

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

### **Decision notice**

**Date:** 17 April 2024

**Public Authority:** Wrexham County Borough Council  
**Address:** Guildhall  
Wrexham  
LL11 1AY

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

---

1. The complainant requested copies of the minutes of meetings of the Safety Group held to discuss safety issues at Wrexham Association Football Club matches. Wrexham County Borough Council (the Council) withheld the information requested under sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) (prejudice to effective conduct of public affairs) of the FOIA.
2. The Commissioner's decision is that the Council has correctly applied sections 36(2)(b)(i) and 36(2)(b)(ii) of the FOIA to the request.
3. The Commissioner has also determined that that the Council breached section 10(1) by failing to confirm that the requested information was held, and section 17(1) by failing to issue a valid refusal notice within 20 working days.
4. The Commissioner does not require any steps to be taken.

#### **Request and response**

---

5. On 21 September 2023 the complainant wrote to the Council and requested information in the following terms:

"I request copies of minutes of Safety Group meetings held to discuss safety at Wrexham AFC matches prior to and during the first 2 months of season 23/24".

6. The Council issued a refusal notice on 23 November 2023 stating that the information requested was exempt under sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) of the FOIA.
7. On 23 November 2023 the complainant requested an internal review of the Council's refusal to disclose the information requested.
8. The Council provided the outcome of its internal review on 7 December 2023 and upheld its decision that sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) of the FOIA applied to the request.

### **Scope of the case**

---

9. The complainant contacted the Commissioner on 20 December 2023 to complain about the way their request for information had been handled.
10. The scope of the Commissioner's investigation is to consider the Council's application of sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) to the request.

### **Reasons for decision**

---

#### **Section 36 – prejudice to the effective conduct of public affairs**

11. Section 36 of the FOIA states that information is exempt where, in the reasonable opinion of a qualified person, disclosure would or would be likely to prejudice the effective conduct of public affairs. Section 36 operates in a slightly different way to the other prejudice based exemptions in the FOIA. Section 36 is engaged, only if, in the reasonable opinion of a qualified person, disclosure of the information in question would, or would be likely to, prejudice any of the activities set out in sub-sections of 36(2).
12. Sections 36(2)(b)(i) and (ii) provide that information is exempt if its disclosure would, or would be likely to, inhibit the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation. Section 36(2)(c) provides that information is exempt if its disclosure would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
13. In this case the Council has applied all three 'limbs' of section 36 to the withheld information.

### **Are the exemptions engaged?**

14. In order to establish whether any of the exemptions under section 36(2) have been applied correctly the Commissioner has:
  - Ascertained who is the qualified person (QP) or persons for the public authority in question;
  - Established that an opinion was given;
  - Ascertained when the opinion was given; and
  - Considered whether the opinion given was reasonable.
15. The Council provided the Commissioner with a copy of the submission put to its QP, the Chief Officer Governance and Customer/Monitoring Officer. The submission dated 22 November 2023 indicated that the QP signed their agreement to the submission which indicated that the level of prejudice claimed was the lower threshold of "would be likely".
16. The Commissioner is satisfied that the Chief Officer Governance and Customer/Monitoring Officer is authorised as the QP under section 36(5) of the FOIA. The Commissioner also notes that the QP was provided with copies of the withheld information with the submission.
17. The Commissioner has gone on to consider whether the QP's opinion is reasonable. It is important to highlight that it is not necessary for the Commissioner to agree with the opinion of the QP in a particular case. The opinion also does not have to be the only reasonable opinion that could be held or the most reasonable opinion. The Commissioner only needs to satisfy himself that the opinion is reasonable or, in other words, it is an opinion that a reasonable person could hold.

### **Sections 36(2)(b)(i) and (ii)**

18. The Council advised that the Safety Advisory Group's (SAG) role is to provide specialist advice so that the Council is able to discharge its statutory functions under the Safety of Sports Grounds Act 1975 and/or Fire Safety and Safety of Places of Sport Act 1987. The SAG consists of members from a number of different agencies such as North Wales Police, Wrexham AFC, North Wales Fire and Rescue Services, Wales Ambulance Service Trust and the Sports Ground Safety Authority. The members of the SAG share their expertise and provide professional advice to the SAG.
19. The Council contends that the SAG provides an essential forum within which itself and other agencies can develop a corporate approach to safety issues at sports grounds, whilst allowing each organisation to be able to exercise its own responsibilities. Discussions at SAG meetings

are confidential and include conversations around sensitive matters including safety issues at a ground, anti-social behaviour, proposed future developments and financial issues at a ground.

20. In order for the SAG to operate effectively, members need to be able to provide professional advice openly and honestly without fear of disclosure into the public domain. Members also need to be able to challenge other members of the group as this in turn ensures that robust, effective and proportionate safety plans are in place.
21. The QP considers that disclosure of the withheld information would be likely to inhibit the ability of members of the SAG to “express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation”. The QP argues that any inhibition that is caused to the way that members of the SAG provide advice and exchange views would impair the quality of decision making around safety issues at the sports ground. This in turn could have a detrimental effect on public safety.

### **Section 36(2)(c)**

22. With regards to section 36(2)(c), the QP considers that disclosure would otherwise prejudice the effective conduct of public affairs because:

“The Safety Advisory Group are carrying out particular functions in relation to legislation relating to the safety at a large sports ground which attracts over 10,000 people collectively to events. The release of safety information including plans for how events are organised would not just be to the complainant but to the world at large. This information could easily be used by for example, opposing supporter groups, organised criminals and those seeking to cause disruption to mass public events i.e. events are potential targets for disruption if safety plans are public”.

### **The Commissioner’s position**

23. With regards to sections 36(2)(b)(i) and (ii), the Commissioner accepts that it was reasonable for the QP to consider that there was a need to protect the confidentiality of discussions and deliberations between members of the SAG. He is further satisfied that the QP’s opinion - that inhibition would be likely to occur through disclosure of the withheld information - was reasonable. He is therefore satisfied that these exemptions are engaged in respect of the withheld information.
24. In order for section 36(2)(c) to also apply, the prejudice envisaged must be different to that covered by any other exemption. The fact that

section 36(2)(c) uses the phrase "otherwise prejudice" means that it relates to prejudice not covered by section 36(2)(a) or (b).

25. In this case, it is the Commissioner's view that the QP's opinion is not reasonable, as there is no causal link demonstrated between the withheld information and the ability of the Council to offer an effective public service. The QP's opinion mentions nothing about the Council's public services being compromised through disclosure. Rather, the Council's arguments in respect of section 36(2)(c) relate more to public safety concerns as opposed to any impact on Council services.
26. In light of the above, the Commissioner finds that the exemption at section 36(2)(c) is not engaged.
27. Section 36 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. As the Commissioner has accepted that sections 36(2)(b)(i) and 36(2)(b)(ii) are engaged he has gone on to consider the public interest test.

### **Public interest test**

28. The Council acknowledges that there is a public interest in openness and transparency in its operations in order that the public are able to see how advice and information is considered and decisions are made.
29. The complainant considers that there is a significant public interest in disclosure as the information affects the safety of thousands of football fans. They consider that the public are entitled to know whether the members of the SAG are competent in licensing the venue to ensure the safety of fans.
30. The complainant pointed out that Wrexham AFC has recently installed a temporary stand which accommodates up to 2,900 fans. They allege that the stand has been erected very quickly and as such the public are entitled to know that the temporary stand is safe and properly licensed by the Council. They consider that withholding the information requested goes against recommendations made since the Hillsborough disaster in 1989.
31. In relation to the public interest in maintaining the exemptions the Council pointed out that the SAG discusses various issues and strategies around security and policing. Any inhibition on the provision of advice and the exchange of views relating to security and safety matters may result in crucial issues not being brought to the attention of the SAG and this could mean that public safety is compromised.

32. In their internal review the complainant expressed the view that there is a significant public interest in disclosure as it relates to thousands of football fans "whose human rights are affected by the decisions of a small group of anonymous who face no scrutiny or accountability". The Council contends that a major factor in maintaining the confidentiality of discussions that take place at SAG meetings is because so many members of the public are affected. It argues that if SAG meeting minutes were made publicly available the safety of the public at a mass event could be easily compromised by a minority who would seek to use the information to disrupt and possibly cause harm to a large public group.
33. The Council pointed out that the public events which are discussed at SAG meetings are large ongoing events, which include home fixtures of Wrexham AFC which occur on a regular basis during the football season. As such, the Council considers that discussions and the sharing of information at SAG meetings relate to live ongoing issues which continue from year to year of the football season, as well as other large scale events which take place at the venue, such as music concerts.
34. When considering complaints regarding the application of the exemptions at section 36(2)(b), where the Commissioner finds that the qualified person's opinion was reasonable he will consider the weight of that opinion in applying the public interest test. This means that the Commissioner accepts that a reasonable opinion has been expressed that prejudice or inhibition would, or would be likely to, occur. However, he will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming his own assessment of whether the public interest test favours disclosure.
35. The Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of information held by public authorities. This assists the public in understanding the basis of how public authorities make their decisions and carry out their functions, and in turn fosters trust in public authorities. Disclosure in this case would allow the public to scrutinise the basis of decisions made in relation to safety and security matters affecting the venue.
36. In the circumstances of this case, the Commissioner accepts that there is a need for a safe space to provide advice and exchange views, free from external comment and examination. The Commissioner considers the public interest in good decision-making by the Council in respect of safety matters associated with the venue to be a compelling argument in favour of maintaining the exemption. Having considered the withheld information and the representations provided by the Council, the Commissioner accepts that disclosure would impact on the effectiveness

of SAG meetings and has the potential to affect the security and safety of the public attending events at the venue.

37. The Commissioner considers that the withheld minutes contain very candid and open discussions in some very sensitive areas. He considers that it is in the public interest not to hamper the candour of such discussions which are important to improve safety and security matters at the venue. The Commissioner also notes that the requested minutes were very recent at the time the request was made and therefore the issues discussed were live and ongoing. The Commissioner has also taken into account the fact that the venue is used on a very regular basis for football matches during the football season and for other ad hoc events such as concerts. He considers that these factors add greater weight to the public interest arguments in favour of maintaining the exemption.
38. The Commissioner has assessed the balance of the public interest. He has weighed the public interest in avoiding the inhibition of the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation against the public interest in openness and transparency. His conclusion is that the public interest in avoiding this inhibition is a relevant factor and he considers that the public interest in maintaining the section 36(2)(b)(i) and (ii) exemptions outweigh the public interest in disclosure. The Commissioner therefore finds that the Council was entitled to rely on sections 36(2)(b)(i) and (ii) to withhold the information requested.

## **Procedural Matters**

---

39. Section 10(1) of the FOIA obliges the authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
40. Section 17(1) obliges the authority to issue a refusal notice in regard to any exempt information within the same timescale.
41. The Council failed to provide a valid response to this request until after 20 working days had passed, due to this it breached sections 10(1) and 17(1).



## **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](mailto:grc@justice.gov.uk)

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

**Joanne Edwards**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**