

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 27 February 2023

Public Authority: Appleby-in-Westmorland Town Council

Address: Moot Hall
Boroughgate
Appleby
Cumbria
CA16 6YB

Decision (including any steps ordered)

1. The complainant requested various information about the Appleby Fair 2022. Appleby-in-Westmoreland Town Council (the Council) provided some information, but withheld other information under section 43 (commercial interests) of the FOIA. During the course of the Commissioner's investigation the Council disclosed some of the information it originally withheld. The Commissioner's decision is that the Council does not hold any additional information relevant to the request. The Commissioner has also determined that the Council was not entitled to rely on section 43 to withhold the requested information.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the remaining information which has been redacted from the certificate of insurance.
3. 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 22 August 2022, the complainant wrote to Council and requested information in the following terms:

"Please supply the following in relation to Appleby Fair 2022
 1. The Amount of Money that was received for the hiring of Fair Hill for the event
 2. Any Revenue you receive from the Event (please separated into the amounts & from whom)
 3. An itemized list of expenditure together with the cost for each Item (list covering the monies spent by ATC & what they were spent on for the last fair) eg Water, Waste collection
 4. Any Specific Health & Safety documentation
 5. Any event plan
 6. Requirements made by ATC to the person hiring the land in relation to Health & Safety or any other stipulation
 7. Name of the insurer used by the person hiring the land for the event insurance
 8. Copy of the insurance document provided to ATC in relation to the hire of the land for the event".
5. The Council provided some of the information requested but withheld information relating to parts 7 and 8 of the request under section 43 of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner initially on 1 September 2022 to complain about the way their request for information had been handled. They contacted the Commissioner again on 14 October 2022, following the Council's internal review response to express their dissatisfaction with the Council's handling of the request.
7. During the course of the Commissioner's investigation, the Council provided the complainant with a copy of the insurance certificate, subject to the details of the insurer being redacted. It also confirmed that it considered both section 43(1) and 43(2) to apply to the withheld information.

8. Following disclosure of the redacted document the complainant asked the Commissioner to consider whether the Council held any further details relating to insurance for the event and whether the name of the insurer should be disclosed.

Reasons for decision

Section 1 – general right of access

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
11. As mentioned earlier in this notice, during the course of the Commissioner's investigation the Council disclosed a copy of the certificate of insurance for the event in question, subject to the insurer's details being redacted. Following this disclosure the complainant raised concerns that the Council may hold additional information relevant to the request. The complainant referred to the lease for the event in question which states that "the licensee agrees to provide a copy of the insurance policy to the licensor prior to the execution of the licence". The complainant considers that, if the Council does not hold full details of the insurance, then the event should not be allowed to take place on Council land.
12. The Council has confirmed to the Commissioner that the only insurance details it holds for the event is the certificate of insurance. The Council advised that the organiser of the event took the insurance details into the Council's offices and after looking at the insurance details it took a photocopy of the insurance certificate for its records. The Council confirmed that it did not take any copies of the insurance policy itself as it only required to see that appropriate insurance was in place for the event.
13. The Commissioner notes the complainant's assertion that the Council is required, under the provisions of the lease in question, to hold more information about the insurance details for the event. However, the

Commissioner is unable to consider what information a public authority *should* hold. He is limited to considering what information a public authority holds at the time a request is received.

14. The Commissioner has considered the Council's explanations for only holding the certificate of insurance and accepts its reasoning for not holding any further information relating to insurance details for the event. Therefore, his decision is that, on the balance of probabilities, the Council does not hold any further information within the scope of the request.

Section 43 – commercial interests

15. Section 43 of FOIA states:

“(1) Information is exempt information if it constitutes a trade secret.

(2) 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).”

16. The Council considers that both sections 43(1) and 43(2) applies to the withheld information.

Section 43(1) – trade secrets

17. It is generally accepted that, for information to constitute a trade secret it must fulfil the following criteria:

(i) it must be information used in a trade or business

(ii) it must be information which, if disclosed to a competitor, would be liable to cause real (or significant) harm to the owner of the secret

(iii) the owner must limit the dissemination of the information or, at least, not encourage or permit widespread publication.

18. It is the Commissioner's view that a trade secret implies that the information is more restricted than information which is commercially sensitive. It involves something technical, unique and achieved with a great deal of difficulty and investment.

19. The remaining withheld information comprises details of the company who has provided insurance for the Appleby Fair 2022, which is an annual public gathering of the gypsy traveller community. The Council contend that this kind of insurance cover is highly specialised and difficult to obtain. It pointed out that the name of the insurer is not “generally known or readily accessible within the circles that normally

deal with this kind of information”, and as such section 43(1) is engaged. The Council also stated that it did not consider that there is any overriding public interest in disclosure of the information.

20. The threshold for categorisation as a ‘trade secret’ is high, it is extremely rare for the Commissioner to find that information that has been withheld under section 43(1) engages that exemption. Based on the very limited representations provided by the Council, as detailed above, the Commissioner is not persuaded that the withheld information, ie details of the insurance company is a trade secret.
21. As the Commissioner finds that the information does not engage the exemption under section 43(1) he has gone on to consider the Council’s application of section 43(2).

Section 43 – commercial interests

22. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
23. In its submission to the Commissioner, the Council stated that it considered that disclosure “would” cause prejudice, however it then goes on to say that it considered that disclosure “would be likely” to cause prejudice.
24. The Council wrote to the complainant during the Commissioner’s investigation to confirm that it also considered section 43(1) to apply to the insurance details. Following this, the complainant wrote back to the Council and stated that:

“As previously advised we do not need the insurers name. At this stage we are more interested in the policy details and what is covered, but will allow the ICO to decide if this information should be redacted”.
25. In light of the complainant confirming they did not need the insurer’s name the Council disclosed the insurance certificate, subject to the insurers details being redacted.
26. Following disclosure of the redacted certificate of insurance to the complainant they wrote back to the Council and confirmed that they still wanted the Commissioner to determine whether the insurers details should be provided.
27. The Council pointed out that the insurance details do not relate to a tender for a public contract and there is no use of public money involved. It considers the insurance policy to be a “confidential, commercial arrangement between the insured and the insurer”. The Council also stated that its interest in the matter is purely to verify that

appropriate insurance is in place for the event in question, which takes place on Council owned land, and it is not party to the insurance policy itself.

28. The Council confirmed that it had consulted with the insured who advised that they considered their commercial interests would be prejudiced through disclosure of the withheld information. The Council re-iterated that it is difficult to obtain insurance for the event in question, however, the insured has managed to secure an insurance policy for what is considered to be a niche event. In the Council's opinion as the insured has identified an insurer in such difficult circumstances, this "sensitive, commercial arrangement should not be jeopardised or in any way put at risk".
29. The Council and the insured considers that if the withheld information is disclosed, it would enable an individual "to try and interfere with the contractual arrangements between the insured and the insurance company", which would in turn jeopardise the commercial relationship between the parties, and possibly prevent the event from taking place in the future.
30. The Council advised that the complainant has been publicly lobbying for the event in question to be run by a third party as a ticketed event, to the exclusion of the insured. In addition, the complainant has approached the Council on behalf of a community group to see if they would be able to take on the licence and run the event themselves. As anyone taking on the event would need to obtain insurance of their own, the Council considers that disclosure of the insurer's details would effectively provide any third party taking on the event with an unfair commercial advantage over the insured who has spent time and effort seeking out a suitable insurer.
31. The Commissioner accepts that as the withheld information relates to the provision of insurance cover from a commercial provider that it falls within the scope of the section 43 exemption. Although the Council advised the Commissioner that it has consulted with the third party concerned ie the insured to seek their views on disclosure, it did not provide the Commissioner with any evidence of this consultation.
32. The only information which the Council holds relevant to the request is the certificate of insurance showing details of the insurer and insured, the policy number, the purpose of the insurance, the amount of public and employers liability insurance and the dates of cover. It does not, for example, include any financial information in relation to premiums paid for the insurance cover. During the course of the Commissioner's investigation the Council disclosed the document but redacted details relating to the insurance provider.

33. The Commissioner notes the Council's comments concerning the difficulties in obtaining insurance for the event in question and that it has direct knowledge of this having sought an equivalent insurance policy several years ago. The Council has argued that disclosure would provide the complainant and any other parties wishing to run the event with an unfair commercial advantage over the insured who has spent time identifying an insurer. However the Commissioner notes that the Council does not advertise an open lease tender for the event in question but rather each year it issues a licence directly to a specific individual for the management of the land during the annual Appleby Horse Fair. As such, it appears to the Commissioner that there are little or no opportunities for any other parties to use the withheld information to their advantage to bid for future leases/events.
34. The Council considers that disclosure would allow an individual to somehow disrupt the insurance arrangements between the parties concerned. However, the Council has not explained exactly *how* an individual would be able to cause such an effect through disclosure of the information concerned. For example, even if another party approached the insurance company themselves to obtain insurance for the event, in light of the fact that the lease is not advertised it is difficult to see how such an approach would have any prejudicial effect on the commercial interests of the insured.
35. Having considered all the above, the Commissioner has concluded that, in this case, the Council has not demonstrated that section 43 is engaged. This is because it has not convincingly shown how disclosure of the withheld information would, or would be likely to prejudice the insured's commercial interests and it has also not shown that its views genuinely reflect those of the insured. Either one of these is sufficient to mean that section 43 is not engaged.
36. It follows that the Council was not entitled to rely on section 43 of FOIA to withhold the identity of the insurance company. The Council must therefore take the steps set out in paragraph 2 of this notice.

Right of appeal

37. 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

38. 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.
39. 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

Joanne Edwards
Senior Case Officer
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