

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2024

Organisation: Royal Horticultural Society
Address: 80 Vincent Square
London
SW1P 2PE

Decision (including any steps ordered)

1. The complainant has requested information from the Royal Horticultural Society (the RHS). The RHS refused to provide the information as it stated that it was not subject to FOIA.
2. The Commissioner's decision is that the RHS is not a public authority for the purposes of FOIA and was therefore not obliged to respond to the request.
3. As the RHS is not a public authority, the Commissioner would be unable to order any remedial steps – even if any were necessary.

Request and response

4. On 9 August 2024, the complainant wrote to the public authority and requested information in the following terms:

“Under the Freedom of Information Act I respectfully request to know how many Section 21 no fault eviction notices the Royal Horticultural Society has issued/had their letting agent Seymours issue since the housing in Wisley Village was first opened up for private renters.”
5. The RHS responded on 23 August 2024. It noted that it was not a public authority and therefore not under an obligation to respond to requests made under FOIA.

Reasons for decision

6. In order to be a public authority for the purposes of FOIA, an organisation must meet one of three criteria. It must be either:
 - listed in [schedule 1 of FOIA](#); or
 - designated as a public authority by ministerial order; or
 - a publicly-owned company – as defined by [section 6 of FOIA](#).
7. The Commissioner will deal with the criteria in reverse order.
8. The RHS is not a publicly-owned company. It is a registered charity, established by royal charter and governed by its trustees. No trustee is a public authority.
9. To be a publicly-owned company, the RHS would have to be entirely owned by one or more public authorities. That is clearly not the case.
10. Nor has the RHS been designated as a public authority by ministerial order. No such order exists.
11. Given the nature of the RHS and what it does, in order to be a public authority, the Commissioner would expect to see it explicitly listed in Part VI of Schedule 1 of FOIA. The RHS is not explicitly listed in this, or any other, part of Schedule 1.
12. The complainant argued that the RHS was a provider of higher education. He noted that the RHS offers [diplomas in horticulture](#).
13. The governing bodies of many higher education providers are covered by FOIA.
14. Schedule 1, section 53(1)(a) of FOIA designates the governing bodies of “registered higher education providers” as public authorities. Section 53(2)(aa) defines a registered higher education provider, via section 3(10) of the Higher Education and Research Act 2017, as an institution listed on the Office for Students’ register of higher education providers.
15. Neither the RHS, nor its awarding body RHS Qualifications, features on [that register](#).
16. The RHS may offer diplomas, however it does not meet the definition of a registered provider of higher education in schedule 1, section 53(1)(a) of FOIA. Nor does the RHS meet any of the other criteria in section 53.

17. As the RHS is not a publicly-owned company, not designated by ministerial order and not listed in schedule 1 of FOIA, it is not a public authority for the purposes of the Act.
18. As FOIA only applies to public authorities, it follows that the RHS was under no obligation to deal with the request.

Other matters

19. The complainant argued that, given the RHS' functions, it should be designated as a public authority by ministerial order.
20. The Commissioner can only regulate the legislation as it is, not how he, or others, might wish it to be.
21. Responsibility for amending FOIA, either by order, or by legislation, lies with the Cabinet Office, not the Commissioner.

Right of appeal

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

Website: 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

Roger Cawthorne
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Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF