

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

### **Decision notice**

**Date:** 19 December 2023

**Public Authority:** Monmouthshire County Council  
**Address:** County Hall  
The Rhadyr  
Usk  
NP15 1GA

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

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1. The complainant submitted a request to Monmouthshire County Council (the Council) for information relating to Spytty Park.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any information within the scope of the request and has therefore complied with section 1(1) of FOIA.
3. The Commissioner does not require further steps as a result of this decision notice.

#### **Background**

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4. Newport Retail and Leisure Park, known locally as Spytty Park, is a retail park based in Newport, which the Council purchased in 2019.

## **Request and response**

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5. On 24 June 2023, the complainant wrote to the Council and requested information in the following terms:

"I am writing to request information under the Freedom of Information Act 2000.

I would be interested in any information held by Monmouthshire County Council regarding Spytty Park from the time you or your colleagues believed it was at risk of making a loss. This should include emails, notes, and any other form of electronic communication."

6. A response was provided on 17 July 2023, in which the Council withheld the information under section 43(2) of FOIA.
7. Upon receiving this response, the complainant requested an internal review on 17 July 2023, and on the same day, the Council provided its internal review response, in which it maintained its original position.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 10 August 2023 to complain about the way their request for information had been handled.
9. The Commissioner contacted the Council for an explanation of its application of section 43(2) of FOIA and asked to see a sample of the withheld information.
10. The Council confirmed that as well as relying on section 43(2), it was also relying on section 44(1)(a), as it's "primary reason" and it informed the complainant of this.
11. During the course of his investigation, the Commissioner enquired as to whether the Council did indeed consider that Spytty Park was loss making. The Council confirmed that the Park was not making a loss. It subsequently changed its position to information not held, and informed the complainant of this.
12. Therefore, the Commissioner will decide whether, on the balance of probabilities, the Council holds any information within scope of the complainant's request.

## Reasons for decision

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13. Section 1(1) of FOIA states that:

Any person making a request for information to a public authority is entitled-

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

14. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds the requested information.

15. In its revised 'information not held' response to the complainant, the Council explained that returns on the investment in Newport Leisure Park have "at times been lower than budgeted, but has always returned a positive income for the Council".

16. The Council further explained that since investment, Spytty Park has not been highlighted as at risk of making a loss.

17. The Commissioner has noted the complainant's comments that there "must have been some correspondence regarding risk and return by officers". However, no evidence has been provided showing this, and the Commissioner has to base his view on the balance of probabilities.

18. The Commissioner has acknowledged the complainant's concerns regarding the Council's handling of their request, and this has been addressed in the other matters section of this notice.

19. However, the Commissioner does accept the Council's position that it cannot provide documents to show that Spytty Park is "at risk of making a loss" when it is not regarded as loss-making, or at risk of being so.

20. Having considered all the circumstances in this case, and on the balance of probabilities, the Commissioner is satisfied that the Council does not hold any information falling within scope of the complainant's request and that it has therefore complied with section 1(1) of FOIA.

## **Other matters**

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21. The Commissioner considers it to be necessary to record his concerns about the Council's overall handling of this request.
22. The Commissioner is satisfied that the complainant submitted a clear request, however the Council failed to recognise what information was actually being requested, and therefore did not cite the relevant exemption for the request.
23. Whilst the Council has since corrected the errors that it made in its initial response, the Commissioner wishes to remind the Council of the importance of giving a request sufficient consideration, so that it can determine a clear and appropriate response under FOIA.
24. The above is necessary so that the requester fully understands the Council's position, and it also ensures that no resources are unnecessarily used, such as if a complaint is subsequently made to the Commissioner.

## Right of appeal

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25. 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)

26. 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.
27. 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

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