

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 November 2022

Public Authority: St Andrews C of E Primary School
Address: Mansfield Road
Skegby
Nottinghamshire
NG17 3DW

Decision (including any steps ordered)

1. The complainant has requested copies of Personal, Health and Social Education (PHSE) lessons provided by a third party supplier. The above public authority ("the public authority") relied on section 41 (actionable breach of confidence) and section 43(2) of FOIA in order to withhold the requested information.
2. The Commissioner's decision is that public authority is entitled to rely on section 41 of FOIA. The public authority breached both section 10 and sections 17 of FOIA as it responded to the request late.
3. The Commissioner does not require further steps.

Request and response

4. On 9 March 2022, the complainant requested all the materials provided to the public authority by the third party supplier Jigsaw for use in PHSE lessons. When the public authority relied on section 43 of FOIA to withhold the information, the complainant submitted a refined request on 22 April 2022 – this time only seeking the teacher notes provided by Jigsaw.
5. The public authority responded to the refined request on 29 July 2022. It maintained that section 43 of FOIA applied to the information and also relied additionally on section 41 of FOIA. The public authority provided a copy of a letter it had received from Jigsaw, in which Jigsaw explained how and why its commercial interests would be prejudiced by disclosure.

Following an internal review, the public authority upheld its original position.

Reasons for decision

6. In decision notice IC-171936-C9H8, the Commissioner found that different PHSE materials, provided by a different third party supplier, were exempt under section 41 of FOIA.¹
7. One key difference between that case and this is that, in the previous case, the school had been willing to allow the person who complained to have a private viewing of a copy of the withheld information. The evidence does not suggest that this has happened in this particular case, but there is also no suggestion that the public authority is unwilling to permit such a viewing – indeed the letter from Jigsaw notes that such viewings are much less likely to harm its commercial interests than unrestricted disclosure.
8. The Commissioner also notes that Jigsaw already publishes an overview of the content of its lessons.
9. The Commissioner is therefore satisfied in the present case that the disclosure would not be a proportionate means of achieving a legitimate aim. He is therefore satisfied that section 41 of FOIA is engaged for the reasons set out in paragraphs 10-46 of decision notice IC-171936-C9H8

Procedural matters

10. Schools may take up to 20 school days to respond to a request for information (ie. they are entitled to disregard days which are neither weekends nor bank holidays, but on which no teaching takes place). However the public authority failed to confirm that it held information and failed to issue a refusal notice citing an exemption from disclosure within 20 school days. It thus breached sections 10 and 17 of FOIA respectively.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021935/ic-171936-c9h8.pdf>

Right of appeal

11. 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

12. 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.
13. 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

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