

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

### **Decision notice**

**Date:** 13 February 2023

**Public Authority:** EEEA Trust Ltd  
(Proprietor of Ravenscote Junior School)

**Address:** 181 Frimley Road  
Camberley  
GU15 2QB

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

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1. The complainant has requested teaching materials, provided by a third party, in support of sex education lessons. The above public authority ("the public authority") provided some information, but relied on section 43 of FOIA (commercial interests) to withhold the remainder.
2. The Commissioner's decision is that the public authority is entitled to rely on section 43 of FOIA and that the balance of the public interest favours maintaining the exemption. The public authority breached sections 10 and 17 of FOIA in dealing with the request.
3. The Commissioner does not require further steps to be taken.

#### **Request and response**

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4. On 21 November 2022, the complainant wrote to the public authority and requested information in the following terms:
  - "[1] I am writing to request copies of all year 6 teaching materials (including lesson plans and other resources issued to the school by third-party education providers) used in my child's PSHE lessons.
  - "[2] Please also provide me with a breakdown of sex education content (as opposed to relationships and health educational) content of the school's PSHE curriculum."

5. The public authority responded on 16 January 2023. It provided information within the scope of element [2] of the request, but withheld information within the scope of element [1], relying on section 43 of FOIA in order to do so.
6. Following an internal review the public authority wrote to the complainant on 19 January 2023. It upheld its previous position, although did provide some information outside the scope of the request and offered the complainant the opportunity to inspect the remaining withheld information for himself.

### **Reasons for decision**

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7. Section 43 of FOIA allows a public authority to withhold information if disclosure would cause commercial harm either to the public authority itself, or to a third party.
8. At the outset of his investigation, the Commissioner drew the complainant's attention to a previous decision he had issued and explained that he was likely to take a broadly similar approach in the present case. The complainant argued that any harm could be eliminated if the public authority were to provide the withheld information under the cover of a non-disclosure agreement.
9. When information is disclosed under FOIA it is considered to have been disclosed to the world at large – it is the equivalent of the public authority publishing the information on its website. The public authority must, in most circumstances, disclose the same information to anyone who requests it. A public authority cannot make disclosure under FOIA contingent on the requester entering into a non-disclosure agreement. Therefore, when disclosing information under FOIA, a public authority relinquishes any ability to control the information's further dissemination.
10. In decision notice IC-171936-C9H8, the Commissioner considered a request for similar information that had been withheld because its disclosure would have constituted an actionable breach of confidence (section 41 of FOIA)<sup>1</sup>. Whilst sections 41 and 43 cover different scenarios, demonstrating that the confider of a particular piece of

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4021935/ic-171936-c9h8.pdf> The Commissioner notes that the public authority in question also argued that section 43 applied to the information in question but, as he found that section 41 applied, he did not go on to consider any other exemptions.

information would suffer commercial harm if that information were disclosed can establish that there are grounds for a breach of confidence action. In decision notice IC-171936-C9H8, the Trust successfully argued that a third party provider of lesson materials would have grounds to bring an action for a breach of confidence because it would suffer commercial harm if the information were released to the world at large.

11. The Commissioner is satisfied that commercial harm would also occur in the present case if the information were to be disclosed and he relies on the same arguments set out in paragraphs 25-31 of decision notice IC-171936-C9H8. Section 43 of FOIA is engaged.

### **Public interest test**

12. In decision notice IC-171936-C9H8, the Commissioner considered that there was a legitimate interest in parents knowing what their children are being taught – particular in a contentious area such as sex education. However, in that case he considered that a proportionate means of achieving this legitimate interest was allowing interested parents to inspect a copy of the information on Trust premises.
13. In this case, the complainant accepted that he had been given an opportunity to view the information in question, but he did not consider he had had sufficient time to study the material in depth.
14. Whilst the Commissioner recognises that the complainant feels he did not have sufficient time to inspect the information and would have preferred his own copy, the fact remains that he did have an opportunity to view the material and identify any particular content that he considered obviously inappropriate. He has also been provided with a copy of the appropriate section of the curriculum.
15. As in the previous case, the Commissioner considers that there is a stronger public interest in allowing third party providers to benefit financially from the intellectual property that they create – so that they can continue to provide specialist content to schools.
16. The Commissioner is therefore satisfied that the balance of the public interest in this case favours maintaining the exemption.

## **Procedural matters**

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17. The public authority breached section 10 of FOIA as it failed to disclose non-exempt information within 20 school days.
18. The public authority breached section 17 of FOIA as it failed to issue a refusal notice within 20 school days.

## Right of appeal

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19. 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)

20. 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.
21. 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**