

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2024

Public Authority: Governing Body of Belfast Royal Academy

Address: 5-17 Cliftonville Road
Belfast
BT14 6JL

Decision (including any steps ordered)

1. The complainant submitted a request to the Governing Body of Belfast Royal Academy (the academy) for financial information relating to the academy and Ben Madigan Preparatory School.
2. The Commissioner's decision is that section 36(2)(c) (prejudice to the effective conduct of public affairs) of FOIA is engaged and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
3. The Commissioner does not require further steps as a result of this decision notice.

Request and response

4. On 25 January 2024, the complainant wrote to the academy and requested information in the following terms:

"BRA 'Scheme of Management' – current as well as the previous two amended versions.

- BRA 'Annual Honorary Treasurers' Report' – for the past five years.
- Education Authority (EA) – 3-year Financial Submission – The last Board of Governors

'3 Year Financial Plan' submitted to the EA for their approval.

- BRA 'Full Financial Statements'*- for the past five years.
- BRA 'Financial Audit Reports'* - for any audits undertaken (both internal & external) for the past five years.
- BM specific 'Full Financial Statements'* - for the past five years.

To clarify, I am requesting the full accounts separately held across both BRA and BM department;

*All information held on your Annual Accounts including but exclusive of full Profit & Loss and Balance Sheets for year each above.

In addition, if information is not available in standard accounting format for BM, I request the same summary annual data using your EA Integrated Financial System (IFS) department format reports for your BM to include all Income & Expenditure over the same time five-year period."

5. On 22 February 2024, the academy informed the complainant that it considered that the exemptions of 36 and 43 of FOIA applied to the requested information, but that it had not yet reached a verdict on the balance of the public interest test.
6. A response was then provided on 21 March 2024, in which the academy disclosed some information and confirmed that it was withholding the rest of the requested information under the above exemptions, and that the balance of the public interest favours maintaining the exemptions.
7. Upon receiving this response, the complainant requested the academy conduct an internal review on 25 March 2024 and on 10 April 2024, the academy provided its response, in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 21 June 2024 to complain about the way their request for information had been handled.
9. During the course of the Commissioner's investigation, the academy provided a revised response to the complainant in which it was able to disclose more of the requested information, due to the passage of time. However, the academy informed the complainant that it was still withholding the Education Authority 3 Year Financial Submission under the above exemptions.
10. The Commissioner contacted the complainant to see if they were happy with the revised response. The complainant responded stating that they wanted the above financial submission to be disclosed.
11. The Commissioner considers that the scope of his investigation is to firstly examine the application of section 36(2)(c) of FOIA.
12. Should the above exemption not apply to the withheld information, the Commissioner will go on to consider the application of section 43(2) of FOIA.

Reasons for decision

Section 36-prejudice to the effective conduct of public affairs

13. Section 36(2) of FOIA provides that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information:

(c) would otherwise prejudice, or would otherwise be likely to prejudice, the effective conduct of public affairs.
14. The Commissioner's guidance on section 36¹ states that information may be exempt under section 36(2)(c) if its disclosure would, or would likely, have an adverse effect on a public authority's ability to offer an effective public service.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-36-prejudice-to-the-effective-conduct-of-public-affairs/>

15. For any part of the exemption at section 36 to be engaged, the qualified person (QP) within the public authority is required to give a reasonable opinion about the likelihood of prejudice or inhibition.
16. When determining whether the QP's opinion is a reasonable one, the Commissioner takes the approach that the opinion is in accordance with reason and not irrational or absurd; in short, if it is an opinion that a reasonable person could hold.
17. The Commissioner is satisfied that the Warden of the Board of Governors is authorised as the QP under section 36(5) of FOIA.
18. The academy confirmed that it obtained the opinion of the QP on 22 February 2024. The QP was provided with a copy of the request and withheld information but was not provided with submissions supporting a recommendation that the exemption was engaged.
19. On 22 February 2024, the QP advised that the disclosure of the withheld information, into the public domain, is "very likely to have a detrimental impact on the operation and reputation of the school, and it is not unreasonable to see issues arising from it."
20. The QP further explained that they could foresee "significant pressures" on school operations arising from the increase in enquiries from parents and press interest from the media.
21. It is important to be clear that the exemptions contained in section 36 focus on the processes that may be inhibited, rather than what is in the withheld information. The issue, in this case, is whether the QP's opinion that disclosure of the information would otherwise prejudice the effective conduct of public affairs is a reasonable one.
22. In submissions to the Commissioner, the academy explained that its Education Authority 3 Year Financial Submission is "confidential and only shared with the Education Authority."
23. It further explained that the document is used to "formulate education policy and specifically the education strategy within the North Belfast Area Learning Community", and that disclosure of the withheld information would likely "disrupt any structured and organised planning by the Department."
24. Building on that position, the academy further explained that "it was clear that releasing the information was likely to damage the reputation of the school in the minds of current and prospective parents of the school."

25. Furthermore, in its submissions, the academy references decision notice FS50302293² in which the Commissioner upheld the public authority's application of sections 36(2)(b)(ii) and 36(2)(c) of FOIA to the withheld information, for reasons similar to those concerning this case.
26. Having inspected the withheld information, the Commissioner accepts that the QP's opinion is one that a reasonable person could hold, as the Commissioner considers that disclosure of the withheld information would be likely to prejudice the effective conduct of public affairs.

Public interest test

27. As section 36(2) is a qualified exemption, the Commissioner will consider whether, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Factors in favour of disclosure

28. The academy acknowledged that disclosure of the withheld information would provide parents and the general public with greater clarity about decision making in the school.
29. The complainant has argued that they "find it odd that a local school would use prejudice/public affairs for not sharing standard documentation."
30. The complainant further argues that as the academy receives public funds, that they are "simply asking for this standard 3 Year Financial Plan documentation that every school in the country must submit to their local public education body."

Factors in favour of maintaining the exemption

31. The academy argues that information is very much 'live', and that the Three-Year Financial Submission includes financial forecasts from 2023 through to 2026.
32. The academy further argues that "releasing the information is likely to damage the reputation of the school in the minds of current and prospective parents."

² https://ico.org.uk/media/action-weve-taken/decision-notices/2011/587636/fs_50302293.pdf

33. The academy further develops this point by explaining that this would affect enrolments, which would risk the academy's ability to "deliver the broad subject choice currently offered." This would then result in pupils transferring to "other competing schools."

The balance of the public interest

34. Where the Commissioner finds that the qualified person's opinion was reasonable, and that the prejudice expressed would or would be likely to occur, he will consider the weight of that prejudice and the severity and frequency of it, in balancing the public interest test.
35. The Commissioner appreciates the complainant's concerns about the future viability of the academy, and the need for it to be transparent.
36. However, the Commissioner is also aware that disclosure of the withheld information would likely lead to a loss of confidence in the academy and would likely result in the predicted prejudice detailed above.
37. Furthermore, these arguments are likely to be strongest when the information is live, as it is in this case.
38. Therefore, whilst the Commissioner considers there are noticeable public interest arguments in favour of disclosure in this case, he considers that the public interest in maintaining the exemption, outweighs the public interest in disclosure.
39. In light of this decision, as the above exemption applies to the withheld information it has not been necessary for the Commissioner to consider the application of 43(2) of FOIA to the information.

Right of appeal

40. 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

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanna Marshall
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