

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

### **Decision notice**

**Date:** 17 May 2022

**Public Authority:** Blackpool Borough Council

**Address:** Town Hall  
Blackpool  
FY1 1NA

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

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1. The complainant requested information from Blackpool Borough Council ("the Council") about how it arranges leaseholders buildings cover, specifically a copy of the Council's contract with its insurance broker, Thomas Sagar Insurances Limited (Sagar). The Council initially refused to provide a copy of the contract with Sagar on the basis of prejudice to commercial interests under section 43(2) of FOIA, however, following the intervention of the Commissioner it disclosed a redacted version of the contract. The Council continued to withhold some information within the contract under section 43(2) of FOIA.
2. The Commissioner's decision is that the Council has correctly relied on section 43(2) of FOIA and that the balance of the public interest favours maintaining this exemption.
3. The Commissioner does not require further steps.

#### **Background**

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4. It should be noted that Sagar's contract with the Council is as an insurance broker, not as an insurer. Under the agreement Sagar obtains quotations from the market and provides ongoing support throughout the duration of the contract.

5. Via Sagar, the Council procures buildings insurance for approximately 400 leasehold properties managed by Blackpool Coastal Housing, which is paid for by Blackpool Coastal Housing, who in turn invoice the leaseholders for their proportion of the premium. Blackpool Coastal Housing is an Arm's Length Management Organisation of the Council which provides social housing.
6. In this context, leasehold is like a very long tenancy. The lease gives the leaseholder the right to live in their home for a fixed number of years, usually up to 125. Blackpool Council is their legal landlord and Blackpool Coastal Housing manages their home on behalf of the Council.

### **Request and response**

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7. On 31 January 2021, the complainant wrote to the Council and requested information in the following terms:

"could you please send me a copy of the long term agreement taken out in 2019 for the period 2020 to 2023 with Thomas sagar for leaseholders buildings insurance also can you please send me a copy of the long term agreement for the period prior to the dates above.and if section 20 notices were issued to leaseholders for the agreement 2020 to 2023 and the period prior to this"
8. The Council responded on 11 February 2021. It refused to provide a copy of the contract with Sagar. It cited the commercial interests exemption under section 43 of the FOIA as its basis for doing so. It also confirmed that no notices had been issued to leaseholders under section 20 of the Landlord and Tenant Act 1985
9. Following an internal review the Council wrote to the complainant on 15 March 2021. It upheld its original position, refusing to provide the requested information on the basis of the commercial interests exemption under section 43 of FOIA.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 6 June 2021 to complain about the way his request for information had been handled.
11. Subsequently, following the intervention of the Commissioner, the Council disclosed a redacted copy of the agreement. Some of the redacted information was withheld on the basis of the commercial

interests exemption under section 43 of FOIA, some on the basis of the personal information exemption under section 40 of FOIA.

12. The complainant believes the information withheld under section 43 of FOIA should be disclosed. This information comprises the fees and payment schedule and Sagar's successful submission to the quotation exercise, which is also included within a schedule of the contract.
13. The following analysis focuses on whether the Council has correctly relied on section 43(2) of FOIA to withhold the fees and payment schedule and Sagar's successful submission to the quotation exercise.

## **Reasons for decision**

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### **Section 43(2) – prejudice to commercial interests**

14. Section 43(2) provides that –

“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).”

15. In order for a prejudice-based exemption, such as section 43, to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice, which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

Does the information relate to a person's commercial interests?

16. The Council argues that disclosure of the requested information would be likely to prejudice the commercial interests of Sagar and its own commercial interests.
17. The term 'commercial interests' is not defined in FOIA; however, the Commissioner has considered his guidance on the application of section 43<sup>1</sup>, which clarifies that: "A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent."
18. The Council argues that the withheld information, which constitutes the fees and payment schedule and the successful bid which now forms part of the contract between the Council and Sagar is inherently commercial in nature.
19. The Commissioner accepts that the interests in question are the commercial interests of the Council and of Sagar

The causal relationship

20. Regarding the commercial interests of Sagar, the Council argues that disclosing the insurance broker's fees/charges and successful submission into the public domain, would be likely to prejudice Sagar's commercial interests. It argues that this specific information being readily available to competitors would undermine Sagar's position in future quotation exercises. The Council also confirmed that it sought the views of Sagar which concurred with the Council's view.
21. Regarding its own commercial interests, the Council argues that if it was to routinely disclose commercial information relating to successful submissions, this would dissuade some organisations from partaking in future exercises as they would be concerned about the possibility of their commercial information being disclosed and that this could undermine their position in other exercises.
22. The Council also argues that disclosure of the information would be likely to be detrimental to its ability to achieve best value for money in future negotiations in similar circumstances.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-43-commercial-interests/>

23. The Commissioner is satisfied that a causal relationship exists between the disclosure of the information and the prejudice to commercial interests that the council described.

The likelihood of the prejudice occurring

24. The Council argued that a disclosure of the information 'would be likely' to cause the prejudice it had foreseen. The Commissioner has therefore considered whether the chance of prejudice occurring meets the threshold of being a real and significant risk.
25. The Commissioner has considered the commercial interests of each relevant party and considers that the Council's arguments are persuasive. He accepts that the prejudice foreseen by it would be likely to occur at points in the future if this information were to be disclosed.

The Commissioner's conclusions

26. The Commissioner has decided that the Council is correct in that section 43(2) is engaged by the withheld information. Since it is a qualified exemption, he must therefore go on to consider the public interest test required by section 2 of the Act.

**The public interest**

27. The test, as set out in section 2(2)(b), is whether "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information".

The public interest in the disclosure of the information

28. The Council recognised that there is a general public interest in transparency.
29. More specifically, there is a public interest in understanding why the Council chose to enter into a specific agreement which affects a large number of individuals. In this case the agreement to use a particular broker may ultimately have some effect on the insurance premiums paid by leaseholders and therefore the costs incurred by a large number of social housing residents in the area.

The public interest in the exemption being maintained

30. The Council argues that disclosure of the information would be likely to be detrimental to its ability to achieve best value for money in future negotiations in similar circumstances and that maintaining a fair and competitive market is in the interest of all parties, including the public

and the leaseholders and that this public interest outweighs that in general transparency.

The Commissioner's analysis

31. The Commissioner recognises that there is a general public interest in the disclosure of information in order to provide transparency to the public about the activities of public authorities.
32. He also recognises that there is some public interest in understanding why the Council chose to enter into this specific agreement which may affect the premiums paid by leaseholders and therefore the costs incurred by a large number of social housing residents in the area.
33. However, he notes that the agreement itself does not set this premium, it is merely an agreement to use a specific insurance broker, therefore although this agreement may affect the premiums paid, there is no evidence to suggest that this effect is likely to be significant.
34. In addition, the Commissioner has already acknowledged that the envisaged prejudice would be likely to occur. He considers that the Council's arguments are strong in identifying likely issues which would arise from a disclosure of the withheld information. These issues would be likely to affect its commercial negotiations in the future, and as a result, would be likely to be detrimental to its ability to achieve best value for money in future negotiations with insurance brokers. This would not be in the public interest.
35. For this reason, the Commissioner's decision is that the public interest in the exemption being maintained outweighs that in the information being disclosed on this occasion. The council was not, therefore, obliged to disclose the requested information.

## Right of appeal

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36. 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@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)

37. 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.
38. 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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**