

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 December 2022

Public Authority: Bristol City Council
Address: The Council House
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant has requested information about a Council vote. Bristol City Council ('the Council') refused the request, citing sections 36(2)(b)(i) and (ii) and section 42(1) of FOIA which concern prejudice to effective conduct of public affairs and legal professional privilege respectively.
2. The Commissioner's decision is that the Council was entitled to rely on sections 36(2)(b)(i) and (ii) to refuse the request. However, by failing to refuse the request within 20 working days, the Council breached section 17(1) of FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 12 February 2022, the complainant made the following request for information to the Council:

"A letter dated 11 February 2022, and signed by the Monitoring Officer and Director of Finance, was sent to councillors about how to vote at the forthcoming Bristol City Council budget full council meeting(s).

Please provide:

- a copy of the letter
 - all previous drafts of the letter with suggested amendments and associated correspondence
 - details of meetings (in person, online or telephone) with agendas, minutes and papers relating to the letter, and names of those in attendance
 - copies of all emails, attachments and other correspondence relating to the letter involving Bristol City Council officers, the Mayor and his advisors, cabinet members, councillors, 'city partners', and/or members of the Mayor's office."
5. On 1 April 2022 the Council refused the request, citing sections 36(2)(b)(i) and (ii), and section 42(1) of FOIA, upholding this position following its internal review.

Reasons for decision

Section 36 – Prejudice to effective conduct of public affairs

6. The Council has acknowledged that part of the requested communication to Councillors, providing them with advice on how to vote for the budget, was leaked and published on the website 'The Bristolian'. However, the Council says that it did not release into the public domain the full correspondence sent to the Councillors and so it continues to rely on section 36(2)(b) in respect of the requested information.
7. Under sections 36(2)(b)(i) and 36(2)(b)(ii) of FOIA, information is exempt information where, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, inhibit the free and frank provision of advice and the free and frank exchange of views.
8. Information may be exempt under sections 36(2)(b)(i) and (ii) if its disclosure would, or would be likely to, inhibit the ability of public authority staff, and others, to express themselves openly, honestly and completely, or to explore a range of options, when providing advice or giving their views as part of the process of deliberation.
9. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a qualified person. The Commissioner is satisfied that, in this case, the Council's Monitoring Officer is authorised as the qualified person (QP) under section 36(5) of FOIA, that he gave the opinion that the exemptions were engaged and gave the opinion at the appropriate time. 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 about a vote on the Council's budget.

10. The QP's opinion was that the envisioned prejudice **would** occur through disclosure of the withheld information. The Commissioner does not consider that there is sufficient evidence to support this but he will accept that the envisioned prejudice would be likely to occur, and that there was a more than a hypothetical or remote possibility of prejudice occurring. He is therefore satisfied that the exemptions were engaged correctly.
11. When considering whether the public interest favours maintaining the exemptions or disclosing the requested information, the Commissioner has taken account of the age of the requested information (the letter in question is dated 11 February 2022, ie the date before the request was submitted) and that the matter of the vote and Council meeting was still 'live' at the time of the request. The Council needed to be able to discuss the vote in question and the associated Council meeting, which was upcoming. If contributors were concerned that these discussions might be made public, the resultant loss of frankness and candour in the course of discussions and deliberations would be likely to damage the quality of advice to decision makers, and thus inhibit the Council's ability to make informed decisions relating to the matter of the vote and the Council meeting.
12. The Commissioner considers the public interest in good decision-making by the Council to be a compelling argument in favour of maintaining the exemption. He acknowledges that the public interest in transparency would be served if the information were disclosed and, with regard to the partial information that has been published, disclosure might present 'the full picture'. However, on balance the Commissioner finds the public interest in protecting the Council's access to unfiltered and frank advice on an ongoing voting matter be the stronger argument.
13. Consequently, and irrespective of the information that was leaked and published, the Commissioner is satisfied that the public interest favours maintaining the exemptions. It follows that his decision is that the Council was entitled to rely on sections 36(2)(b)(i) and (ii) of FOIA to refuse the request.
14. In light of this decision, he has not gone on to consider the Council's application of section 42(1) of FOIA to the information.

Procedural matters

15. Under section 17(1) of FOIA a public authority must issue a refusal notice in respect of any exempt information within 20 working days following the date of receipt of a request. In this case, the complainant submitted their request on 12 February 2022 and did not receive a refusal notice until 1 April 2022. The Council therefore breached section 17(1) of FOIA.

Right of appeal

16. 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

17. 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.
18. 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:

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF