

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

### **Decision notice**

**Date:** 28 November 2022

**Public Authority:** Equality and Human Rights Commission (EHRC)  
**Address:** Arndale House  
The Arndale Centre  
Manchester  
M4 3AQ

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

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1. The complainant has requested details of meetings between the EHRC and third parties.
2. The EHRC disclosed information with information redacted under section 41 (information provided in confidence).
3. The Commissioner's decision is that the withheld information engages section 41 and the public interest favours maintaining the confidence.
4. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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5. The complainant made a request that was received by the EHRC on 23 February 2022:

"For the period between 15 October 2020 and 28 January 2022 inclusive.

• How many virtual and/or in-person meetings have taken place between the chair and/or employees of the EHRC between officers and or representatives of the following organisations:

- Fair Play for Women
- Sex Matters
- Fair Cop

- Women Are Human and any other organisation which partly or solely promotes the exclusion of trans+ women from spaces reserved for women.
  - Names and role titles of those who attended and the organisations represented
  - Dates and duration of each meeting
  - Transcripts of meetings.”
- 6. On 9 February 2022 the EHRC responded and explained that “searches of our systems can only be run on the basis of names of organisations.” It asked the complainant to clarify their request.
- 7. The complainant wrote to the EHRC on 14 February 2022 and excluded the reference to ‘any other organisation which partly or solely promotes the exclusion of trans+ women from spaces reserved for women’ from the request.
- 8. The EHRC provided the substantive response to the request on 6 April 2022. It explained that it did not hold transcripts of the meetings but did hold email notes of meetings that had occurred. It released the emails with redactions made under section 41 (information provided in confidence). It also withheld the names of its staff and third parties under section 40(2) (personal information).
- 9. On 25 April 2022 the complainant requested an internal review. The complainant accepted that personal information could be redacted under section 40(2) but did not accept that the EHRC had redacted information under section 41.
- 10. The EHRC has explained to the Commissioner that ‘One line of text from the meeting write up of the Sex Matters meeting is being withheld as it is information which was provided in confidence.’
- 11. The Commissioner has seen the information that is being withheld, it’s the details of a specific test case. He can’t describe the test case as doing so would, in itself, disclose information that may be protected by the exemption.
- 12. The complainant is concerned that Sex Matters<sup>1</sup> wishes to segregate the transgender community and therefore all test cases ‘upon which these arguments are based’ must be fully scrutinised.

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<sup>1</sup> [Sex Matters - It shouldn't take courage to say so \(sex-matters.org\)](https://sex-matters.org)

## Reasons for decision

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### Section 41 – information provided in confidence

13. Section 41(1) of FOIA states that information is exempt from disclosure under the FOIA if:
  - a) it was obtained by the public authority from any other person (including another public authority), and
  - b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
14. Looking at the withheld information, the Commissioner is satisfied that it has not originated from the EHRC – it was obtained from another person.
15. In order for disclosure to represent a breach of confidence, the information:
  - must have the necessary quality of confidence;
  - must have been imparted in circumstances importing an obligation of confidence; and
  - must be an unauthorised use of the information to the detriment of the confider.
16. The Commissioner is satisfied that the withheld information is more than trivial and it is not otherwise accessible. Therefore, the information has the necessary quality of confidence.
17. The EHRC has explained that the details of the test case were conveyed to it with an expectation of confidence. The EHRC has explained that 'It is crucial for the Commission (EHRC), in the exercise of its regulatory function, that it can continue to have confidential discussions with stakeholders and members of the public who wish to consult us and that such persons can rely on this safe space.'
18. The Commissioner must now consider whether unauthorised disclosure would cause a specific detriment to the party that provided it or any other party. The EHRC has explained that, if the information were disclosed, this would have adverse effect on both Sex Matters and the EHRC itself, both of which are expected to safeguard information provided in confidence. Were either party to breach this confidence, it is

likely that the confider would be able to bring an actionable breach of confidence against it.

19. Although section 41 is an absolute exemption, it's accepted that if there is an overriding public interest in disclosure, this can be used as a defence against any breach of confidentiality that might be brought against the public authority. In other words, the Commissioner must balance the public interest in the information with the inherent public interest in preserving the principle of confidentiality.
20. The complainant has a valid interest in the withheld information. They wish to scrutinise how this test case might affect the transgender community. There's a public interest in understanding how organisations such as Sex Matters are involved in the work of the EHRC.
21. The Commissioner's guidance<sup>2</sup> states 'Any disclosure of confidential information will to some degree, undermine the principle of confidentiality and the relationship of trust between public authorities and confiders of information. Individuals and organisations may be discouraged from confiding in public authorities if they don't have a degree of certainty that this trust will be respected. The weight carried by this factor will depend upon on the context and, more specifically, how the relationship of trust operates to serve the public interest.'
22. The role of the EHRC is to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights within the UK. The EHRC also relies on the free flow of information, from individuals or their representatives, in order to inform and perform these statutory functions. If confiders were deterred from providing information to the EHRC, this would impact the EHRC's ability to carry out its work.
23. The Commissioner is mindful that, in relation to this request, the EHRC disclosed an email summary of Sex Matters and the EHRC's meeting, including an outline of Sex Matter's proposed policy. The Commissioner considers the public interest in understanding how these two organisations interact has been largely met and the policy in question can be scrutinised without the need to disclose the test case, which would interfere with the privacy rights of those involved and present the possibility of an actionable breach of confidence.
24. With this in mind, the Commissioner is satisfied that section 41 applies and the public interest lies in preserving the principle of confidentiality.

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<sup>2</sup> [information-provided-in-confidence-section-41.pdf \(ico.org.uk\)](https://ico.org.uk/information-provided-in-confidence-section-41.pdf)

## Right of appeal

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25. 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)

26. 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.
27. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**