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Scarborough Borough Council

Mr Tim Thorne

e-mail:- [request-152499-
b8f9d7cf@whatdotheyknow.com](mailto:request-152499-b8f9d7cf@whatdotheyknow.com)

Your Ref:
Our Ref: FOIA2512

8 April 2013

Dear Mr Thorne

Re: Freedom of Information Act 2000 – FOIA2512

Thank you for your recent request which has been dealt with under the Freedom of Information Act 2000 (FOIA). You requested the following information:

When booking an artist for a show, agents often insist on a minimum fee guarantee for their artist so they are not left out of pocket if an event unexpectedly fails, isn't promoted well enough and doesn't achieve the ticket sales expected.

With this in mind, for each of the following venues, please could you list the number of acts that have been booked with a minimum fee guarantee, the total sum underwritten by Scarborough Borough Council to book those acts.

Please provide this information for:

*The Open Air Theatre
The Spa
The Futurist Theatre*

It should be made clear that any disclosure under the FOIA is a disclosure to the public at large. In that respect, disclosed information is published upon the Council's disclosure log and placed into the public domain. In considering whether any exemptions apply to the requested information, and in considering the public interest, the Council must take this into account.



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Response

Firstly, in order to clarify I would advise you that the Council is not responsible for booking acts at the Scarborough Spa or Futurist Theatre and therefore do not hold any information relevant to this request in relation to these venues

With regards the Open Air Theatre.

I would inform you that it is the Council's position that this information is exempt from disclosure under section 43(2) of the Freedom of Information Act 2000 (FOIA).

Section 43(2) FOIA - Commercial Interests

Section 43(2) of the FOIA states the following:

Information is exempt information if its disclosure under this Act would, or would be likely to; prejudice the commercial interests of any person (including the public authority holding it).

The Council believe that the release of the withheld information would be likely to prejudice the commercial interests of:

- (a) the third party contractor; and
- (b) the Council.

The Council has consulted with the third party contractors involved. They have stated that disclosure of the requested information (which I will call the 'financial information' for ease of reference) would be likely to cause prejudice to their commercial interests, being their ability to partake competitively in the business of securing performances for artists, and promoting the same.

The financial information in question is the result of private and confidential negotiations between the council, the third parties and the agents for the artists involved. Disclosure of the information would prejudice future contracts and the ability of the third party to secure the best commercial deals for themselves and their clients. This would have the effect of the artists seeking representation and promotion elsewhere and thus damaging the third party's business in the process.

Disclosure of the information would also be likely to prejudice the Council's commercial interests, being the ability to secure appropriate and high profile performers and acts at the Open Air Theatre. If the financial information were disclosed, third parties, agents, promoters and performers would likely not want to do business with the Council, or at the very least be reluctant to provide full information.

The Council are therefore satisfied that the exemption is engaged.

As part of the consideration of the application of this exemption, we are required to balance the public interest in disclosure against the public interest in maintaining the exemption.

Public interest arguments for disclosure are as follows:

It is accepted that the public have an interest in ensuring that the council are achieving best value when agreeing contracts for performances at the Open Air Theatre. Disclosure of the financial information would aid the public in assessing whether best value had been obtained.

Where information is kept out of the public domain it may lead to allegations that decisions are not being made in an open and accountable manner. Disclosure of the information would allow the public to satisfy themselves that the process has been undertaken lawfully and appropriately.

Ensuring transparency in procurement of entertainment – there is clear public interest in ensuring that the Council achieve the best possible price when procuring for entertainment at the Open Air Theatre. Disclosure of the financial information would allow the public to understand the Council's position thus increasing transparency.

Disclosure would assist in satisfying the public that the Council's position is objectively justified.

Public interest arguments in favour of maintaining the exemption are as follows:

Ensuring well informed decision making – commercially sensitive information is required by the Council so that they are able to make well informed decisions in the best interests of the borough. Disclosure of the financial information has significant potential to impact upon the willingness of parties to deal with the Council in future. Even where parties do treat with the Council they may not be prepared to disclose certain information for concern that it may be disclosed without their consent. This would not be conducive to open and transparent negotiations and dealings between the Council and third parties.

The public have an interest in the Council being able to conduct its affairs in an appropriate manner, intrinsic to which is the requirement to achieve best value. If parties were unwilling to treat with the Council this would be likely to be prejudicial to achieving best value and securing the most advantageous arrangements.

The public have an interest in the Council attracting top level artists and performers to the Open Air Theatre, so as to increase tourism revenue and boost the local economy, and to provide high class entertainment to locals and visitors alike. Disclosure of the financial information would lead to such third parties, artists, promoters etc. refusing to appear at the SOAT, which would impact upon the success of the venue, and the local economy.

There is an obvious public interest in maintaining trust and preserving the free flow of information which is required for the performance of public functions.

The public also have a clear interest in the Council being able to conduct their commercial affairs to the benefit of the borough. It cannot be within the public interest for the Council to have to disclose details connected to these affairs where there is no suggestion or allegation of impropriety. To do so would put the Council at a significant disadvantage which in turn has a direct impact upon the public, the local economy and the local taxpayer.

The Council already have in place sufficient external and internal measures to ensure propriety and best value.

Consequently the Council believe that the public interest weighs in favour of maintaining this exemption.

Review

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of our decision, you should write to the Freedom of Information Officer, Legal and Support Services, Town Hall, St Nicholas Street, Scarborough, North Yorkshire, YO11 2HG or email foi@scarborough.gov.uk.

If you are not content with the outcome your complaint, you may apply directly to the Information Commissioner for a decision. Generally, the Information Commissioner's Office cannot make a decision unless you have exhausted the complaints procedure provided by Scarborough Borough Council. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Tel: 01625 545745 Fax: 01625 524510 Web: www.ico.gov.uk.

Yours sincerely



Stuart Clark
Parking and Venues Manager