

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 July 2017

Public Authority: Bury College
Address: Market Street
Bury
BL9 0DB

Decision (including any steps ordered)

1. The complainant made a request to the public authority for a copy of two due diligence reports produced pursuant to the proposed merger of the public authority (Bury College), Bolton College, and the University of Bolton. The public authority withheld the reports in reliance on the exemptions contained at sections 41(1), 42(1) and 43(2) of the FOIA.
2. The Commissioner has concluded that the public authority was entitled to withhold the reports on the basis of the exemption contained at section 43(2) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. The complainant submitted a request for information to the public authority via the 'WhatDoTheyKnow?' website on 7 August 2016 in the following terms:

"I would be grateful if you supplied me with a description of 'due diligence' process, followed by Bury College, in respect of the Vice Chancellor of University of Bolton, in relation to the current proposed merger with The University of Bolton. I would also like a copy of the report that resulted from the process of 'due diligence' "
5. The public authority provided its response on 31 August 2016. With regard to the first part of the request for a description of the due diligence process, the authority explained that it had appointed and

instructed external specialist legal advisors, Mills & Reeve LLP, and external specialist financial advisors, BDO UK LLP, to undertake an appropriate due diligence exercise on the proposed arrangement and institution. Each independent external advisor reported directly on its findings to the public authority's governing body prior to it making its determination on the merger proposal.

6. In terms of the second part of the request for a copy of the report that was produced pursuant to the due diligence undertaken, the public authority confirmed that it "holds the information". The information was however withheld by the public authority in reliance on the exemptions contained at sections 43(2), 41(1) and 42(1) of the FOIA.
7. On 2 September 2016 the complainant requested an internal review of the public authority's decision to withhold the information held pursuant to his request for a copy of the due diligence report.
8. The public authority wrote to the complainant with details of the outcome of the internal review on 9 November 2016. It upheld the original decision.

Scope of the case

9. The complainant contacted the Commissioner on 23 November 2016 to complain about the way his request for information had been handled. He disagreed with the decision to withhold the information held by the public authority pursuant to his request for a copy of the due diligence report.
 10. During the course of the investigation the public authority clarified that it holds two due diligence reports produced by Mills & Reeve LLP and BDO UK LLP respectively within the scope of the request. The proposed merger is between Bury College (the public authority in this case), Bolton College and the University of Bolton. The due diligence review was jointly commissioned by the public authority and Bolton College and was conducted in relation to the University of Bolton only.
 11. The Commissioner considers that the scope of the case is whether the public authority was entitled to withhold the due diligence reports referred to above in reliance on the exemptions contained at sections 43(2), 41(1) and 42(1).
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Reasons for decision

Section 43(2)

12. The Commissioner firstly considered the public authority's application of section 43(2) of the FOIA. The public authority has withheld both reports in reliance on this exemption.
13. Section 43 states:
 - 1) "Information is exempt information if it constitutes a trade secret.
 - 2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
 - 3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2)."
14. During the course of the Commissioner's investigation she became aware that the complainant had also made an identical request to Bolton College, who refused the request for the due diligence reports on the basis of the same exemptions under the FOIA as this case. She has established that the withheld information in both cases is identical, being the two due diligence reports. Identical reports were provided to the public authority and to Bolton College, both being parties to the proposed merger with the University of Bolton. The request to Bolton College has already been considered by the Commissioner and the case reference is FS50648482. The decision can be found via this link:
<https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2014430/fs50648482.pdf>
15. The public authority confirmed that the submissions made by Bolton College during the Commissioner's investigation under case reference FS50648482 and the decision notice that followed apply equally in this case. The public authority explained that during merger talks, it had liaised with Bolton College with regard to their respective responses to the requests for the withheld reports.
16. During the Commissioner's investigation of this case the public authority was asked to reply to a series of questions relating to its application of the exemptions cited in refusing the request for the due diligence report. The public authority's arguments mirrored those submitted by Bolton College under case reference FS50648482 (these are detailed in paragraphs 16 to 25 of the above decision notice). The complainant's

position (in paragraphs 14 and 15 of the above decision notice) is the same in this case.

17. As the Commissioner is content that the arguments submitted by the public authority and Bolton College under case FS50648482 are the same, and relate to a request for the identical information, she sees no need to repeat these arguments here.
18. Paragraphs 26 to 35 of the decision notice for FS50648482 outline the Commissioner's reasoning for upholding section 43(2) of the FOIA in this case, and again, as this analysis is equally applicable in this case, there is no need to repeat it here.
19. In paragraphs 36 to 43 the Commissioner considered the public interest test and overall decided that the public interest rested in maintaining the application of this exception. Again, this decision is directly applicable in this case, as the requested information is exactly the same, so there is no need to repeat this here.

Conclusion

20. The Commissioner is satisfied, for the reasons explained in her decision notice of 6 July 2017 under case reference FS50648482, that section 43(2) has been applied appropriately in this case and that the public interest in maintaining the exemption outweighs the public interest in disclosure. As a result the Commissioner has not gone onto consider the public authority's application of sections 41(1) and 42(1) of the FOIA.

Right of appeal

21. 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@hmcts.gsi.gov.uk

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

22. 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.
23. 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

Pamela Clements
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