

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 April 2023

**Public Authority:** The Buckinghamshire Grammar Schools

**Address:** Aylesbury Grammar School  
Walton Road  
Aylesbury  
Buckinghamshire  
HP21 7RP

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the Buckinghamshire Grammar Schools (TBGS) relating to its Secondary Transfer Test.
2. The Commissioner's decision is that TBGS is entitled to rely on section 41 (information provided in confidence) of the FOIA to refuse to provide the information requested in part 1 of the request. He has also determined that on the balance of probabilities, TBGS does not hold the information requested in part 2 of the request.
3. The Commissioner does not require TBGS to take any steps.

## Request and response

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4. The complainant made the following information request to TBGS on 18 October 2023  

“What was the maximum possible score in each section and how does that then translate into the eventual score of 113?”
5. TBGS interpreted the request as being for [1] the number of questions in the Secondary Transfer Test for 2023 entry and [2] the age standardisation methodology used to calculate the Secondary Transfer Test Score.
6. TBGS refused to provide the information requested in part 1 of the request citing section 43(2) (commercial interests) of the FOIA as its basis for doing so. It denied holding information within the scope of part 2 of the request.

## Reasons for decision

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7. Whilst TBGS has applied section 43(2) of the FOIA to refuse to provide the information requested in part 1 of the request, the Commissioner has discretion to proactively consider exemptions that have not been relied on by a public authority. Due to the similarity described below between this case and a previous decision notice, the Commissioner has exercised this discretion in this case. This reasoning covers whether the Council is entitled to rely on section 41 (information provided in confidence) of the FOIA to refuse to provide the information requested in part 1 of the request.
8. It will also cover whether TBGS is correct when it says that it does not hold information within the scope of part 2 of the request.

## Section 41 – information provided in confidence

9. The Commissioner considers the circumstances of this case to be similar to that of IC-47086-D9P3<sup>1</sup> even though IC-47086-D9P3 relates to the Secondary Transfer Test for 2020 entry rather than the Secondary Transfer Test for 2023 entry as in this case. In both cases, the number of questions in the Secondary Transfer Test has been requested. In IC-47086-D9P3, the Commissioner found that TBGS was entitled to rely on

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<sup>1</sup> [IC-47086-D9P3 \(ico.org.uk\)](https://ico.org.uk)

section 41 of the FOIA to refuse to provide the number of questions in the Secondary Transfer Test. The Council's application of section 41 of the FOIA in IC-47086-D9P3 was upheld at the First Tier Tribunal (Information Rights).<sup>2</sup>

10. In IC-47086-D9P3, the Commissioner was satisfied that the number of questions within the Secondary Transfer Test for 2020 entry had been obtained from a third party as the test had been provided to TBGS by GL Assessment Ltd. In this case, TBGS has confirmed that the Secondary Transfer Test for 2023 entry was provided to it by GL Assessment Ltd.
11. In IC-47086-D9P3, the Commissioner considered that the information had the necessary quality of confidence as the number of questions in the Secondary Transfer Test was not already within the public domain and could not be seen as trivial. Furthermore, the Commissioner considered that there was a clear and explicit obligation of confidence in relation to the number of questions in the Secondary Transfer Test as TBGS is subject to a confidentiality clause which prohibits it from disclosing any information relating to the test. He was also satisfied that disclosure of the number of questions within the Secondary Transfer Test would constitute an actionable breach of confidence and cause detriment to the confider, GL Assessments Ltd.
12. In IC-47086-D9P3, the Commissioner acknowledged that there is a public interest in openness and accountability surrounding 11+ testing. However, he was also mindful of the wider public interest in preserving the principle of confidentiality and the need to protect the relationship of trust between the confider and confidant.
13. The Commissioner considered that the public interest in disclosing the information did not outweigh the public interest in maintaining trust between confider and confidant and that TBGS would not have a public interest defence for breaching its duty of confidence. He therefore concluded that there was a stronger public interest in maintaining the obligation of confidence than in disclosing the information.
14. The Commissioner's decision is that, for similar reasons as given in IC-47086-D9P3, TBGS is entitled to rely on section 41 of the FOIA to refuse to provide the information requested in part 1 of the request.

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<sup>2</sup> [EA-2020-0310 \(tribunals.gov.uk\)](https://www.tribunals.gov.uk)

## **Section 1 – information not held**

15. The complainant considers TBGS to hold information within the scope of part 2 of the request as they believe that TBGS would have obtained the age standardisation methodology used by GL Assessments Ltd to calculate Secondary Transfer Test scores before agreeing to use GL Assessments Ltd as its test provider.
16. The position of TBGS is that it does not hold information within the scope of part 2 of the request. In its submissions to the Commissioner, TBGS explained that GL Assessment Ltd has never provided TBGS with its age standardisation methodology and TBGS has not requested it. TBGS considers that under its contractual arrangements with GL Assessments Ltd, it does not have any entitlement to the age standardisation methodology used by GL Assessment Ltd to calculate Secondary Transfer Test scores and that the information is the intellectual property of GL Assessment Ltd.
17. The Commissioner accepts this explanation from TBGS as to why it does not hold information within the scope of part 2 of the request. His decision is that on the balance of probabilities, TBGS does not hold information within the scope of part 2 of the request.

## Right of appeal

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18. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**