

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 August 2023

**Public Authority:** The Governing Body of Colchester Royal Grammar School

**Address:** 6 Lexden Road  
Colchester CO3 3ND

### Decision (including any steps ordered)

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1. The complainant has requested information from Colchester Royal Grammar School ("the School") about its considerations to join a multi-academy trust. The School withheld the information under section 43(2) of FOIA.
2. The Commissioner's decision is that the School is entitled to withhold the information under section 43(2).
3. The Commissioner does not require further steps.

### Request and response

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4. On 22 February 2023, the complainant wrote to the School and requested information in the following terms:

**"In my previous Freedom of Information Act request dated 7th September 2022, I requested minutes of the full governing body between 1st December 2021 and that date. At the time, you withheld some parts of the minutes under Section 43(2).**

**Today the Information Commissioner (IC-204285-L1M0) has ruled that you were entitled to withhold these minutes at the time of my initial request due to the desire to keep your consideration of joining a Multi-Academy Trust a secret. From Paragraphs 7-9 of the ICO's ruling, it is clear that this reason no longer applies therefore I would like to make a further request:**

**[1] To release the parts of the minutes from 1st December 2021 to 7th September 2022 that were originally redacted under Section 43(2).**

**[2] To release the full governing body minutes from 8th September 2022 to the current date.** [Numbering added by Commissioner].

5. The School responded on 20 March 2023:
  - In respect of part [1] it stated that it was continuing to withhold the requested information under section 43(2);
  - In respect of part [2] it disclosed the requested information subject to some redactions under section 40(2) and section 43(2).
6. On 22 March 2023, the complainant challenged the application of section 43(2) to both parts of the request.
7. Following an internal review, the School wrote to the complainant on 28 April 2023. It maintained the application of section 43(2).

## **Reasons for decision**

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8. This reasoning covers the School's application of section 43(2) of FOIA to information it had redacted from the disclosed minutes. The reasoning takes account of the situation as it was at the time of the request in February 2023.
9. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
10. In a submission to the Commissioner, the School has provided a background to the matter discussed in the redacted minutes and a copy of the information it is withholding. The matter under discussion was the Schools consideration of joining a multi-academy trust ("MAT").

11. The Commissioner has previously considered some of this information and its context in decision notice IC-204285-L1M0<sup>1</sup>, where the Commissioner considered an earlier request for it in September 2022. In that decision, the Commissioner found that the School was entitled to withhold the information under section 43(2).
12. In this case, the Commissioner must consider whether there has been any substantive change in the context that would mean the School is no longer entitled to withhold that information, as well as further information that it now holds.
13. The only substantive change in circumstances that the Commissioner is aware of, is that at the time of this request, it was publicly known that the School was considering joining a MAT. The complainant has argued that this change indicates that the Schools reliance upon section 43 is no longer valid.
14. In decision notice IC-204285-L1M0, the Commissioner noted the following:

**“The School considers that disclosing the information at the time of the request would have been likely to prejudice its relationships with the bodies with which it was working at that time. The School considers that it would also have been likely to result in certain bodies gaining an insight into the School’s requirements that could ultimately lead to the School not obtaining the best outcome.”** [Commissioner at paragraph 8]
15. The School has argued to the Commissioner that the disclosure of the information would continue to prejudice its commercial interests. This is because whilst it was publicly known that the School was considering joining a MAT, and an in-principle decision had been made that one MAT was the preferred trust, this was still subject to due diligence checks and negotiation. As such, the disclosure of the information would still provide an insight into the School’s requirements and negotiating position, and could prevent the School from pursuing the best outcome in the conclusion to these negotiations.
16. Having considered the above, the Commissioner notes that whilst it is now publicly known the School is in negotiations to join a MAT, these negotiations are ongoing. In this situation, it is reasonable for the

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024399/ic-204285-l1m0.pdf>

Commissioner to accept that insight into the Schools negotiating position will undermine its ability to negotiate.

17. The Commissioner is satisfied first, that the harm the School envisaged relates to commercial interests; its own. Second, the Commissioner accepts that a causal link existed between disclosure and commercial prejudice for the reasons the School has provided to the Commissioner – disclosure (at the time of the request) would reveal the basis of its negotiating position. Finally, the Commissioner accepts the School's position that the envisioned prejudice would have been likely to happen i.e., it is more than a remote, hypothetical possibility. The Commissioner's decision is therefore that at the time of the request the School was entitled to apply section 43(2) to the withheld information. He will go on to consider the associated public interest test.
18. There is a general public interest in public authorities being open and transparent and, in the School's case, a specific public interest in being transparent about matters that may affect it (and so may affect its staff and students).
19. The Commissioner is satisfied that the general public interest in transparency has been met through the information it disclosed. He considers that there is greater public interest in the School being able to obtain the best outcomes based on its own particular circumstances. On balance therefore, the Commissioner finds that the public interest favoured maintaining the section 43(2) exemption in this case.

## **Other matters**

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20. The Commissioner refers the School to the findings in decision notice IC-204285-L1M0, and specifically the procedural matters noted.
21. The Commissioner further reminds the School that, as noted in both this and the prior decision notice, the application of section 43 can be dependent on the timing of the request. Once the substantive matter is concluded, and should the information no longer have the potential to prejudice its commercial interests, the School may wish to consider whether the information can be proactively disclosed.

## Right of appeal

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22. 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)

23. 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.
24. 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 .....**

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