

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2025

Public Authority: Alfreton Town Council
Address: Room 12
Alfreton House
High Street
Alfreton
DE55 7HH

Decision (including any steps ordered)

1. The complainant has requested information relating to the 2024 Summer Display. Alfreton Town Council (the Council) provided some information in scope of the request and advised further information was available on its website and Facebook account. The Council refused to disclose further information at internal review citing section 43(2) and section 3(2) of FOIA.
2. The Commissioner's decision is that the Council was entitled to rely on section 43(2) and section 3(2), and the balance of the public interest lies in maintaining the exemption.
3. No steps are required as a result of this decision.

Request and response

4. On 12 October 2024, the complainant requested information in the following terms:

"I am requesting the following information related to the 2024 Summer Display:

A list of all payments made to third parties involved in the delivery of the 2024 Summer Display. This should include the date of each payment, the amount paid, and the name of the recipient.

A list of all payments received from third parties in relation to the delivery of the 2024 Summer Display. This should include the date of each payment, the amount received, and the name of the payer and the name of the recipient.

A list of all sponsors who contributed financially towards the 2024 Summer Display, including the amount contributed and the date of the contribution.

A list of all businesses that were promoted as part of the 2024 Summer Display.

Under Section 84 of the Act, I am requesting recorded information only and not seeking any personal data unless its disclosure is permissible under the FOIA's public interest test or relevant exemptions.

Please ensure the requested information covers all relevant transactions up to the date of this request. In the event that any of the requested information is exempt under Part II of the FOIA (e.g., exemptions concerning commercial sensitivity), I request that you provide justification for its withholding, in accordance with Section 17 of the Act.

If any part of this request is unclear, exceeds the statutory cost limit under Section 12, or encounters any other legal limitation, please notify me as soon as possible so that I may refine the scope of the request. I trust that this request will be processed within the statutory 20 working days as prescribed by Section 10 of the Act."

5. The Council responded on 5 November 2024 providing information in scope of the request and links to its website and Facebook pages for information already published. It refused parts two and three of the request regarding third party payments citing section 3 and stated the information was held directly by the third party Decx Limited as it had

managed the project and recommended contacting it directly for this information.

6. The Council provided an internal review outcome on 27 November 2024. It stated that it was confident that it had provided all information it held in scope of the request and went on to address specific points raised citing section 43(2) and section 3 to withhold that specific information.

Scope of the case

7. The complainant contacted the Commissioner on 27 November 2024 to complain about the way their request for information had been handled. They argued that they had not received information relating to two parts of their request regarding payments and the administration of sponsorship for the summer display.
8. The complainant has said: "that the public authority is responsible for responding to request and private company should direct a FOI request to the public authority they are working with, as it's the authority's duty to respond." And "that information held by another person/third party is considered to be "information held by a public authority."
9. The Commissioners remit is to consider if the Council is entitled to withhold information under section 43(2) and whether section 3 is also engaged, he is not concerned with other legal frameworks or obligations that the Council may or may not be required to meet.

Reasons for decision

Section 43(2) – commercial interests

10. Section 43(2) states that information may be withheld if its disclosure would, or would be likely to, prejudice the commercial interests of any legal person (including the public authority holding the information).
11. In order to engage section 43(2), it's not sufficient to argue that because information is commercially sensitive, its disclosure would, or would be likely to, prejudice commercial interests. There must be a causal link between disclosure and the prejudice envisaged.
12. The Council has argued that the information within the requested report was classed as confidential due to commercial sensitivity it was therefore considered exempt under section 43 as it would likely prejudice the commercial interests of any party including the public authority itself.

13. During the Commissioners investigation, the Council further explained that the quotation was accepted in competition with a number of suppliers and that the decision to accept the winning quotation was taken in a confidential session of the full Council meeting in accordance with the 'Admissions to Meetings Act 1960' and recorded in Council minutes.
14. It went on to say that the publication of the responses may result in one or more obtaining a competitive edge when quoting for future displays or in direct competition with Decx Limited. Permission had not been sought or provided in order to publish detailed arrangements although the amount paid is published in accordance with financial regulations.
15. The Commissioner has considered the Council's arguments, bearing in mind that for the causal link referred to in paragraphs 12, 13 and 14 to exist, the prejudice claimed must at least be possible, i.e. there are circumstances in which it could arise.
16. The Commissioner accepts the Council's arguments that the withheld information is commercially sensitive in a competitive market where any advantage can make a difference. The Commissioner accepts that disclosure could lead to the replication of approaches and techniques, which would be likely to affect Decx's ability to operate as effectively in a commercially competitive marketplace. The Commissioner is satisfied that a causal link exists and that the prejudice described would be likely to occur in this case. – therefore, the exemption is engaged.
17. Section 43(2) is a qualified exemption; the Commissioner will now go on to consider where the balance of the public interest lies.

Public interest test

Arguments in favour of maintaining the exemption

18. The Commissioner has accepted that disclosure would be likely to prejudice the commercial interests of Decx, the third parties involved, on the basis that competitors and consultancies could benefit from the information being placed into the public domain.
19. In its response to the Commissioner, the Council stated that it had taken into account factors including openness and transparency, accountability, reputational damage or loss and the negotiating position, and on balance it considered the reputational damage which may be caused by revealing the terms and conditions of the successful bid and the impact on the Council's future negotiating position outweighed other considerations.

20. To add context, it was also explained that both the Council and Decx would potentially experience detriment from the disclosure of the requested information. This could result in a strain of those relationships where either party would be less inclined to continue them. It considered that this would not be in the interests of the public.
21. The Council also stated that all the information requested by the complainant relating to the Council report has been provided to them in their capacity as an elected member of the Town Council in order to discharge their duty at that time.
22. It was therefore, satisfied that the public interest is strongly in favour of withholding the requested information from disclosure to the wider public in general.

Arguments in favour of disclosure

23. There is always a public interest in public authorities being transparent about their work and opening up their decisions for scrutiny.
24. The Council acknowledges that the public have an expectation that public bodies will always seek to obtain value for money and spend money responsibly. Furthermore, the public also expect openness and transparency from public bodies. Disclosure of the information concerned could provide this assurance.

Balance of the public interest

25. The Council has explained that although the public interest in transparency is justifiably strong, this should not come at the detriment of the public interest in protecting the public purse and those third parties involved in the supply of services to it, and therefore, the balance is swayed toward withholding the information in scope of the request.

The Commissioners conclusion

26. In this instance, the Commissioner has determined from the arguments presented to him that the balance of the public interest lies in maintaining the exemption.

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

27. Section 1 of FOIA says that a public authority is required to confirm or deny that it holds the requested information, and disclose relevant information that it holds, unless an exemption or exclusion applies. If a public authority does not hold recorded information that falls within the

scope of the request, the Commissioner cannot require the authority to take any further action.

Section 3(2) – information held by a public authority

28. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of FOIA: “information is held by a public authority if— (a) it is held by the authority, otherwise than on behalf of another person, or (b) it is held by another person on behalf of the authority.”
29. The Commissioner must therefore consider the following two questions when determining whether the information is held by the Council for the purpose of FOIA:
- Does the Council itself hold a copy of the requested information?
 - If not, does Decx hold the information on behalf of the Council?
30. The Commissioner’s guidance¹ explains the circumstances in which information is considered to be held by a public authority for the purposes of FOIA.
31. The Commissioner’s guidance also makes it clear that, whether information is held by a public authority, or is held on behalf of a public authority, depends on the facts of the case.

Does the Council itself hold a copy of the requested information

The complainant’s position

32. The complainant has said that they believe the Council has employed a third party to provide services on its behalf in respect to the administration of the sponsorship of the 2024 summer display and have been directed to contact the third party directly, including upon appeal.
33. And that section 5(1a) and section 5(1b) of the Act states that it applies to private companies that supply services on behalf of a public authority, and the Act further notes that the public authority is responsible for responding to request and private company should direct a FOI request to the public authority they are working with, as it’s the authorities duty to respond. Section 3(2b) of the FOIA states that information held by another person/third party is considered to be “information held by a

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/information-you-hold-for-the-purposes-of-foia/>

public authority", a section I would argue backs my argument for disclosure of the information by the Council.

The Council's position

34. The Commissioner asked the Council to provide a full explanation of its response for the requested information, and how it had concluded that it did not hold it.
35. In its response the Council explained that although it had provided Decx with a list of businesses which had expressed an interest in exhibiting, the sponsorship agreements including items to be exhibited and the fee was negotiated between the sponsor and Decx directly. It was the case that the sponsorship monies were collected and collated by Decx and if the sponsorship exceeded their costs, they would donate any surplus to charity.
36. The Council went on to explain that it neither incurred any cost or financial benefit from the sponsors items. The list of sponsors has been provided to the requester and is publicly accessible information.

The Commissioner's view

37. The Commissioner has carefully considered the points made by the complainant and the Council and as such is satisfied that the Council does not itself hold a copy of the requested information, he has gone on to consider whether the requested information is held by Decx on behalf of the Council.

Does Decx hold the requested information on behalf of the Council

The complainant's position

38. The complainant has stated (paragraph 32 and 33) they believe that as the third party holds the information due to its contracted obligations to the Council, it has a duty to make the information available to the Council and therefore, the Council has full access to the information held on its behalf by Decx.

The Council's position

39. The Council has stated that it does not hold a formal contract with Decx for the purposes of the sponsorship requirements including collation and collection of monies and therefore it does not hold the information, nor does it have access to it from Decx directly.

The Commissioner's view

40. The Commissioner recognises that the effect of section 3(2) and the meaning of 'held' in the context of FOIA have been clarified by case law in the landmark decision of *University of Newcastle upon Tyne v Information Commissioner and BUAV*², a decision that was upheld by the Upper Tribunal on appeal.
41. His guidance states: "The BUAV case means that – to decide if you 'hold' the information for the purposes of FOIA – you need to establish if there is an 'appropriate connection' between the requested information and **your role and functions as a public authority** [emphasis added]."
42. In that respect, his guidance states:
- "Several factors can help you decide the extent to which you hold information for your purposes as a public authority. These factors include:
- the extent to which you have access to the information,
 - the degree of control you have over the information, including controlling who has access to it and how it is used,
 - the extent to which you use it for your own purposes, regardless of whether it was created by a third party,
 - the extent to which you had an input in its creation or alteration,
 - the extent to which you retain ultimate responsibility over the management of the information, including its retention and deletion, and
 - whether you are merely providing storage, either on your physical premises or on your electronic and cloud systems.
- This is not an exhaustive list, and the weight attached to each factor varies depending on the circumstances of each case."
43. Whilst this guidance is written to assist public authorities determine whether information they hold themselves if held by them for the purposes of FOIA or on behalf of another organisation, these factors also apply to the question of whether another organisation holds information

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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i459/BUAV v IC & Newcastle University \(0064\) PI Decision 10-11-10 \(w\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i459/BUAV_v_IC_&_Newcastle_University_(0064)_PI_Decision_10-11-10_(w).pdf)

on behalf of the public authority (in this case, whether Decx Limited holds the information on behalf of the Council).

44. Given the nature of the arrangements between the Council and Decx Limited, the Commissioner is satisfied that Decx does not hold the information on behalf of the Council. The information is therefore not held by the Council under section 3(2)(b) and is therefore not held by the Council for the purposes of FOIA.
45. In reaching this conclusion the Commissioner has noted that;
- it is not normal for the Council to require access to such information;
 - the Council does not need access to such information;
 - there is no requirement for the monitoring and provision of information to the Council and no specific contract in place;
 - there is no requirement for Decx to provide the information to the Council; and
 - there is no requirement for the information to be passed to the Council on the termination or end of the event in question.

The Commissioner's decision

46. In view of the above, the Commissioner is satisfied that the sponsorship information is not held by the Council for the purposes of FOIA.
47. The Commissioner, having considered the information the complainant has provided, can understand why the complainant would have expected a copy of the sponsorship information to be held by the Council. However, for the reasons set out above, he is satisfied that the requested information is neither held by the Council itself nor held by Decx Limited on behalf of the Council.

Right of appeal

48. 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

49. 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.
50. 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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