

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2018

Public Authority: Rochdale Metropolitan Borough Council

Address: Number One Riverside
Smith Street
Rochdale
OL16 1XU

Decision (including any steps ordered)

1. The complainant has requested the fees paid to specific acts at the Rochdale Feel Good Festival. Rochdale Metropolitan Borough Council ("the Council") withheld the information under section 43(2).
2. The Commissioner's decision is that the Council has correctly engaged section 43(2), and that the public interest test indicates the exemption should be maintained.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 15 April 2018, the complainant wrote to the Council and requested information in the following terms:
 - 1) *How much Feeder are being payed to play Rochdale Feel Good Festival 2018.*
 - 2) *How much Razorlight were paid to play Rochdale Feel Good Festival 2017.*
 - 3) *How much The Fratellis were paid to play Rochdale Feel Good Festival 2016.*
 - 4) *How much Toploader were paid to play Rochdale Feel Good Festival 2015.*
 - 5) *How much Scouting For Girls were paid to play Rochdale Feel Good Festival 2014.*
 - 6) *How much The Feeling were paid to play Rochdale Feel Good Festival 2013.*
 - 7) *How much Martha Reeves and the Vandellas were paid to play Rochdale Feel Good Festival 2012.*
 - 8) *How much The Fun Lovin' Criminals were paid to play Rochdale Feel Good Festival 2011.*
 - 9) *How much The Lightning Seeds were paid to play Rochdale Feel Good Festival 2010.*
 - 10) *How much The Bluetones were paid to play Rochdale Feel Good Festival 2009.*
5. The Council responded on 4 May 2018. It stated that the information was withheld under section 43(2).
6. Following an internal review the Council wrote to the complainant on 6 June 2018. It revised its response and confirmed that information was only held in respect of parts 1) to 5) of the request, and that any information in respect of parts 6) to 10) would be held by the 'Rochdale Town Centre Management Company'. The Council confirmed that the information held in respect of parts 1) to 5) was withheld under section 43(2).

Scope of the case

7. The complainant contacted the Commissioner on 16 June 2018 to complain about the way their request for information had been handled, and specifically that the Council had incorrectly withheld the information in respect of parts 1) to 5) of the request.

8. The Council subsequently disclosed the total act budget for the event in each of the years for 2015, 2016, 2017 and 2018, but maintained that individual payments to acts were exempt under section 43(2).
9. The Commissioner considers the scope of this case to be the determination of whether the Council has correctly withheld the information under section 43(2).

Reasons for decision

Section 43(2) – Prejudice to commercial interests

10. Section 43(2) of the FOIA provides an exemption from disclosure for information which would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption and is therefore subject to the public interest test.
11. The term 'commercial interests' is not defined in the FOIA; however, the Commissioner has considered her guidance on the application of section 43. This comments that:

...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services.¹

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

12. The information withheld in this case are the fees paid by the Council to specific acts to perform at the Rochdale Feel Good Festival from 2014 onwards. The Commissioner accepts that the information is commercial in nature as it relates to the 'purchase' of services.

The likelihood of the prejudice occurring

13. In order for the exemption to be engaged it is necessary for it to be demonstrated that disclosure of information would result in some identifiable commercial prejudice which would, or would be likely to, affect one or more parties.

¹ See here: <https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>

14. The ICO has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of First-tier Tribunal (Information Rights) ("the Tribunal") decisions. The Tribunal has been clear that this phrase means that there are two possible limbs upon which a prejudice based exemption can be engaged; i.e. either prejudice 'would' occur, or prejudice 'would be likely to' occur.
15. With regard to 'would be likely to' prejudice, the Tribunal in *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)* confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15).
16. With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner (EA/2005/0026 & 0030)* commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).

The Council's position

17. In this case the Council has stated that disclosure of the information 'would be likely to' prejudice both its own commercial interests, and those of the acts that have previously taken part in the event.
18. In relation to its own commercial interests, the Council has explained that it organises the event on an annual basis, and that one of the principal aims of it is to provide an revenue-raising opportunity for local businesses (and independent research has indicated that the event has generated over £1.5 million of additional revenue for local businesses since starting). Potential acts are approached by the Council to discuss their availability to appear at the event, and the Council will negotiate a fee with each act; as acts will typically not have a standard fee or hourly rate. The event is free to access and publicly funded, and as such, acts are often willing to appear for a lower rate than they normally charge for ticketed, commercial events with larger budgets.
19. The Council argues that disclosing the fees paid to past acts would prejudice its ability to secure the value for money that it is currently able to do. For example, if it was revealed what fee a previous act had negotiated, future acts may expect to be paid a similar or higher fee than they would otherwise have sought. By disclosing the information and creating a 'benchmark' of the amount the Council would be willing to pay, this would prejudice the Council's ability to achieve value for money in future negotiations and potentially increase the cost to the Council, and therefore those paying council tax. Additionally, should acts

believe that their negotiated fees be publicly disclosed, this may damage the Council's ability to attract acts for future events.

20. In relation to the commercial interests of the acts that have previously contributed to the event, the Council has explained that the disclosure of acts' previously negotiated fees may prejudice their ability to seek a more competitive fee for future events that they may participate in.

The Commissioner's conclusion

21. The Commissioner has considered the Council's position, and accepts that the disclosure of the information would be likely to have a prejudicial impact on the commercial interests of the Council.
22. In order to accept the exemption is engaged the Commissioner usually requires evidence of a causal link between the information in question and the alleged prejudice argued. This is often easier to argue where an issue is ongoing, such as retendering or negotiated a new commercial contract or deal. Whilst the Council has not specifically provided evidence of this, the Commissioner considers it reasonable to accept that, given the annual occurrence of the event, the Council will need to undertake further negotiations in the future with acts similar (i.e. the public performance of music) to those previously engaged. Therefore it can reasonably be argued that disclosing the fees negotiated with previous acts, and creating a benchmark of the fees the Council may be willing to pay, will impede the Council from undertaking effective negotiations with future acts; this in turn may increase the Council's costs.
23. Whilst the Council has referred to the commercial interests of the acts, the Council has not provided any evidence to support its argument. As such, the Commissioner has only considered the Council's own commercial interests.
24. However, the Commissioner considers that section 43(2) was correctly applied on the basis of the Council's own commercial interests, and she has therefore gone on to consider the public interest test.

The public interest test

Public interest arguments in favour of disclosure

25. The Council has acknowledged that there is a public interest in ensuring transparency about the spending of public money. The disclosure of the information would assist in providing such transparency, and assure the public that the Council is not seeking to improperly hide any decisions that it has made.

26. In order to provide greater transparency about this matter, the Council has subsequently released the total cost of the acts who performed at the event in 2015, 2016, 2017 and 2018.

Public interest arguments in favour or maintaining the exemption

27. The Council argues that there is a competing public interest in ensuring that the Council's future negotiating position is not damaged. Such damage may cause additional cost to the Council, and additionally, prevent it from securing certain acts. This would jeopardise the Council's ability to organise the event in the future.

Balance of the public interest arguments

28. The Commissioner recognises that there is a public interest in ensuring transparency about the spending of public money. In this case, disclosing the individual fees paid would give an insight into the amounts spent by the Council on specific acts.
29. The complainant has also referred to the Commissioner to a newspaper article deriving from 2016², in which the understood fees of specific acts at various events within Greater Manchester have previously been cited; therefore creating precedent for this type of disclosure.
30. Balanced against this, the Commissioner has accepted that there would be a prejudice to the Council's commercial interests should the information be disclosed. There is significant public interest in ensuring that the Council is able to effectively negotiate with acts in order to achieve best value when delivering the publicly funded event. It is also reasonable for the Commissioner to accept that the potential disclosure of recently negotiated fees may dissuade future acts from participating; limiting the Council's choice when securing acts for the event (a key purpose of which, as noted in paragraph 18, is to financially benefit the local economy). The Commissioner also notes that the total yearly amounts spent on fees has since been disclosed; thereby providing transparency about the amount of public money used each year.
31. Whilst the Commissioner has considered the content of the newspaper article referenced by the complainant, and acknowledges that other public authorities (or the acts themselves) may have disclosed similar information in the past (in circumstances unknown), the Commissioner's

² See here: <https://www.manchestereveningnews.co.uk/whats-on/family-kids-news/tv-stars-were-paid-more-12015747>

decision in this case must consider the specific facts and arguments relevant to it. Whilst it is recognised that some individuals may be personally interested to know the fees paid to specific acts, the Commissioner considers that the public interest in this case is likely to be better addressed by disclosing of the annual public cost for all of the acts; which has since been effected by the Council.

32. Having considered the above factors, the Commissioner has concluded that the public interest test indicates the exemption should be maintained.

Right of appeal

33. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF