

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 November 2021

**Public Authority:** Calderdale Metropolitan Borough Council  
**Address:** Town Hall  
Crossley Street  
Halifax  
West Yorkshire  
HX1 1UJ

### Decision (including any steps ordered)

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1. The complainant has requested information from Calderdale Metropolitan Borough Council ("the Council"), regarding business plans that were submitted to it by The Piece Hall Trust, on how it plans to run The Piece Hall.
2. The Commissioner's decision is that the Council incorrectly cited sections 40(2) – personal data and 43(2) – commercial interest, of the FOIA. It should instead have cited section 1 of the FOIA – information not held.
3. The Commissioner does not require the public authority to take any further steps.

### Request and response

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4. On 24 February 2020, the complainant wrote to the Council and requested information in the following terms:

*"Can you please supply us with a copy of all business plans which The Piece Hall Trust submitted to you in respect to their ambition to run the Piece Hall?"*

5. The Council responded on 12 March 2020. It stated that the information was withheld under section 40(2) of the FOIA – personal information and Section 43 of the FOIA – commercial interests.
6. Following an internal review the Council wrote to the complainant on 28 May 2020. It stated that it was upholding its original position and refused to provide the requested information.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 18 July 2020, to complain about the way their request for information had been handled, and specifically that the Council was not entitled to withhold the requested information under section 40(2) of the FOIA and section 43 of the FOIA.
8. The Commissioner has considered the request for information, along with the Council's responses. Using her discretion, the Commissioner has determined that the matter to be decided upon is if the Council does hold the requested information on behalf of The Piece Hall Trust, as set out in section 1 of the FOIA – information held/not held.

## **Reasons for decision**

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### **Section 1 – General right of access to information held**

9. Section 1 of the FOIA states that:

*"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."*

10. Section 3(2) provides that –

*"For the purposes of this Act, 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."*

11. During the Commissioner's investigation of this case, she has considered if the information is held by the Council on behalf of The Piece Hall Trust, or if The Piece Hall Trust is a separate entity to the the Council, and not subject to the FOIA.
12. The Council has provided a letter to the Commissioner, from The Piece Hall Trust, which advised that The Piece Hall Trust is a separate commercial legal entity, distinct from the Council itself and is therefore not subject to the FOIA.
13. It explained that the Business Plan in question was provided to the Chief Financial Officer at the Council, for the purpose of scrutiny and was not issued for transmission beyond this. It also advised that there was no legal requirement for the document to be submitted to the Council for its records.
14. The Commissioner has reviewed this letter and also investigated to determine if The Piece Hall Trust is a separate entity to the Council and not subject to the FOIA.
15. Section 6(1) of the FOIA states:

*"A company is a "publicly-owned company" for the purposes of section 3(1)(b) if—*

  - (a) it is wholly owned by the Crown,*
  - (b) it is wholly owned by the wider public sector, or*
  - (c) it is wholly owned by the Crown and the wider public sector."*
16. Section 6(2)(b) states:

*2)For the purposes of this section -*

  - (b) a company is wholly owned by the wider public sector if, and only if, every member is a person falling within sub-paragraph (i) or (ii)—*
  - (i)a relevant public authority or a company wholly owned by the wider public sector, or*
  - (ii)a person acting on behalf of a relevant public authority or of a company wholly owned by the wider public sector..."*
17. Within the Commissioner's guidance, it states that, "A charitable trust is a type of charity run by a small group of people known as trustees. Public authorities, usually local authorities, can be trustees of charitable trusts...when a local authority is the sole trustee of a charitable trust, the information is held for the purposes of the FOIA."

18. The Commissioner found during her investigation, using information available on The Piece Hall Trust website<sup>1</sup>, along with Companies House<sup>2</sup>, that The Piece Hall Trust is 80 percent privately owned and 20 percent publicly owned.
19. As explained in the Commissioner's guidance<sup>3</sup>, each case needs to be viewed individually to determine whether a public authority holds information for its own purposes, or solely on behalf of another person.
20. The Commissioner is satisfied, from the information provided by The Piece Hall Trust, and from her own investigation, that The Piece Hall Trust is a separate entity to the Council, it is not subject to the FOIA and that the Council does not hold the requested information on its behalf.
21. As The Piece Hall Trust is not subject to the FOIA and the Council is not holding information on its behalf, the Commissioner finds that the Council was incorrect to rely on the exemptions (section 40(2) – personal data and section 43 – commercial interest) that it cited when responding to the complainant's request.
22. The Commissioner finds that the Council should have relied on section 1 of the FOIA – information held, to explain to the complainant that the requested information was not held. While the Council may hold a physical copy of the information, it is not at liberty to provide this information elsewhere, as it not held by or owned by the Council for FOIA purposes.
23. Based on the above factors, the Commissioner has determined that the Council should have explained that the information requested was not held on the basis of section 1 of the FOIA.

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<sup>1</sup> [The Trust - Established in 2013 | The Piece Hall](#)

<sup>2</sup> <https://find-and-update.company-information.service.gov.uk/company/08906735/filing-history>

<sup>3</sup> [https://ico.org.uk/media/for-organisations/documents/1148/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf)

## Right of appeal

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24. 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)

25. 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.
26. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**