

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

### **Decision notice**

**Date:** 19 December 2022

**Public Authority:** Bassetlaw District Council  
**Address:** 17B The Square  
Retford  
Notts  
DN22 6DB

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

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1. The complainant has requested information from Bassetlaw District Council regarding the event "Uplift Retford." The council withheld the requested information under section 41(1) (information provided in confidence) of the FOIA.
2. The Commissioner's decision is that the Bassetlaw District Council was not entitled to withhold the requested information under section 41(1).
3. The Commissioner requires Bassetlaw District Council to take the following steps to ensure compliance with the legislation.
  - Disclose the withheld information, subject to any necessary redactions of personal data.
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 29 September 2021 the complainant requested information from Bassetlaw District Council ("the council") in the following terms:

"Please send me:

1. Provide an electronic copy of any agreement of MoU between ASICs and Bassetlaw Council with regards to the event – Uplift Retford, held on 25 September 2021.
2. Provide an electronic copy of any agreement MoU or meeting minutes between ASICs and Bassetlaw Council with regards to post event support for Retford. I draw your attention to this ASIC's media statement:

"Elaborating on the legacy Asics hopes for, Raucher explains it will leave behind an infrastructure – both physically and mentally – that will encourage the local community to keep moving, even after evening falls on the event.

We know that there are some tennis courts and also a running track that is in need of some repair, so we're working with the council to really make sure that this isn't just a one off event, but that we're making a commitment to helping people uplift their minds on an ongoing basis."

3. I draw your attention to the ASICs media statement below. Please provide electronic copies of initial ASICs / Bassetlaw Council communication following completion of this survey highlighting Retford. This could be emails or minutes of meetings.

"Following the research, the Asics State-of-Mind Index identified Nottinghamshire as the English county that most wanted a mental uplift (80%), with the small town of Retford being reported as one of the most motivated to improve their emotional and mental wellbeing."

4. Please give details of any financial contribution made to Bassetlaw Council by ASIC's prior to the Uplift Retford Event, during or post event. To include amount of financial contribution made and in what form."

6. The council responded on 3 November 2021. It refused to provide the requested information. It cited the exemption at section 41(1)

(information provided in confidence) of the FOIA, as the basis for the refusal.

7. The complainant requested an internal review on 5 November 2021.
8. The council sent the outcome of its internal review on 29 December 2021. It upheld its original position.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 24 December 2021 to complain about the way his request for information had been handled. Specifically disputing the application of section 41(1) to the requested information.
10. The scope of this case is to determine whether the council was entitled to rely on section 41(1) to withhold the information requested by the complainant.

### **Reasons for decision**

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#### **The withheld information**

11. The Commissioner has had very poor engagement from the council in regard to this case.
12. It is standard practice for the Commissioner to request a copy of the withheld information when investigating a FOIA complaint. However, despite repeated requests, the council has failed to provide the withheld information to the Commissioner for his review.
13. The Commissioner notes that the council confirmed to the complainant, in its response of 3 November 2021, that it holds information in scope of all four questions.
14. This decision notice therefore relates to all of the information held by the council which is in scope of the four request questions.

#### **Section 41(1) – Information provided in confidence**

15. Section 41(1) of the FOIA states that:

Information is exempt information if–

- (a) it was obtained by the public authority from any other person (including another public authority), and

- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
- 16. The council has not responded to the Commissioner's investigation questions regarding the application of section 41(1) to the requested information.
- 17. In his enquiries to the Council, the Commissioner asked it to identify which third party provided it with the withheld information.
- 18. As the council has not responded to the Commissioner's questions, nor provided a copy of the withheld information, the Commissioner has been unable to verify whether it was obtained from "any other person".

**Would disclosure constitute an actionable breach of confidence?**

- 19. Whilst it is not the only test for establishing confidence, the Commissioner finds that the appropriate test for this case is that which is set out in the case of "Coco v Clark [1969] RPC 41". According to the decision in this case a breach of confidence will be actionable if:
  - i. The information has the necessary quality of confidence;
  - ii. The information was imparted in circumstances importing an obligation of confidence; and
  - iii. There was an unauthorised use of the information to the detriment of the confider.
- 20. All three elements must be present for a claim to be made. However, for that claim to be 'actionable' within the meaning of section 41(1)(b), a public authority must establish that an action for breach of confidence would, on the balance of probabilities, succeed. This requires consideration of whether or not there would be a public interest defence to such a claim.
- 21. In response to the Commissioner's investigation, the council provided a copy of a "Non Disclosure Agreement". It provided no arguments to explain the application of the exemption.
- 22. In order to determine whether the test for establishing confidence has been satisfied, the Commissioner would need to review the council's arguments in conjunction with the withheld information. The council has failed to provide any evidence to the Commissioner for his consideration, nor a copy of the withheld information.

23. The council has not provided compelling evidence that prejudice would be likely to occur. As this test is not met, there is no requirement for the Commissioner to proceed any further.
24. On this basis the Commissioner finds that the exemption at section 41(1) is not engaged.
25. The Commissioner requires the council to disclose the withheld information, subject to any necessary redactions of personal data.

## Right of appeal

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26. 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)

27. 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.
28. 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 .....**

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