

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 December 2022

Public Authority: North Yorkshire County Council
Address: County Hall
Racecourse Lane
Northallerton
North Yorkshire DL7 8AL

Decision (including any steps ordered)

1. The complainant requested information relating to school provisions for teaching Relationships and sex education (RSE) and Personal, social, health and economic education (PSHE). North Yorkshire County Council (the "council") refused the request under the exemption for commercial interests (section 43(2)).
2. The Commissioner's decision is that the information is commercially sensitive and the council is entitled to withhold it under section 43(2) of FOIA. The public interest favours maintaining the exemption.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 15 June 2022, the complainant wrote to North Yorkshire County Council (the "council") and requested the following information:

"I would like all details of:

a) the names of any/all PSHE and RSE external providers, responsible for providing resources and training to primary and secondary schools in the NYCC area

b) ALL PSHE and RSE materials to be taught by said providers to all primary and secondary schools in the NYCC area I would also like any training materials, workshop materials (or other related materials) provide to schools, teachers and teaching assistants on gender identity and sexuality, 'sex positivity', transgender, intersex and non binary persons or other related matters, whether produced internally or provided by external providers."

5. The council responded to part a of the request and refused to provide the information in part b, relying on the exemption for commercial interests (section 43(2)).

Reasons for decision

6. 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.
7. The council has explained that, to ensure streams of income it provides many traded services using the expertise of its staff to provide services to other organisations for remuneration. A lot of these are education services such as maintained schools and academies.
8. The council confirmed that the withheld information consists of training materials for school staff on statutory guidance around the topics identified by the complainant. The materials are used as part of the service the council provides to schools on payment of a fee.
9. The council has argued that disclosure would prejudice the council's market position, impact the revenues generated from the sale of this commercial product and provide competitors with access to materials which could be used to their advantage.

10. The Commissioner is satisfied that the harm the council envisages relates to its own commercial interests. The Commissioner also accepts that a causal link exists between disclosure and commercial prejudice, specifically that disclosure would provide competitors with the council's training materials which could be used to enhance their own commercial position to the council's detriment. The Commissioner's decision is, therefore, that the council was entitled to apply section 43(2) to the withheld information. He has gone on to consider the associated public interest test.
11. The complainant considers there is a public interest clear value in holding the council to account for how it advises schools to comply with the law and statutory guidance, including meeting safeguarding requirements in curriculum delivery. They have argued that PSHE/RSE is a contentious, developing and complex area and there is a strong public interest in transparency and community engagement.
12. The council has argued that there is a strong public interest in allowing it to provide effective training to school staff and to protect its ability to generate revenue via its commercial enterprises. The council has identified direct competitors to its training provision who would benefit from having access to the withheld information.
13. In considering where the balance of the public interest lies, the Commissioner recognises the complainant's genuine concerns about how these sensitive issues are addressed in schools.
14. However, the Commissioner is mindful that there is already substantial information in the public domain which explains how schools carry out their obligations in these areas. In addition to detailed, published curriculum information¹ the Commissioner notes that information about specific performance can be accessed via Ofsted reports².
15. The Commissioner considers that these factors adequately address the public interest in transparency and accountability. He also considers that there is no significant countervailing public interest in disclosing the training materials, at least not of sufficient weighting to justify the

¹ See, for example: <https://healthyschoolsnorthyorks.org/wp-content/uploads/2021/03/September-2020-NYCC-DfE-RSHE-inclusive-PSHE-and-Citizenship-Guidance-for-KS3-4.docx.pdf>

² <https://www.gov.uk/find-ofsted-inspection-report>

commercial prejudice which disclosure would cause, particularly at a time when local authority resources are stretched.

16. Having considered the relevant facts, the Commissioner has concluded that, in this case, the public interest favours maintaining the application of section 43(2).

Right of appeal

17. 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

18. 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.
19. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF