry
CV1 5RR

Decision (including any steps ordered)

1. The complainant requested information relating to the funding of Coventry City of Culture Trust. Coventry City Council (the "Council") disclosed some information and withheld other information under the exemption for information provided in confidence (section 41).
2. The Commissioner's decision is that the Council:
 - Failed to demonstrate that the exemption under section 41 is engaged,
 - and failed to respond in time, breaching section 10(1).
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the information in part 1 of the request, subject to the appropriate redaction of personal data under section 40(2) of FOIA.
4. The Council must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The request relates to the Coventry City of Culture Trust:

"In October 2015, Coventry City of Culture Trust was incorporated as an independent, private company to coordinate and deliver Coventry's bid for the UK City of Culture 2021 title. In 2016, The Trust was registered as an independent charity."¹

6. The request refers to a National Audit Office (NAO) report (the "Report") relating to the funding of Coventry City of Culture Trust (the "Trust"). The Report explains:

"In December 2017, following a competition run by the Department for Culture, Media & Sport (DCMS), Coventry was selected to be the UK City of Culture for 2021. Coventry City of Culture Trust (the Trust) had been set up in October 2015 to oversee Coventry's bid and subsequent activities."²

7. The Report goes on to clarify:

"Coventry's year as UK City of Culture ended in May 2022. From June 2022 to March 2024, the Trust was responsible for delivering a 'legacy phase'. In February 2023, the Trust went into administration having publicly reported financial pressures in October 2022."³

8. The focus of the request is on the Council's approval of a loan of up to £1 million to the Trust at a commercial interest rate, to be repaid in full by March 2024⁴.

¹ <https://edemocracy.coventry.gov.uk/documents/s56431/Briefing%20note%20-%20Background%20to%20CoCT%20Loan%20Decision.pdf>

² <https://www.nao.org.uk/reports/funding-of-coventry-city-of-culture-trust/?nab=1>

³ Ibid.

⁴ See page 25 of the Report: <https://www.nao.org.uk/wp-content/uploads/2023/07/funding-of-coventry-city-of-culture-trust.pdf>

Request and response

9. On 24 February 2024 the complainant requested the following information from the Council:

“(In relation to the NAO report “Funding of Coventry City of Culture Trust”)

1) Can Coventry City Council release any written correspondence (e.g. emails, letters, etc) it received or sent about the “accounting error” reported to the council by the Trust from August in 2022?

2) Did the council conduct any analysis (e.g. a report or assessment by a council officer) of the accounting error reported by the Trust before approving the £1m loan in 2022? If yes, can you provide me with any documents relating to this analysis.”
10. The Council responded on 24 May 2024 and disclosed information relating to part 2 of the request. It withheld the information in part 1 under the exemption for information provided in confidence (section 41).
11. On 31 July 2024 the complainant asked the Council to carry out an internal review. As part of their review request the complainant confirmed that they were happy for the Council to exclude any personal information falling within the scope of their request.
12. The Council provided its review response on 21 November 2024. It confirmed that it was maintaining its reliance on section 41 to refuse part 1 of the request.

Scope of the case

13. On 25 November 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
14. As confirmed in the complainant’s internal review request, the Commissioner considers that the scope of the request and his investigation excludes any personal information.
15. The Commissioner has, therefore, considered whether the Council has correctly withheld the information in part 1 of the request under section 41.

Reasons for decision

Section 41 – information provided in confidence

16. Section 41(1) of the FOIA provides that information is exempt from disclosure if it was obtained by the public authority from any other person and the disclosure by the public authority would constitute an actionable breach of confidence.
17. In this case the withheld information comprises correspondence relating to the “accounting error” reported to the Council by the Trust

Was the information obtained from another person?

18. The first step is for the Commissioner to consider whether the information was obtained by the council from any other person in order to satisfy the requirements of section 41(1)(a).
19. The Council has stated that the withheld information was provided to the Council by the Trust, clarifying that the that the Board of the Trust was made up of representatives from the Council, Coventry University and Warwick University. In summary, though, the originating party for the information was the Trust itself.
20. Having established that the requested information was in fact obtained from another person, the Commissioner must next consider whether or not its disclosure to the public (otherwise than under the FOIA), would constitute a breach of confidence ‘actionable’ by that or any other person.

Actionable claim for breach of confidence

21. Whilst it is not the only test for establishing confidence, the Commissioner finds that the appropriate test for this case is that which is set out in the case of *Coco v Clark* [1969] RPC 41. According to the decision in this case a claim for breach of confidence can be established where:

“... three elements are normally required if ... a case of breach of confidence is to succeed. First, the information itself ... must ‘have the necessary quality of confidence about it’. Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it...”
22. All three elements must be present for a claim to be made. However, for that claim to be ‘actionable’ within the meaning of section 41(1)(b) of

the FOIA, a public authority must establish that an action for breach of confidence would, on the balance of probabilities, succeed. This requires consideration of whether or not there would be a public interest defence to such a claim.

Obligation of Confidence

23. Even if information is to be regarded as confidential, a breach of confidence will not be actionable if it was not communicated in circumstances that created an obligation of confidence. An obligation of confidence may be expressed explicitly or implicitly.
24. Although there is no absolute test of what constitutes a circumstance giving rise to an obligation of confidence, the judge in *Coco v Clark*, suggests that the 'reasonable person' test may be a useful one. The test was described as follows:

"If the circumstances are such that any reasonable man standing in the shoes of the recipient of the information would have realised that upon reasonable grounds the information was being given to him in confidence, then this should suffice to impose upon him the equitable obligation of confidence."
25. The Council has confirmed that the withheld information relating to accounting errors which negatively affected the Trust's finances originated in the Trust and was provided to the Council in confidence and on the understanding that it would be used solely for analysis purposes linked to the request for financial assistance and support.
26. The Council considers that the information is neither trivial nor otherwise accessible to the world at large and has the necessary quality of confidence.
27. In light of this and, having applied the "reasonable person" test, the Commissioner accepts that the information was provided in circumstances imparting an obligation of confidence. Given the submissions provided by the Council it is also clear to the Commissioner that the information was not, at the time of the request, otherwise accessible. He, therefore, accepts that the information has the necessary quality of confidence.

Detriment to confider

28. Having considered whether the information in this case was imparted in circumstances giving rise to a duty of confidence and had the necessary quality of confidence, the Commissioner has gone on to consider whether unauthorised disclosure could cause detriment to the confider.

29. As confirmed above, the Trust as confider of the information, went into administration in October 2022. The Council has argued that the duty of confidence does not end just because the disclosing party no longer exists. In its view, the necessary quality of confidence remains even in the event that the Trust no longer exist. The Council considers that the duty of confidence here also extends to the respective organisations who had representatives on the Board of the Trust, who were of the view that the information being provided imported an obligation of confidence.
30. In relation to detriment, the Council has explained that services it provides to the community are procured and delivered under third party contractual arrangements and these involve the provision of commercially sensitive and confidential information.
31. The Council has argued that if it became known that details passed to the Council in confidence were releasable through FOIA requests, companies and individuals would be less likely to contract with the Council which would undermine the ability for the Council to meet its statutory duties. The Council has also argued that that unauthorised disclosure would also cause detriment to other parties, namely each and every organisation which appointed representatives onto the Board of the Trust.

The Commissioner's conclusions

32. In relation to detriment, the Council's submissions are focussed on the potential impact of disclosure on its own commercial interests; however, these are not relevant to the engagement of this exemption.
33. In order for the exemption to be engaged it must be shown that disclosure would result in detriment to the confider. Simply stating that the disclosure of information would, as a point of principle, trigger certain actions, does not address this question. The Council's suggestion, for example, that disclosure might result in a future refusal by third parties to engage with the Council, for example, is not a detriment but rather a choice.
34. In relation to Trust and other parties cited by the Council, the Commissioner has not been provided with specific arguments which explain how disclosure of the information would affect the confiders' interests in this matter.
35. In conclusion, the Commissioner considers that the claimed detriment has not been demonstrated sufficiently and therefore the test of confidence fails on this limb and section 41 does not apply. In reaching this decision the Commissioner has referred to a previous decision

notice which relates to a comparable scenario and he, therefore, considers that the conclusions can be transposed here⁵.

Procedural matters

Section 10: Time for compliance

36. Section 10(1) requires that a public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
37. In this case the complainant submitted their request on 24 February 2024 and the Council responded on 24 May 2024. Since this was well outside the statutory time for compliance the Commissioner finds that the Council failed to comply with section 10(1)

⁵ https://ico.org.uk/media2/migrated/decision-notice/1560300/fs_50592253.pdf

Other matters

38. Although they do not form part of this notice the Commissioner would like to note the following matters of concern.

Internal reviews

39. The code of practice issued under section 45 of the FOIA (the "Code") recommends that authorities should normally complete internal reviews within 20 working days, with an extension to 40 working days or more in exceptional cases⁶.
40. In this case the complainant requested an internal review on 31 July 2024 and the Council provided its review response on 21 November 2024, some 80 working days later.
41. The Commissioner, therefore, considers that it is unlikely the Council's internal review conforms to the recommendations of the Code. In future he expects that the Council will carry out internal reviews in accordance with the Code.

6

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

42. 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

43. 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.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF