

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2023

Public Authority: The Governing Body of Colchester Royal Grammar School

Address: 6 Lexden Road
Colchester CO3 3ND

Decision

1. The Commissioner's decision is that Colchester Royal Grammar School ('the School') was entitled to withhold some information in Full Governing Body minutes under section 43(2) of FOIA. It is commercially sensitive information and the public interest favoured maintaining the exemption. The School's refusal notice did not comply with the requirements of section 17(3) of FOIA. It is not necessary for the School to take any steps.

Request and response

2. The complainant made the following information request to the School on 7 September 2022:

"Please could you email me the minutes of meetings of the full governing body from 1st December 2021 to date? Thank you."
3. On 5 October 2022, the School released the seven sets of minutes it held at that point, with personal data redacted under section 40(2) and information redacted from the May 2022 minutes under section 43(2) of FOIA. In its response to the request the School had not referred to the public interest test associated with section 43. At internal review, the School said that, "When applying a Section 43 exemption we understand a Public Interest Test must be performed. We have considered this and

are satisfied with the original decision made to use the Section 43 exemption.”

Reasons for decision

4. This reasoning covers the School’s application of section 43(2) of FOIA to information it redacted from the minutes it released. The reasoning takes account of the situation as it was at the time of the request in September 2022. The Commissioner will also consider whether the School’s refusal complied with section 17 of FOIA.
5. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
6. In a submission to the Commissioner, the School has provided a background to the matter discussed in the redacted minutes and a copy of the information it is withholding.
7. The commercial interests at stake here, the School says, were its own. At the time of the request a live situation was ongoing in that the School was considering joining a multi-academy trust (MAT). Although this is in the [public domain](#) now, that the School was formally considering such a step was not in the public domain in September 2022.
8. The School considers that disclosing the information at the time of the request would have been likely to prejudice its relationships with the bodies with which it was working at that time. The School considers that it would also have been likely to result in certain bodies gaining an insight into the School’s requirements that could ultimately lead to the School not obtaining the best outcome.
9. The Commissioner is satisfied first, that the harm the School envisaged relates to commercial interests; its own. Second, the Commissioner accepts that a causal link existed between disclosure and commercial prejudice for the reasons the School has provided to the Commissioner – disclosure (at the time of the request) would reveal the existence of talks about joining a MAT and the criteria it was considering. Finally, the Commissioner accepts the School’s position that the envisioned prejudice would have been likely to happen ie it is more than a remote, hypothetical possibility. The Commissioner’s decision is therefore that at the time of the request the School was entitled to apply section 43(2) to the withheld information. He will go on to consider the associated public interest test.

10. The complainant has not presented any public interest arguments for the information's disclosure; albeit they do not know what the information is. There is, however, a general public interest in public authorities being open and transparent and, in the School's case, a specific public interest in being transparent about matters that may affect it (and so may affect its staff and students).
11. The Commissioner is satisfied that the general public interest in transparency has been met through the information it disclosed. He considers that there is greater public interest in the School being able to obtain the best outcomes based on its own particular circumstances. On balance therefore, the Commissioner finds that the public interest favoured maintaining the section 43(2) exemption in this case.

Procedural matters

12. Under section 17(1) of FOIA a public authority that is refusing to disclose information must, within 20 working days of receiving a request, issue the applicant with a refusal notice that states that fact, cites the exemption being relied on and explains why that exemption is engaged.
13. Under section 17(3), in the case of qualified exemptions such as section 43, the public authority's refusal notice must discuss the public interest test it has carried out and explain why it considers the public interest favours maintaining the exemption.
14. The Commissioner finds that in this case the School did not comply with section 17(3). Its initial refusal did not mention the public interest test at all and its reference to the test in its internal review response was somewhat perfunctory. The Commissioner appreciates that the School was limited in what it could say without disclosing the very information it wished to protect. However, it could still have provided something similar to paragraph 10 of this decision notice and it certainly should not have skipped this step altogether.

Right of appeal

15. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

16. 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.
17. 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

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