

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2014

Public Authority: Hackney Council
Address: Town Hall,
Mare Street,
London E8 1EA

Decision (including any steps ordered)

1. The complainant has requested information from Hackney Council on the fee and its method of calculation received from Future Cinema for an event held on Hackney Downs from 26 August to 5 September 2013.
2. The Commissioner's decision is that the information requested is environmental and therefore Hackney Council should have dealt with the request under the Environmental Information Regulations 2004 (the EIR) and not the Freedom of Information Act 2000 (the FOIA).
3. The Commissioner requires Hackney Council to take the following steps to ensure compliance with the legislation.
 - Reconsider and respond to the complainant's request dated 4 September 2013 under the EIR.
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

5. On 4 September 2013 the complainant wrote to Hackney Council (the council) and requested information in the following terms:

"I would like to request the following information concerning the use of Hackney Downs for the Future Cinema 'Dirty Dancing' event held 26/08/2013 to 05/09/2013:

- 1. Total amount received by the Council for the use of Hackney Downs for the event*
 - 2. Total of any costs borne by the Council in connection with the event*
 - 3. Explanation of how the fee charged was calculated i.e., how was it derived from area used, size of audience, duration etc."*
6. The council responded on 13 December 2013 and stated that in relation to questions 1 and 3 of the request the information was commercially sensitive and disclosure would prejudice any future negotiations with individual event organisers. In relation to question 2 of the request it stated that no direct costs were borne by the council.
7. On 12 January 2013 the complainant requested an internal review as he was dissatisfied with the council's response.
8. Following an internal review the council wrote to the complainant on 12 May 2014. It clarified that it was withholding the information covered by questions 1 and 3 of the request under section 43(2) of the FOIA on the basis that disclosure would be likely to prejudice its commercial interests and those of the event organiser with which it contracted. In relation to question 2 of the request, it reiterated that no direct costs were borne by the council.

Scope of the case

9. The complainant contacted the Commissioner on 19 May to complain about the way his request for information had been handled and on 29 May 2014 confirmed that he was happy limit the scope of his complaint to the council's response to questions 1 and 3 of his request.

Chronology

10. The Commissioner wrote to the council on 3 June 2014. He requested a copy of the withheld information together with any further arguments it wished to advance in support of its application of section 43(2) of the FOIA and any evidence of the prejudice disclosure would be likely to occur to the commercial interests of the event organiser. The Commissioner also requested clarification as to whether there was any reference in the council's annual or other accounts or on its website to the income received from the event organiser.
11. The council responded on 1 July 2014 with a copy of the withheld information and provided further arguments in respect of its reliance on section 43(2) of FOIA. It also sent evidence in relation to the prejudice disclosure would cause to the event organiser's commercial interests and clarified that any income received for Hackney Downs would be included in its final Statement of Accounts for 2013/14¹ but not specifically mentioned.
12. The Commissioner replied to the council on 2 July 2014 with some further questions in relation to the withheld information and invited to consider whether it was 'environmental' and therefore covered by the Environmental Information Regulations (the EIR) as opposed to the FOIA.
13. The council responded on 11 July 2014 and stated it did not consider that the withheld information was 'environmental' and therefore covered by the EIR.

Reasons for decision

Is the requested information 'environmental'?

14. The first question for the Commissioner to consider is whether the requested information is 'environmental' and therefore covered by the EIR as opposed to the FOIA.
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¹ <http://www.hackney.gov.uk/Assets/Documents/statement-of-accounts-2013-2014.pdf>

Regulation 2(1) of the EIR

15. Regulation 2(1) of the EIR defines 'environmental information' as any information in any material form on:

'(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements; (d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).'

16. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.

17. The Commissioner has referred to the council's website² for general information regarding the holding of an event in one of its parks or open spaces. This information makes it clear that when applying to hire one of the council's parks or open spaces an applicant must sign its standard 'Terms and Conditions for Hire of Parks and Open Spaces'.³ The section headed 'Payment' gives details of the charges the council may request. These include a 'hire fee' and a 'bond'. The council's website states that the hire fee 'will vary depending on the number of people attending, the type of event and type of group organising it. Furthermore, the fee will cover the hire of the park or open space for the actual event days as well as any set up and dismantling before and after your event'. The website goes on to state that the 'refundable bond is required to ensure any damage caused as a result of the event occurring can be resolved and that litter which has not been properly managed by the organiser can be cleared by our Waste Management Department when the event has vacated the site. The Bond is fully refundable providing there is no damage or waste issues'.
18. In this case the Commissioner has seen the requested information and notes that it includes the hire fee, the refundable bond, confirmation that the event organiser signed the council's 'Terms and Conditions for Hire of Parks and Open Spaces'⁴ and correspondence on the fee negotiations.
19. The Commissioner considers that the requested information is environmental in that it is a 'measure' on the state of the 'elements' namely land, under Regulations 2(1)(c) and 2(1)(a) of the EIR.
20. As the information is environmental, it is excluded from consideration under the FOIA by virtue of section 39.
21. The Commissioner therefore requires the council to reconsider the complainant's request under the EIR.

² <http://www.hackney.gov.uk/park-events.htm>

³ <http://www.hackney.gov.uk/Assets/Documents/Green-space-hire-terms-and-conditions.pdf>

⁴ <http://www.hackney.gov.uk/Assets/Documents/Green-space-hire-terms-and-conditions.pdf>

Right of appeal

22. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

Rachael Cragg
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