

**Sent via email to: clerk@torpointtowncouncil.gov.uk**  
**Case Reference: IC-289145-K7J9**  
**Freedom of Information Act 2000 (FOIA)**  
**Information request from: Chris Mackenzie**

24 May 2024

Dear Information Governance team

We wrote to you previously to let you know that we have accepted this case for investigation. I have now been asked to investigate it.

You should now reconsider the way Torpoint Town Council has handled this request and respond as detailed below.

### **ICO's approach**

On receipt of a complaint under the FOIA, we will give a public authority one opportunity to justify its position, before issuing a decision notice. Please consider the guide for public authorities on our website for more information about how we handle complaints:

[http://www.ico.org.uk/for\\_organisations/freedom\\_of\\_information/guide.aspx](http://www.ico.org.uk/for_organisations/freedom_of_information/guide.aspx)

### **The request**

On 17 November 2023, the complainant requested information of the following description:

"Could you please forward the detailed breakdown of the scoring so that we can better understand how the scores were allocated?"

You responded on 21 December 2023 and refused to provide the requested information, stating it was "commercially sensitive". You did not cite an exception as a basis for doing so, and maintained this position at internal review.

### **What you need to do now**

Where possible we prefer complaints to be resolved by informal means, and we ask both parties to be open to compromise. It is also your responsibility to satisfy us that you have complied with the law. Our website has guidance which you

should refer to in order to check whether your original response to the information request was appropriate.

This is your opportunity to finalise your position. With this in mind, you should revisit the request. After looking at our guidance, and in light of the passage of time, you may decide to reverse or amend your position. If you do, please notify the complainant and me within the timeframe specified at the end of this letter. This may enable us to close this case informally without the need for a decision notice.

To help us make a decision on this case, please **provide a copy of the withheld information** and answer the following questions in relation to section 43 of the FOIA.

Section 43(1)

Provide evidence to support the position that the withheld information constitutes a trade secret. For example, is it the case that the information is used to gain a competitive advantage but it is not generally known in that trade or business? Are steps taken to keep the information secret?

Section 43(2)

Please identify the party or parties whose commercial interests would, or would be likely to be prejudiced if the withheld information was disclosed.

Please provide a detailed explanation to support the position that disclosure of the withheld information would, or would be likely to prejudice a party's commercial interests.

Please ensure that you provide evidence which demonstrates a clear link between disclosure of the information that has actually been requested and any prejudice to commercial interests which may occur.

If the prejudice relates to the commercial interests of third parties, in line with the Information Tribunal decision in the case *Derry Council v Information Commissioner* (EA/2006/0014), the ICO does not consider it appropriate to take into account speculative arguments which are advanced by public authorities about how prejudice may occur to third parties. Whilst it may not be necessary to explicitly consult the relevant third party, arguments which are advanced by a public authority should be based on its prior knowledge of the third party's

concerns. Therefore, please clarify on what basis you have established that disclosure of a third party's interests may occur and please provide copies of correspondence the Council has had with third parties in relation to this request.

Provide a copy of the Invitation to Tender (where appropriate), details of when the tendering process was complete or details of what stage the tendering process had reached when the request for information was made. Please also provide details of when the tendering process is likely to be completed.

We strongly recommend that your response is guided by recent decision notices, our guidance and our lines to take, which demonstrate our approach to the exemption and procedural sections of the FOIA. These can be found on our website:

- <http://search.ico.org.uk/ico/search/decisionnotice>
- <https://ico.org.uk/for-organisations/>

Having revisited the request, you may decide to apply a new exemption. We will consider new exemptions but it is your responsibility to tell the complainant why the new exemption applies and to provide us now with your full submissions.

For the avoidance of doubt, you should now do the following.

- Consider whether to change your response to the information request, and let us know the outcome.
- Send us the withheld information.
- Send us your full and final arguments as to why you think the exemptions apply.
- Answer all of the questions in this letter.

Please provide your response within 10 working days of the date of this letter, that is by **7 June 2024**, ensuring that you fully set out your final position in relation to this request. If you have any concerns please contact me at [icocasework@ico.org.uk](mailto:icocasework@ico.org.uk) (quoting the above reference) or call me on the number below.

Yours sincerely

Annabel McQuade



Lead Case Officer  
Information Commissioner's Office  
0330 414 6385

For information about what we do with personal data see our privacy notice at [www.ico.org.uk/privacy-notice](http://www.ico.org.uk/privacy-notice)