

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

### **Decision notice**

**Date:** 23 January 2023

**Public Authority:** Honiton Town Council

**Address:** The Beehive  
Dowel Street  
Honiton  
Devon  
EX14 1LZ

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

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1. The Commissioner's decision is that Honiton Town Council is entitled to withhold the requested information associated with a dispute about The Beehive venue under section 42(1) of FOIA as it attracts legal professional privilege.

#### **Request and response**

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2. The complainant submitted the following information request to Honiton Town Council ('the Council') on 26 September 2022:  

“Would you please provide to me in digital format, the 39 documents referred to in the above Decision Notice that you provided to the Information Commissioner regarding the above case. This covers a period from 1st August 2017 to 20th October 2020.”
3. The Council's final position was to withhold the information under section 42(1) of FOIA.

## Reasons for decision

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4. This reasoning covers whether the Council is entitled to withhold the requested information under section 42(1) of FOIA.
5. By way of background, the Commissioner had dealt with a previous complaint from the complainant, "the above Decision Notice<sup>1</sup>" referred to in the request. In that decision, from July 2022, the Commissioner had found that the Council had correctly applied section 42(1) to the majority of the requested information associated with a dispute about The Beehive. However, he instructed the Council to provide a fresh response to the part of the request for the list of documents it had sent to its solicitors. The Council had refused this element of the request as vexatious under section 14(1). The Council subsequently disclosed the list of documents and the current request is for the documents themselves.
6. Under section 42(1) of FOIA, information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is exempt information. This exemption is subject to the public interest test.
7. The purpose of legal professional privilege (LPP) is to protect an individual's ability to speak freely and frankly with their legal advisor in order to obtain appropriate legal advice. It recognises that individuals need to lay all the facts before their adviser so that the weaknesses and strengths of their position can be properly assessed. Therefore, LPP evolved to make sure communications between a lawyer and their client remain confidential.
8. In correspondence following that July decision the Commissioner had advised the complainant that while they **could** request information about The Beehive again, it may be the case that the Council would continue to withhold information under section 42 if the matter with which the information was associated was still live, or if the Council considered it could draw on the advice again at an indeterminate date in the future. As such, the Council could consider that information associated with The Beehive dispute retained its legal professional privilege.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021231/ic-103349-r8r1.pdf>

9. The complainant submitted the current request in September 2022. They consider that Council minutes from April 2022 indicate that matters involving The Beehive had concluded and that those matters were therefore no longer live. However, in their complaint to the Commissioner, the complainant has also noted that in its response to the current request in October 2022, the Council had advised them that it had made decisions about The Beehive in August 2022 and that the dispute remained live.
10. The complainant has sent the Commissioner a copy of the list of documents that the Council sent to him following the earlier decision. The list shows that the information in scope of the current request is correspondence, minutes and other information associated with The Beehive dispute which Council sent to its solicitors.
11. In a submission to the Commissioner, the Council has confirmed that issues associated with The Beehive have not concluded. It has explained that the parties involved in the matter are in talks about a non-disclosure agreement. Therefore matters associated with The Beehive remain live and the Council's solicitors have confirmed that the requested information therefore retains its legal privilege.
12. For the reasons given in his previous decision and which he does not intend to repeat here, the Commissioner has again decided that the Council is entitled to withhold the 39 documents that the complainant has requested under section 42(1) of FOIA.
13. Regarding the public interest test, those arguments are the same as in the previous decision. Transparency over how a particular project has been managed and funded is outweighed by the importance of the principle behind legal professional privilege. There is again greater public interest in safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice. The material is legally privileged and there is weight in that principle in itself; that of solicitor/client confidentiality. The Commissioner is therefore again satisfied that the balance of the public interest falls in favour of maintaining the section 42(1) exemption.

## **Other matters**

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14. The Commissioner has now made two decisions on cases the complainant has brought to him about information related to The Beehive which the Council has withheld under section 42(1). The Commissioner may be less prepared to make a third decision about a

similar complaint and may rely on the provision under section 50(2)(c) of FOIA to refuse to make such a decision.

15. The Commissioner reminds the complainant that if they are not satisfied with the decision he has made in this case, they have the option of appealing it to the First-tier Tribunal, as explained below.

## **Right of appeal**

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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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**