



Mark House

Information Management
Shire Hall
Warwick
CV34 4RL
Telephone 01926 412211
Email brucegreen@warwickshire.gov.uk

Please ask for Bruce Green

Our ref: 7236612

Your ref:

Date: 2nd November 2021

Dear Mark House

Freedom of Information Act 2000

Your request for information has been considered by Warwickshire County Council under the Freedom of Information Act 2000.

I can confirm that the information you have requested is held by Warwickshire County Council. However, please be advised we are unable to provide the information.

This is because we consider the information is exempt under Section 36 (Prejudice to effective conduct of public affairs), Section 40 (Personal Information) and Section 43 (Commercial Interests) of the Freedom of Information Act 2000.

Please see below for further details and explanation.

You asked us:

Now that you have announced the closure of Marle Hall, the minutes and agenda from both cabinet meeting and scrutiny committee when Marle Hall where discussed should be made available.

Previously they have not been as it would have been seen to effect the councils commercial position. Now the centre has closed, the council are not involved in the area of business meaning the documents should be released as this will have no effect on the council going forward.

If within those documents there are references to individuals or other organisation involved in the sector or with interest of Marle Hall, those sections can be omitted.

Yours faithfully.

We confirm that on 8 July 2021, Warwickshire County Council's Cabinet voted to close Marle Hall on a permanent basis from Friday 22 October 2021. The decision was called in and subsequently considered by the Children and Young People's Overview and Scrutiny Committee before the decision was confirmed. On 27 July 2021, the members of the Children and Young People's Overview and Scrutiny Committee voted not to take any further action.

The agenda (including background papers) and minutes of these two committee meetings were exempt from publication on the Council's website under Schedule 12A, Part 1, paragraphs 2, 3 and 4 of the Local Government Act 1972 because these documents contained:

- a. Information which is likely to reveal the identity of an individual (Schedule 12A, Part 1, paragraph 2);
- b. Information relating to the financial or business affairs of any particular person (including the authority holding that information) (Schedule 12A, Part 1, paragraph 3); and
- c. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under the authority (Schedule 12A, Part 1, paragraph 4).

The agenda and minutes are exempt from disclosure under section 36 of the FOIA (prejudice to effective conduct of public affairs). Section 36 of the FOIA provides:

(1) This section applies to'

...

(b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act'

...

(b) would, or would be likely to, inhibit'

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Section 36 requires that the qualified person for the public authority must give their reasonable opinion that the exemption is engaged. An opinion was provided on 11 October 2021 by the Council's Monitoring Officer who is a qualified person for the purposes of section 36.

Section 36 is a qualified exemption so the fact that the exemption is engaged by the Monitoring Officer's opinion does not automatically mean that the information should be withheld. The Council can only withhold the information under section 36 if the public interest in withholding the information outweighs the public interest in releasing it. The starting point must be to apply a presumption in favour of disclosure.

The public interest factors in favour of disclosing the information include promoting transparency and the accountability of the Council, the significant interest of residents, schools, parents and pupils in the closure of Marle Hall, and promoting public understanding and scrutiny of the decision to close Marle Hall. The public interest arguments in favour of withholding the information include the importance of protecting the Council's ability to deliberate freely, frankly and effectively when information is exempt from publication under the Local Government Act 1972 and the importance of ensuring that all relevant background information is put before the Council when it is exempt from publication under the Local Government Act 1972 without fear that it will then be disclosed under FOIA. Having weighed the factors in favour of disclosure against the factors in favour of withholding the information, we are satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Some of the information in the agenda and minutes is also exempt from disclosure under section 40(2) of the FOIA (protection of third party personal data) which exempts information where complying with the request would breach any of the principles in the UK GDPR.

The background report to the closure of Marle Hall contains information about a staff member and the information is likely to reveal the identity of that individual. We do not consider that it would be fair to that individual to publish their personal information. Accordingly, disclosure of the information would contravene Article 5(1)(a) of the UK General Data Protection Regulation in that there is no lawful or fair basis for processing the information. The background report is therefore exempt from disclosure under section 40(2) of the FOIA.

Some of the information in the agenda and minutes is also exempt from disclosure under section 43(2) of the FOIA which exempts information where disclosure would, or would be likely to, prejudice the commercial interests of any legal person (including the public authority itself). The background report contains commercially sensitive details of the Council's costings, information about the potential sales and/or disposals of the site and its assets, and information about the Council's trading activity. In our view, complying with the request would prejudice or would be likely to prejudice the Council's commercial interests within the meaning of section 43(2) of the FOIA. This exemption is also subject to the public interest test.

The public interest arguments in favour of disclosing the information include promoting transparency and the accountability of the Council, the significant interest of residents, schools, parents and pupils in the closure of Marle Hall, and promoting public understanding and scrutiny of the decision to close Marle Hall. However, we consider that these factors are outweighed by the public interest arguments in favour of maintaining the exemption, which include the public interest in protecting the public purse and ensuring that the Council is not hampered in its business affairs by disclosing commercial-in-confidence material and details about the commercial position of running Marle Hall as a traded service

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within 40 days of the date of receipt of the response to your original letter and should be addressed to:

Information Management
Shire Hall
Warwick
CV34 4RL
inforights@warwickshire.gov.uk

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Phone: 0303 123 1113
Website: www.ico.gov.uk

I will now close your request as of this date.

Yours faithfully

Bruce Green
Information Rights Officer