

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2023

Public Authority: Ards and North Down Borough Council
Address: City Hall
The Castle
Bangor
BT20 4BT

Decision (including any steps ordered)

1. The complainant has requested a copy of the final agreed proposal from an independent marketing company, namely Social Market Research ("SMR"), used in respect of market research for the now withdrawn Kinnegar to Donaghadee Greenway proposal. Ards and North Down Borough Council ("the Council") disclosed some of the information to the complainant but withheld the methodology section of SMR's Quotation Submission by virtue of section 43(2) of FOIA.
2. The Commissioner's decision is that the Council was correct to withhold the information under section 43 of FOIA. He does not require the public authority to take any further steps.

Request and response

3. On 16 December 2023, the complainant wrote to the Council and requested information in the following terms:

"The following is requested under FOI. During a recent email conversation with [name redacted] I was informed of a survey carried out with regard to the coastal path development. So can I request the following [sic].

1. A copy of final agreed proposal from the independent marketing company used

2. A copy of the list of questions asked
3. The dates, locations and times where the questions were asked
4. A breakdown of all monies spent on this PR exercise

If there is clarification required on what survey I mean just in case there were others I am not aware of, please contact [name redacted] to ensure information for the correct survey is supplied. As usual an acknowledgement of this email is requested.”

4. The Council responded on 18 January 2023 and provided information in respect of question 2, 3 and 4 above. However, it withheld information relating question 1 regarding SMR's methodology section.
5. Following an internal review, the Council wrote to the complainant on 9 February 2023 and maintained its original position to withhold the information under section 43(2) of FOIA.

Reasons for decision

6. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
7. The Commissioner's guidance states 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.
8. The withheld information relates to the methodology section of SMR's quotation submission. The Council explained that the methodology section of SMR's quotation submission sets out how SMR will deliver the contract for the Council. It confirmed that the methodology sets out how SMR would conduct the market research work that the Council was seeking to procure and provides an insight into SMR's approach to such work, which would be valuable to other economic operators in the same market competing for similar work in future. The Council considers that the methodology constitutes information which is commercial in nature.
9. In relation to the prejudice, the Council's view is that the disclosure of the information to the world at large would be likely to prejudice SMR's commercial interests. It argues that disclosure would provide competitors with an insight into SMR's approach to submitting quotations for similar work and unfairly prejudice their competitiveness.
10. It considers that the information contained within the methodology would be useful to SMR's competitors in gaining an understanding of SMR's

approach to delivering a market research project, which could be utilized by competitors when competing for similar work in that market.

11. In the Council's submissions to the Commissioner, it explained that SMR objected to the disclosure of the methodology as it considered that a full disclosure would potentially provide their competitors with insight into its approach to responding to research tenders which could compromise its ability to compete fairly for other tenders. The Council explains that within SMR's objection, it advised that paragraphs 1.2 and 1.3 on page 4 of the report published within the agenda to the Council's 11 January Community Wellbeing Committee meeting sets out an overview of the methodology. The Council says SMR also advised that pages 42 and 43 of the report provides information on Resident Survey Sampling and Profiling and information on User Survey Sampling Profile, which is publicly available on the Council's website.
12. The Council concludes that considering SMR's objection, it believes this would be likely to prejudice SMR's competitiveness and provide other economic operators with an unfair advantage. It maintains that there is a real and significant risk that this prejudice would occur.
13. The Commissioner has considered the arguments provided by the Council. He is satisfied that the harm identified relates to the interests that section 43(2) is designed to protect. Furthermore, the Commissioner is satisfied that there is a causal link that exists between disclosure and the prejudice that the Council envisages. Finally, the Commissioner accepts the Council's position that the envisaged prejudice would be likely to occur.
14. Therefore, the Commissioner's decision is that the Council was entitled to apply section 43(2) to the withheld information, and he will go on to consider the associated public interest.

Public interest test

15. The exemption at section 43 of FOIA is subject to the public interest test as set out in section 2(2)(b) of FOIA. Therefore, the Commissioner has also considered whether in all the circumstances of this case the public interest in maintaining the exemption at section 43(2) outweighs the public interest in disclosing the withheld information.
16. The Commissioner has considered the arguments provided by the complainant in their complaint of 17 March 2023 in which they listed the public interest arguments they considered to be relevant in this matter. In addition, they have also provided a detailed background to this matter, all of which the Commissioner will take into account.
17. The Council recognises the public interest in transparency and accountability in its procurement activities for the market research itself and in the withdrawn Kinnegar to Donaghadee Greenway. It recognises a significant public interest in understanding how the market research

was conducted owing to the estimated cost of the development of the proposed greenway and the nature of the proposed works along the existing North Down coastal path. The Council says that recognising this public interest, it held three public information meetings in early 2023 to discuss the proposed greenway. It confirmed that a director of SMR attended the three meetings to provide information on the greenways report dated 21 December 2022.

18. In its public interest arguments in favour of maintaining the exemption, the Council contends that there is a strong public interest in maintaining the integrity of procurement exercises to ensure that no economic operator is disadvantaged in future procurement exercises in that marketplace, by providing competitors with an insight into their approach to delivering a market research project.
19. The Council says that it also recognises that there is a public interest in ensuring an economic operator remains able to compete fairly in the marketplace and not be adversely affected by information being disclosed to the world at large which would assist other economic operators. The Council contends that greater weight must be given to the potential harm that would be done to the contractor.
20. The Commissioner has considered the arguments before him. To summarise the complainant's arguments, they contend that there is a strong public interest due to the cost of the proposed coastal path development, the questions surrounding the misuse of public funds and concerns surrounding bias with the survey. Whilst the Commissioner understands these arguments and the wider context, he is satisfied that the Council has demonstrated accountability with the information in the public domain and through public information meetings held in early 2023.
21. The Commissioner agrees that there is a strong public interest in maintaining the integrity of the procurement exercises in which the Council engages and to ensure fair competition that will not adversely undermine economic operators within the marketplace. In the Commissioner's view, the disclosure of such information could potentially undermine the Council's future engagements in seeking competitive tenders, if competitors feel that their commercial interests could be undermined. He also considers that the wider issues surrounding this matter will not be solved by the release of the methodology section of SMR's quotation submission. On this basis, the Commissioner considers that the public interest lies in maintaining the exemption.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

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