

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 21 September 2021

Public Authority: The Buckinghamshire Grammar Schools
Address: Aylesbury Grammar School
Walton Road,
Aylesbury
Buckinghamshire
HP21 7RP

Decision (including any steps ordered)

1. The complainant has requested from the Buckinghamshire Grammar Schools (TBGS) the minutes of a meeting that took place on 27 September 2019. TBGS responded by stating that it did not hold the information.
2. The Commissioner's decision is that, on the balance of probability, TBGS does not hold the requested information.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 17 November 2020 the complainant wrote to TBGS and requested information in the following terms:

"Please provide a copy of the minutes from the meeting of TBGS directors held 27 September 2019."

5. TBGS responded on 7 December 2020 and stated that the information was not held.
6. On 21 January 2021 the complainant requested an internal review and asked why the minutes were not held regarding a full meeting of TBGS directors on the given date.
7. TBGS provided an internal review on 9 February 2021 in which it said that it was not obliged to provide an explanation but did explain that the meeting was *"not clerked and no minutes are therefore held by TBGS"*.

Scope of the case

8. The complainant contacted the Commissioner on 19 December 2020 to complain about the way his request for information had been handled. He suggested that TBGS had a history of avoiding disclosure and doubted that the requested information was not held.
9. The Commissioner considers that the scope of the case is whether TBGS holds the requested information.

Reasons for decision

Section 1 – general right of access to information held by public authorities

10. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled- (a) To be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him."

11. In cases where there is a dispute over the amount of information held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by

the Information Rights Tribunal when it has considered whether information is held (and, if so, whether all of the information held has been provided).

12. The Commissioner wrote to TBGS on 5 July 2021 and asked a series of questions in order to establish whether the requested information was held or not held.

The complainant's view

13. The complainant explained to the Commissioner the context in which he had made the request:

"TBGS are a consortium of 13 state funded selective schools set up to organise a common 11 plus test."

The BBC reported in September 2019 that children sitting these exams had discovered that they were given *"impossible to answer"* questions. The Commissioner notes from the BBC report¹ that two questions on the verbal skills paper could not be answered because the options on the answer paper did not reflect those in the question paper. The complainant states that over 10,000 children were affected by the error and his view is that TBGS had been extremely evasive about the impact on the reliability of the test.

14. The complainant's view is that TBGS holds the information and that it may have been an offence to withhold it. He highlights a request from another individual who had requested minutes from TBGS meetings from January 2018 to the present day (at the time of the request, 3 December 2019). The complainant explains that *"some minutes were disclosed but minutes from two meetings around that critical time were neither disclosed nor identified"*. TBGS did not confirm that it held this information or provide any reasons why the minutes were withheld. He lists the missing minutes as 13 September 2019 and 27 September 2019. Focusing on the "missing minutes" from 27 September 2019 which were the subject of this request, the complainant states that the minutes from the subcommittee that met on 25 September 2019 recorded the decision to accept GL Assessment's proposed solution which was subject to the acceptance and agreement at a meeting of TBGS directors which was due to be held on 27 September 2019.

¹ [Buckinghamshire Grammar Schools apologise for exam errors - BBC News](#)

15. The complainant made a request for the minutes of this meeting. He was unaware at the time that there had been an earlier meeting on 13 September 2019. TBGS confirmed that the information was not held. The complainant contends that it is unlikely that the meeting plans would have changed in the two days between 25 and 27 September 2019. He says that the "*solution*" needed to be approved by the whole board before notifications were sent to the parents and carers of the affected children. If the meeting had been cancelled, TBGS would have said that it hadn't taken place and not that it wasn't held. His view is that it was an offence to withhold this information and that it wouldn't be difficult to establish whether the meeting took place.
16. Finally, he drew the Commissioner's attention to what he describes as a past history of TBGS trying to avoid disclosing minutes from their meetings and he directed the Commissioner to an FTT decision EA/2017/0169² which he believes reinforces his argument.

TBGS's position

17. TBGS responded to the Commissioner stating that its position was "*very simple*". The information is not held by TBGS because it had never existed.
18. TBGS provided the Commissioner with an explanation as to why the information was never held. The meeting from which the request originated was not part of the formal, scheduled meetings of TBGS. It was called by the Chair in order that the rest of the Board could hear a presentation by one of the contractors to give colleagues the opportunity to ask questions. The meeting was called at short notice and outside the usual schedule because errors had been discovered in one of the Secondary Transfer Test papers which TBGS and the contractor were working to resolve. It was explained that TBGS holds a copy of the presentation that was given during the meeting. The complainant has also requested this information which has already been the subject of a decision notice [IC-44874-F1Y8](#) that has been appealed.
19. There were no minutes taken because there was no reason to do so. TBGS expresses the view to the Commissioner that, although the complainant considers that minutes should have been taken, it is not a matter relevant to the FOIA.

² [Information Tribunal > Search \(tribunals.gov.uk\)](#)

20. TBGS has provided some context stating that it has a schedule of regular meetings planned a year in advance. These meetings have a formal agenda and are clerked. TBGS explained that minutes from those meetings are all held and have been released under FOIA.
21. For the avoidance of doubt, TBGS then moved on to answer the Commissioner's specific questions confirming that no searches had been made because the requested information had never existed. Had the information existed it would have been held electronically. The information was not destroyed because it had never existed. Although TBGS does not have a policy for the retention and destruction of minutes, no minutes taken or held have ever been destroyed. There was no business reason why the requested information should have been created or held and no statutory requirement to do so.

The Commissioner's view

22. This FTT decision EA/2017/0169 that the complainant directs the Commissioner to, concerns an appeal made by TBGS against a ruling by the Commissioner that certain withheld information be disclosed. Although the complainant suggests that it illustrates his view that TBGS is reluctant to disclose information, it did not concern whether TBGS held information or not but that it withheld information.
23. The complainant suggests with regard to this request, that TBGS has tried to "*avoid the disclosure of minutes*" and "*falsely claim that no minutes were taken*". He believes that he has provided the Commissioner with "*detailed reasoning*" as to why the balance of probability falls on the side of the information being held. However, the Commissioner is not persuaded that she has been provided with evidence that equates to TBGS holding the requested information whilst stating several times, including to the Commissioner, that it is not held.
24. The Commissioner understands that the complainant believes that minutes of what he considers to be an important meeting would or should be held. He invited the Commissioner to consider the factual evidence that, he argued, tilted the evidence in favour of the information being held. In circumstances such as these, the Commissioner's investigation has taken her little further than the outcome of the internal review which stated clearly that the meeting was not clerked or minuted. TBGS has confirmed again to the Commissioner that no minutes were taken. Though this is not a requirement of the legislation, the reasons why minutes were not taken was also provided by way of explanation. The legislation solely covers held information and the issue of whether a public authority should hold information is therefore not part of the Commissioner's remit as

Regulator. She has no reason to doubt TBGS in this matter and, on the balance of probability, accepts that this information is not held.

Right of appeal

25. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF