

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

### **Decision notice**

**Date:** 12 May 2015

**Public Authority:** Bridgnorth Town Council  
**Address:** College House  
St Leonard's Close  
Bridgnorth  
Shropshire  
WV16 4EJ

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

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1. The complainant has requested information relating to tenders for provision of the 2014 Christmas lights. Bridgnorth Town Council disclosed some information and withheld other information because it was subject to "commercial confidentiality"; it also suggested that the request was vexatious.
2. The Commissioner's decision is that Bridgnorth Town Council:
  - Failed to issue a compliant refusal notice and breached section 17(1) and 17(5) of the FOIA;
  - Failed to demonstrate that the request was vexatious under section 14(1) and failed to show that the exemption for prejudice to commercial interests (section 43(2)) was engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the requested tender information to the complainant.
4. The public authority must take these steps within 35 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.

## Request and response

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5. On 30 November 2014, the complainant wrote to Bridgnorth Town Council (the "council") and requested the following information:

*"...could I please see all tenders received involving this year's Christmas lights, or be advised under which specific act the documents can be withheld from the public and their elected representatives, and if I am unable to see the tenders, could I please have information as to how many different companies tendered in addition to the company that actually won the contract, and all details of those tenders that I am allowed to know."*

6. The council responded on 1 December 2014 and disclosed some information, namely copies of an agenda, a report and the minutes of a procurement meeting. It stated that the remaining tender information was being withheld because it was subject to "commercial confidentiality."
7. Following an internal review the council wrote to the complainant on 17 December 2014. It stated that it was maintaining its reliance on "commercial confidentiality" to withhold the requested information.

## Scope of the case

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8. On 19 December 2014 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner confirmed with the complainant that his investigation would consider whether the council was entitled to withhold the requested information.

## Reasons for decision

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### Section 17 – refusal notice

10. Under section 1(1) of the FOIA any person making a request for information to a public authority is entitled

*"(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

11. Section 10(1) of the FOIA requires a public authority to comply with section 1(1) within 20 working days.
12. Section 17(1) of the FOIA states:

*"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-*

  - (a) states that fact,*
  - (b) specifies the exemption in question, and*
  - (c) states (if that would not otherwise be apparent) why the exemption applies."*
13. In this instance, the council confirmed that it was withholding information because it was subject to "commercial confidentiality". The Commissioner notes that there is no section of the FOIA which explicitly identifies this category of information.
14. Furthermore, the council did not cite the relevant section of the FOIA upon which it was relying, nor did it explain why the grounds for refusal were applicable.
15. Section 17(5) of the FOIA states:

*"A public authority which, in relation to any request for information, is relying upon a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."*
16. In this case, the council failed to confirm that it considered the request to be vexatious until during the Commissioner's investigation.
17. In light of the above, the Commissioner finds that, in relation to the council's application of exemptions and its suggestion that it was not obliged to comply with the request because it was vexatious, the council failed to issue a compliant refusal notice. He has concluded, therefore, that the council breached section 17(1) and section 17(5) of the FOIA.

## Section 14 – vexatious requests

18. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
19. The term “vexatious” is not identified in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>1</sup>. The Tribunal commented that vexatious could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure.*” The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
20. In the Commissioner’s view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
21. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>2</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious.
22. In this case, the council’s submission to the Commissioner said (of the complainant) that “...perhaps he could be considered vexatious”.
23. Firstly, the Commissioner must confirm that, under the FOIA, it is only the request, rather than the requestor which can be deemed vexatious for the purposes of section 14(1).
24. Secondly, the Commissioner notes that the council has provided no supporting evidence or reasoning in support of its application of section 14(1) in this case. The Commissioner considers that the council’s suggestion that the complainant is one of several residents that continuously raise issues in relation to the Christmas lights, is wholly insufficient grounds for invoking section 14(1) in this case.

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<sup>1</sup> GIA/3037/2011.

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

25. Having considered its submissions the Commissioner has concluded that the council has failed to demonstrate that the request is vexatious and that section 14(1) has, in this case, been misapplied.

**Section 43(2) – prejudice to commercial interests**

26. The council has withheld the tenders which were submitted for provision of the 2014 Christmas lights.
27. Section 43(2) provides an exemption from disclosure of information which would or would be likely to prejudice the commercial interests of any person (including the public authority holding it).
28. Although the council has not explicitly cited section 43(2) of the FOIA the Commissioner has assumed that, in withholding the information on grounds of “commercial confidentiality”, it considered this exemption to be relevant. The withheld information consists of the tenders submitted to the council in respect of provision of the Christmas lights.
29. The council has stated that, as its current set of Financial Regulations contain no provision or notification that contractors have given permission for their tenders to be made available to the public, the tenders should remain confidential. The council confirmed that it considered that the tenders should be made available under the “new Transparency Act”. However, it stated that, as this was only adopted in March 2015 (after the request was made), the information should not be disclosed.
30. The council has also stated that disclosing the information would give the complainant a pecuniary advantage over other tenderers.
31. The Commissioner notes that the council’s submissions:
- (i) Do not specify the party or parties whose commercial interests would be prejudiced by disclosure of the information;
  - (ii) do not specify the nature of the commercial prejudice which disclosure would cause;
  - (iii) do not explain the causal link between the disclosure of the specific withheld information and any alleged resulting prejudice;
  - (iv) do not confirm the likelihood of any ascribed prejudice occurring; that is, whether prejudice *would* or *would be likely to result* from disclosure of the withheld information.
32. In relation to the council’s reference to disclosure providing the complainant with a pecuniary advantage, the Commissioner has not

been provided with an explanation of the nature of this advantage or indeed any explanation of how this would impact on a party or parties' commercial interests.

33. Furthermore, the Commissioner is unclear on the council's reference to a "Transparency Act". The general right of access to information enshrined in the FOIA was enacted in 2005 so the fact that the "Transparency Act" was only adopted by the council subsequent to the request being received, is not, in the Commissioner's view, a relevant impediment to disclosure.
34. Having considered the withheld information and the council's submissions the Commissioner has concluded that the council has failed to demonstrate that disclosure of the information would result in prejudice to the commercial interests of any parties. As he has determined that the exemption is not engaged he has not gone on to consider the public interest.

## Right of appeal

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35. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**