

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2022

Public Authority: The Royal Borough of Kensington and Chelsea
Address: Town Hall
Hornton Street
W8 7NX

Decision (including any steps ordered)

1. The complainant has requested for a copy of the recent correspondence which The Royal Borough of Kensington and Chelsea ("the Council") sent to the Department of Education ("DfE") relating to Holland Park School ("the school"). The Council refused to disclose the information and relied on section 36 of FOIA (prejudice to the effective conduct of public affairs)¹ as its basis for doing so.
2. The Commissioner's decision is that the Council have correctly applied section 36(2)(b)(ii) of FOIA to withhold the information. He does not require the public authority to take any further steps.

Request and response

3. On 5 May 2022, the complainant requested information in the following terms:

"Please disclose, preferably by PDF, a copy of the most recent piece of correspondence the Council has sent to the Department for Education relating to Holland Park School and highlighting the need for urgent action."
 4. The Council confirmed that it holds the information requested but refused to disclose it, on the basis of section 36(2)(b)(ii) of FOIA. The
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¹ [Section 36 \(ico.org.uk\)](https://ico.org.uk)

complainant requested for an internal review, following which the Council upheld its original position.

Reasons for decision

5. Section 36(2)(b)(ii) of FOIA states that information is exempt from disclosure if, in the reasonable opinion of the Qualified Person, disclosure of the information would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation.
6. Section 36 relies on the qualified person within the Council to give an opinion on the likelihood of prejudice occurring. In this case the Council confirmed that its qualified person is the Chief Solicitor and Monitoring Officer who considered the requested information and took the opinion that the exemption at section 36(2)(b)(ii) is engaged. The Commissioner is satisfied that the Council's Monitoring Officer is authorised as the qualified person under section 36(5) of FOIA.
7. In the opinion of the qualified person the exemption at section 36(2)(b)(ii) is applicable to the withheld information because disclosure would inhibit the free and frank exchange of views for the purposes of deliberation.
8. The qualified person has explained that the correspondence as at the date of the request is an email dated 25 April 2022 from the Council's Executive Director sharing their and the Council's views to inform decisions or actions which needed to be taken by DfE. In addition, the email contains very sensitive personal data which had to be disclosed to the DfE to inform their considerations. The Council also argued that at the time of the email the school had received the report of an investigation and OFSTED had announced an inspection. The recent difficulties encountered by the school are set out in the background to a report to the meeting of the Council's Leadership Team on 6 July 2022. The challenges faced by the school and the impact on staff and pupils have been reported in the press.
9. The Commissioner has had sight of the withheld information. He accepts that it is reasonable for the qualified person to consider that there was a need for a safe space for the Council to deliberate on matters concerning the school with the DfE away from the public domain. He is also satisfied that the qualified person's opinion- that inhibition relevant to section 36(2)(b)(ii) of FOIA would be likely to occur through disclosure of the withheld information - is reasonable. The Commissioner's conclusion is, therefore, that the exemption is engaged.

Public Interest test

10. The Council acknowledges that there is a general public interest in accountability and transparency of the Council's actions. They also consider that disclosure of the information would show an insight into the process by which senior officers and management receive and share advice.
11. The Council argues that the disclosure of the withheld information will inhibit the provision of advice and the free and frank exchange of views between the Council and the DfE, which will affect the quality of decision making. They have stated that the disclosure of the information would inhibit the ability of officers to give honest opinions, and exchange views in similar matters in the future.
12. The Commissioner recognises that, inherent in the section 36(2)(b) exemptions is the argument that a public authority should be afforded private space for staff, in which, issues can be considered and debated, advice from colleagues and subject experts can be sought and freely given and ideas tested and explored to protect the integrity of the deliberation process.
13. In this case, the Commissioner accepts that the subject matter associated with the withheld information was live at the time of the request. The Commissioner accepts that a safe space is required when issues under discussion are still live. He considers that at the time of the request, disclosure of the withheld information would hinder the Council's ability to engage in free and frank exchange of views and advice with the DfE.
14. For the reasons set out above the Commissioner considers that in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure. Therefore, the Council was not obliged to disclose the requested information.

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: 0203 936 8963
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

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