

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2024

Public Authority: Linacre College

Address: Oxford
OX1 3JA

Decision (including any steps ordered)

1. The complainant made a request for the due diligence report relating to a planned donation to Linacre College.
2. The Commissioner's decision is that the College was entitled to rely on section 41(1) of FOIA to withhold the information requested at part one of the request and, on the balance of probabilities, does not hold information within scope at part two of the request.
3. The Commissioner doesn't require any steps as a result of this decision notice.

Request and response

4. On 17 October 2023, the complainant wrote to Linacre College and requested information in the following terms:

"1) Please provide a copy of any due diligence reports completed by Linacre College on the planned donation by [name redacted] to the College, including any assessment of the source of funds and the reputational risks of accepting the donation

2) Please provide a copy of all email correspondence between the Linacre senior leadership team and [name redacted] in relation to the donation."

5. Linacre College responded on 3 November 2023 and refused part one the request under section 40(1), 41 and 43(2) of the FOIA. It stated that no information was held in relation to part two of the request.
6. Linacre College conducted an internal review on 1 December 2023 maintaining its original position.

Scope of the case

7. The complainant contacted the Commissioner on 11 December 2023 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if Linacre College can rely on section 40(1), section 41 and section 43(2) to withhold information relating to part one of the complainant's request.
9. In addition the Commissioner has also considered whether, on the balance of probabilities, no information is held in relation to part two of the complainant's request.

Reasons for decision

Section 41 – information provided in confidence

10. This reasoning covers Linacre College's application of section 41(1) of FOIA to part one of the complainant's request.
11. Section 41(1) of the FOIA states:

"Information is exempt information 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."
12. In its submission to the Commissioner, Linacre College stated that in October 2020 it commissioned an investigative due diligence report on [name redacted], her husband and business partner, [name redacted] from an expert global business security firm. It stated that this is the only report that meets the criteria in part one of the complainant's request.

Was the information obtained from another person?

13. Linacre College stated that the due diligence report was prepared by Kroll Associates UK Limited (the security firm), an expert global business security firm on its behalf.
14. It also explained that the information within the report was obtained by a variety of methods from the security firm including but not limited to its own sources.
15. The Commissioner is therefore satisfied that the information was obtained from a third party and therefore the requirement of section 41(1)(a) is satisfied.

Would disclosure constitute an actionable breach of confidence?

16. 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 either the party which provided it or any other party.

Does the information have the necessary obligation, and the necessary quality of confidence?

17. The Commissioner finds that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial.
18. The Commissioner has reviewed the withheld information and notes that the information in the report isn't trivial – the College explained (and the Commissioner has seen) that the due diligence report contains information relating to the personal and financial interests of the donor, their source of wealth, political affiliations and other personal information relating to their background. The report also contains information collected from 'sources' that provide opinions and further background information and insight relating to the individual, her husband and companies.
19. If the information is more than trivial then the authority must go on to consider whether the information is otherwise accessible. Information

that is already in the public domain won't possess the necessary quality of confidence.

20. The Commissioner is aware that there has been reports in the media concerning the potential donation that this request relates to, as well as other information relating to the individual concerned and her husband.
21. However, the College explained that even though much of the information may have been drawn from the public domain, the way in which the security firm and College have chosen to consider in its deliberations and the way in which the information has been presented in the report is not in the public domain.
22. The Commissioner's guidance states that if disclosure would reveal something new, then the material that would bring the new information to light may still retain its quality of confidence.
23. The Commissioner is therefore satisfied that the withheld information has the necessary quality of confidence.

Was the information imparted in circumstances importing an obligation of confidence?

24. A breach of confidence will not be actionable if the information was not communicated in circumstances that created an obligation of confidence. An obligation of confidence may be expressed explicitly or implicitly.
25. Linacre College explained that the due diligence report was provided subject to actionable obligations of confidentiality with the security company and it provided a copy of the 'Restricted Use Warning' to the Commissioner as evidence of this.
26. The College also stated that to ensure it met the requirements of section 41(1)(b) FOIA, it sought the consent of the security firm for disclosure of the due diligence report and it was informed that the terms of the engagement letter with the security firm and the disclosure notice to the report would prohibit any such disclosure of any part of the report.
27. Linacre College explained that if it was to make an unauthorised disclosure of the security company's report in violation of its agreement, it believes that it would be reluctant to provide services to Linacre College again in future which would be detrimental to it to carrying out further due diligence on potential future donators.
28. In addition, upon viewing the withheld information, the Commissioner notes 'sources' provided statements and views of the donor and her businesses and the security firm stated that these have been included but not verified as part of the report.

29. The Commissioner refers to the test set out in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41, specifically:

“...if the circumstances are such that any reasonable man standing in the shoes of the recipient of the information would have realised that upon reasonable grounds the information was being provided to him in confidence, then this should suffice to impose upon him an equitable obligation of confidence”

30. The Commissioner accepts that there is an implied and explicit obligation of confidence on the security firm and that the College will not share information provided as part of this due diligence process.
31. The Commissioner also accepts that the information gathered from ‘sources’ would have been communicated in confidence to the security firm. He is also satisfied that there would have been no reasonable expectation on behalf of the ‘sources’ at the time, that this may be put into the public domain in the future.

Would disclosure be an unauthorised use of the information to the detriment of the confider?

32. Linacre College explained that based on a careful and considered analysis of the confidential nature of the personal data contained within the due diligence report, there could be potential consequences of breaching its confidentiality obligations to the security firm, and the likely prejudice to the commercial interests of the donor, her husband, the security firm and Linacre College.
33. The Commissioner acknowledges that disclosure of the withheld information would provide the public within an insight into the donor’s personal and professional life and such insights could be of significant interest to competitors. The Commissioner accepts that although this information may potentially be in the public domain, the way in which the security firm has gathered this information and provided it is not.
34. The Commissioner is also mindful that information was also provided from other ‘sources’ and that there is also a need to protect the confidentiality of these individuals. These ‘sources’ are not named, however information contained in the statements and views provided may reveal the identity of the individuals.
35. The Commissioner accepts that if the information was to be disclosed under FOIA the security firm’s future viability of similar research may be impacted as individuals would be reluctant to provide comments and views as they could be disclosed as a result of a request made under FOIA. This could potentially devalue the work taken out by the security

firm, thus impacting the quality and detail of the report and which is necessary as part of the due diligence process.

36. In addition, if the report was to be disclosed, competitors of the security firm may also be aware of what information is collected as part of a due diligence report and how it is presented. This could provide insight into the work of the security firm and would therefore be detrimental to the business.
37. The Commissioner therefore accepts that disclosure of the requested information would have a genuine and negative effect on the donor's commercial interests, as well as the relationship between Linacre College and the security firm which would be detrimental to both parties ability to carry out further due diligence on potential future donators.
38. The Commissioner also accepts that if the 'sources' statements were to be made public as a result of disclosure under FOIA this may cause detriment to the 'sources' damaging their relationship with the donor.

Is there a public interest defence for disclosure?

39. 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 a public authority disclosing information under FOIA. In other words, the Commissioner must balance the public interest in the information with the inherent public interest in preserving the principle of confidentiality.
40. The complainant argued that the issue of reputation washing is a major issue at British universities, with those who earn funds from non-rule of law jurisdictions associating with western education establishments to enhance their prestige and that it is a very live public debate which this disclosure could meaningfully inform.
41. Linacre College stated that it strongly endorses the view that there is legitimate public interest in ensuring that a proper due diligence investigation has been carried out. However, it explained that it is able to demonstrate that a rigorous process has been carried out without it being necessary to disclose the information.
42. Linacre College explained to the Commissioner that the University of Oxford's Committee to Review Donations (which is independent of the college), the Charity Commission and the UK Minister for Higher Education's office have all reviewed our due diligence process and have confirmed that they are satisfied with what it has done. Linacre College

stated that that this was widely reported in national and international media¹.

43. Linacre College explained that it does not accept that disclosure of the results of its due diligence work is necessary in order to confirm that the due diligence process itself was appropriate and sufficient. It also said that it does not accept that there are any reasonable grounds for concern about the quality or depth of its due diligence process.
44. Linacre College also explained that there is a need to be transparent with potential donors and it carry out due diligence work. It stated that donors invariably accept that it is necessary for the college to carry out thorough due-diligence checks before accepting a donation, provided it is done discretely and confidentially.
45. Linacre College explained that as it is a UK registered charity, the College relies heavily on philanthropic donations to fund its operations and fulfil its charitable objectives for the public good. It argued that it believes that there is significant public interest in its ability to raise funds through philanthropic donations, as these donations enable it to continue providing valuable services and support to the wider community. Conducting due diligence on potential donors is a crucial aspect of its fundraising efforts, as it allows it to ensure that any donations the College receive are from legitimate sources and do not pose a risk to its organisation.
46. Linacre College has also claimed that it would be unable to sign an engagement letter that prohibited it from disclosing the report knowing that Linacre College would have to disclose it following a request made under the FOIA. It claimed that disclosure would have a very serious impact on Linacre College's ability to commission high-quality due diligence on future donors and believes this is not in the public interest.
47. Linacre College explained to the Commissioner that, since the request was made, it has become clear that the donor is not able to transfer a donation to Linacre College due to current currency regulations. Additionally, Linacre College explained that it has no present intentions to alter its name, as stated in its Gift Agreement, the name change was contingent upon the receipt of the funds and that this has been widely reported in national and international media.²

¹ [Oxford's Linacre College gets go-ahead to accept £155m gift - BBC News](#)

² [Oxford college's plan to rename itself after Vietnamese billionaire collapses \(telegraph.co.uk\)](#)

48. Linacre College confirmed that since the funds have not been received, and it has no plans to change the college's name, it believes that there is no longer any substantial public interest in revealing this information.
49. The Commissioner recognises the public interest in ensuring that a proper due diligence investigation has been carried out by public authorities receiving donations, especially when the donors are subject to controversy.
50. The Commissioner accepts disclosing the information would help understand how Linacre College has carried out due diligence on donors and how decisions have been made.
51. He also accepts that there is general public interest in a public authority being transparent and accountable by complying with requests that it receives under FOIA.
52. However, the Commissioner accepts that to carry out due diligence on donors, a public authority may require a third party to conduct such work and that this may contain confidential information and confidentiality clauses.
53. The Commissioner also accepts that if due diligence reports were to be made public via requests under FOIA, public authorities may not be able to receive all information made available to them and make a fully informed decision which would not be in the public interest.
54. On this occasion therefore, the Commissioner is satisfied that section 41(1) of FOIA is engaged, and the public interest lies in preserving the principle of confidentiality.
55. As the Commissioner has decided that section 41(1) was appropriately cited and the public interest favours non-disclosure, he has not gone on to consider section 40(2) and 43(2) of FOIA.

Section 1 – information not held

56. This reasoning covers whether, on the balance of probabilities, no information is held in relation to part two of the complainant's request.
57. Section 1 of FOI states that:

“Any person making a request for information to a public authority is entitled –

 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.”

55. The public authority is not obliged to create or acquire information in order to satisfy a request. The Commissioner is not required to consider the accuracy or the adequacy of the recorded information a public authority does (or, in some cases, does not) hold. This is because the terms of FOIA only relate to the provision of information as it is held, regardless of its accuracy or validity.
56. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
57. Linacre College explained to the Commissioner that all negotiations in Vietnam, in relation to the donation, were carried out on behalf of Linacre College by a trusted intermediary. It stated that it did not pay for this service and they are not an employee or a member of the College.
58. It also explained that the donor does not speak English and neither the Principal nor the Bursar speak Vietnamese. It explained that Linacre College has never had any direct written communication with the donor nor any messages from her passed through her personal assistant or through a translator.
59. Linacre College stated that the only direct communication that the Principal and Bursar have had with the donor was spoken conversations through a translator, via video conferencing or at face-to-face meetings in Vietnam and Oxford.
60. The Commissioner asked what searches were carried out to check no information was held within the scope of the request and why these searches would have been likely to retrieve any relevant information.
61. Linacre College explained that email messages from the donor to the Bursar or Principal would have been sufficiently unusual and it would have been important that Linacre College would have known immediately of their existence. It is therefore confident that no such correspondence exists or has ever existed. It confirmed that the donor did not communicate in this way with Linacre College.
61. Linacre College also explained that the Principal and the Bursar are confident that they have never received any email correspondence from the donor and no other members of the Senior Management Team were ever involved in any such correspondence.

63. Linacre College confirmed that if emails from the donor existed, they would most probably be held as electronic records. It explained that Linacre College has a data retention policy for certain types of data and if the donor had corresponded with the Principal and/or Bursar by email about the proposed donation then copies would have been retained.
64. The Commissioner has found no evidence to suggest that the information in question is or was held and based on the information available to him. It is the Commissioner's understanding that correspondence was carried out on behalf of Linacre College by a trusted intermediary and that information was not provided to the College.
65. It is also his understanding that the only direct communication the Principal and Bursar of Linacre College had with the donor was spoken conversations through a translator, via video conferencing or at face-to-face meetings in Vietnam and Oxford and did not result in any follow up emails.
64. Consequently, the Commissioner's decision is that, on the balance of probability, the information requested at part two of the request is not held nor was it held at the time of the request. Therefore Linacre College has complied with the requirements of section 1(1) of FOIA in this respect.

Right of appeal

58. 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

59. 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.
60. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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