

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2022

Public Authority: The Governing Body of King Edward VI
Academy Trust Birmingham

Address: Foundation Office
Edgbaston Park Road
Birmingham
B15 2UD

Decision (including any steps ordered)

1. The complainant has requested King Edward VI Academy Trust (the trust) to disclose its contract with GL Assessment. The trust disclosed some information but withheld the remainder citing section 43 of FOIA.
2. The Commissioner's decision is that the trust has failed to demonstrate that section 43 of FOIA applies to the remaining withheld information.
3. The Commissioner requires the trust to take the following steps to ensure compliance with the legislation:
 - Disclose the remaining withheld information to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 19 May 2022, the complainant wrote to the trust and requested information in the following terms:

"Please provide a copy of the contracts between the Foundation and GL Assessment.
6. The trust responded on 28 June 2022, refusing to disclose the requested information, citing section 43 of FOIA. It upheld its position at internal review.

Scope of the case

7. The complainant contacted the Commissioner on 3 August 2022 to complain about the way their request for information had been handled. They believe the trust is not entitled to rely on section 43 of FOIA.
8. During the Commissioner's investigation the trust disclosed a redacted version of the contract to the complainant. It remains of the view that the financial information it has redacted from this is exempt from disclosure under section 43 of FOIA.
9. The Commissioner does not consider the trust has demonstrated sufficiently that section 43 of the FOIA is engaged and requires the trust to take the steps outlined in the summary above. The following section will explain why.

Reasons for decision

10. Section 43 of FOIA states that information is exempt from disclosure if its disclosure would or would be likely to damage the commercial interests of the public authority and/or a third party. It is also subject to the public interest test.
11. Initially the trust withheld the entire contract, stating that it was all exempt under section 43 of FOIA. Following the Commissioner's intervention all but the financial information was disclosed to the complainant. This approach is more in line with the approach the Commissioner would expect to see in cases of this nature.
12. The Commissioner asked the trust to explain why it considers the remaining withheld information would or would be likely to prejudice the commercial interests of the trust itself and/or GL Assessment (and if

arguing it affects GL Assessment's commercial interests, evidence to demonstrate that these arguments have originated from GL Assessment itself). He also asked for the public interest arguments it considered for and against disclosure and how it reached the view that the public interest rests in maintaining the exemption. The Commissioner asked for this information on 19 October and 6, 11 and 17 November 2022.

13. The trust responded, referring the Commissioner back to the responses it issued to the complainant and stated that it redacted information in line with the provision of section 43. It stated that the information pertains to the particulars of individual costings and service arrangements between the trust and GL Assessment. The trust considers this information is commercially sensitive as it could prejudice future tender exercises and give competitors an unfair advantage if they knew the full details of service agreements.
14. Nothing further was provided. The trust did not explain in sufficient detail how the redacted information would be useful to competitors and has not provided any evidence that such arguments have originated from GL Assessment itself. The trust also did not provide any public interest arguments for the Commissioner to consider.
15. It is not the responsibility of the Commissioner to do the necessary work for a public authority. If a public authority does not provide the submissions the Commissioner requires, he will proceed to an adverse decision.
16. For these reasons, the Commissioner has no alternative but to conclude that section 43 of FOIA is not engaged.

Right of appeal

17. 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

18. 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.
19. 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

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