



Derry City & Strabane  
District Council  
Comhairle  
Chathair Dhoire &  
Cheantar an tSraitha Báin  
Derry Cittie & Strabane  
Destrict Coouncil

Ref: FOI / 2243

22 January 2019

Mr

Email: @gmail.com

Dear Mr

### **Freedom of Information Act 2000 Request Paid performances past 10 years**

I refer to your FOI request and respond as follows:

#### **Request:**

Would it be possible to get a breakdown of the money paid by the council to performers/musicians/chefs etc over the past ten years or if it costs too much to go back that far, then as many years that fall within the price limit for the request.

These would be individuals paid to perform in some way at certain public events etc.

Could this mention the names of the people, be broken down into each year with totals for each year and have an overall total for the entire period.

Separately, can I be provided with a list of people performing at the mayor's events for each of those years?

#### **Response:**

I can advise Derry City and Strabane District Council was formed under the Local Government Act (Northern Ireland) 2014 effective 1 April 2015 and replaces the former councils of Strabane District Council and Derry City Council. The provision of the information in the attached spreadsheets is from the commencement of the new Derry City and Strabane District Council in 2015. To access information prior to 2015 from the records from the legally extant Councils, would, in our estimation, exceed the appropriate limit, as these records are held in different locations, servers, systems and software packages.

As you are aware, Section 12(1) of the FOIA contains a provision which allows a public authority to refuse to comply with a request for information where the cost of

#### **Derry**

C/o Council Offices  
98 Strand Road  
Derry  
BT48 7NN

#### **Strabane**

C/o Council Offices  
47 Derry Road  
Strabane  
BT82 8DY

+44 (0) 2871 253 253  
info@derrystrabane.com  
www.derrystrabane.com

f Derry City & Strabane District Council  
@dcsdcouncil

compliance is estimated to exceed a set limit known as the appropriate limit. For local authorities, this limit is set at £450 - The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004 SI 2004 No 3244 refers.

I can also advise however that whilst Council holds the requested information, it is part-exempt due to Data Protection legislation. Personal names have been omitted in the attached spreadsheet by virtue of the Data Protection Act 2018 and General Data Protection Regulations 2018. The Council believes that any detailed information would be personal data as defined by Section 1(1) of the Data Protection Act (DPA) as it relates to an identifiable individual.

Therefore the information you requested is personal data as described in section 40(2)(a) of the FOIA.

40 (2) Any information to which a request for information relates is also exempt information if:

- (a) It constitutes personal data which do not fall within subsection (1), and
- (b) Either the first or the second condition below is satisfied.

Having determined that the information is personal data we then considered whether any disclosure would breach any of the data protection principles in respect of section 40(3)(a)(i) detailed below,

40 (3) The first condition is –

- (a) in a case where the information falls within any of the paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 2018, that the disclosure of the information to a member of the public otherwise than under this Act would contravene
- (i) any of the data protection principles,

The first principle in the Data Protection Act states:

"1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless,

- (a) at least one of the conditions in Schedule 2 is met."

Therefore we have to consider whether it would be fair to disclose the information to the public, especially in light of the fact that the information is disclosed to the wider public not just the specific requester. In short, would it be fair on the individuals in question to disclose their personal information. We do not feel that the individuals in question would reasonably expect their information to be disclosed in this way and therefore it would be unfair on them to do so.

Therefore by disclosing this information the Council risks being in breach of the first principle of the Data Protection Act and therefore the exemption provided by Section 40(2) and (3) of the Freedom of Information Act is engaged. If we were to go on and consider the conditions for processing held in Schedule 2, the only ones relevant in this case which potentially could be met would be the first condition and the sixth condition which is:

“6. The data subject has given his consent to the processing.”

Furthermore, trading names within the information you requested is being withheld in reliance on the exemption(s) in section(s) 43(1) and (2) of the FOIA because its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it. 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.

In applying this qualified exemption we have had to balance the public interest in withholding the information against the public interest in disclosure. Council appreciates that there is an inherent public interest in ensuring openness, transparency and accountability around spending of budgets. However Council feels the disclosure of this information may prejudice our position in a highly competitive marketplace by revealing commercially sensitive information to other performers. Revealing this information could weaken our Council’s position in a competitive environment by revealing market sensitive information or information of potential usefulness to participants and potentially weakening our position in future procurement exercises. We have provided all information where it is in the public interest to do so.

If you are dissatisfied with our response you have rights of review and appeal; these rights consist of two review processes. Firstly our internal review procedure is available by contacting:

John Kelpie  
Chief Executive  
Derry City and Strabane District Council  
98 Strand Road  
Derry BT48 7NN Tel 028 71253253 or email [john.kelpie@derrystrabane.com](mailto:john.kelpie@derrystrabane.com)

Secondly, you can appeal directly by contacting the Information Commissioner at:

Information Commissioner  
Wycliffe House

Water Lane

Wilmslow

CHESHIRE SK9 5AF Tel: 0303 123 1113 (local rate) or email: [casework@ico.org.uk](mailto:casework@ico.org.uk)

I would advise however, the Information Commissioner has indicated that a review will not be undertaken unless the Council has first had an opportunity to re-consider its decision.

Yours sincerely

**Head of Culture**

**Enc**



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