

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2025

Public Authority: The Corporation of Croydon College
Address: Croydon College
College Road
Croydon
London
CR9 1DX

Decision (including any steps ordered)

1. The complainant has requested from Croydon College (the College) granular information about 'A' level results at the Coulsdon campus. The College refused to provide this information, citing section 43(2) of FOIA – commercial interests. It later added further exemptions – sections 36(2)(c) (prejudice to the effective conduct of public affairs), 41(1)(information provided in confidence) and 40(2)(personal information) of FOIA.
2. The Commissioner's decision is that the College cited section 43(2) correctly and that the public interest favours non-disclosure. However, he has also decided that the College has breached sections 1(1), 10(1) and 17(1) of FOIA by not confirming that it held information or issuing a refusal notice within the statutory timeframe.
3. The Commissioner does not require further steps.

Request and response

4. On 30 January 2024, the complainant wrote to the College and requested information in the following terms:

"I would be grateful if you could send me a breakdown of the College's June 2023 A-level exam results – Number of students per grade per subject etc."

5. The College responded on 31 January 2024 but this appears to have been a normal course of business response asking what the purpose was for wanting the information, though it did mention confidentiality.
6. On the same day the complainant questioned why this information was confidential. The complainant chased a response from the College on 7 and 23 February 2024.
7. On 26 February 2024 the College asked the complainant to contact them. The complainant replied on 28 February 2024 stating that they just wanted the same information (including an example) as had been provided by another College minus the last four columns.
8. The College sent a holding email on 7 March 2024. On 8 April 2024 the complainant sent another chaser email.
9. The College responded on 4 June 2024, refusing to provide the requested information and citing section 43(2) – commercial interests. Subsequently, the complainant asked for an internal review on 18 July 2024.
10. Despite an acknowledgement from the College, there appears to have been no internal review carried out.

Scope of the case

11. The complainant contacted the Commissioner on 13 October 2024 to complain about the way their request for information had been handled.
12. During the investigation the College cited additional exemptions – sections 36(2)(c), 40(2) and 41(1) of FOIA.
13. The Commissioner considers that the scope of his investigation is to decide whether the College cited section 43(2) of FOIA correctly. He may then move on to look at the application of the other exemptions. The Commissioner will also consider any procedural breaches that have occurred.

Reasons for decision

Section 43(2) – commercial interests

14. 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.
15. The Commissioner has defined the meaning of the term "commercial interests" in his [guidance](#) on the application of section 43 as follows: "A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent."
16. Most commercial activity relates to the purchase and sale of goods but it also extends to other fields such as services.
17. The Commissioner's guidance says that there are many circumstances in which a public authority might hold information with the potential to prejudice commercial interests. The actual harm that the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to commercial interests.
18. The public authority must demonstrate a clear link between disclosure and the commercial interests of either itself, a third party or both. There must also be a real and significant risk of the prejudice to commercial interests occurring for it to be successfully engaged.
19. The exemption is subject to the public interest test. This means that, even if the exemption is engaged, the Commissioner needs to assess whether it is in the public interest to release the information.

The College's view

20. The College is grant funded but operates in a competitive market. It explains how grant funding is dictated by the number of enrolled students and the type of course that the students "enrol on (e.g. whether a course the government is seeking to promote to students)". The amount of funding "is for it to carry out its activities and provide A level education to students".
21. The College provided the "Local area, deprivation and student households Data from MyLondon (based on ONS deprivation statistics by area, which considers education, employment, health and housing deprivation) "over 30% of households in the area served by the College's Coulsdon campus suffer from deprivation". Many of the 16-18 year olds in the local population are from -

"a deprived household, with no or few household members with level 3 (A Level) or higher education attainments and many with few, if any, level 2 education (e.g. GCSE grades C to A* or 4 to 9)".

It is a "huge achievement" for "these young people" that they attend any education institution, progress to the extent that they achieve any qualification and sometimes to university degree opportunities.

22. The College "operates in a highly competitive environment for 16-18 year old students" and it lists several of the educational establishments with which it is in competition, excluding private or fee paying schools. These establishments require early application, particular grades to be obtained at GCSE, or have selective admission criteria that result in 'better' students being selected. The College's 'A' level courses are open to any student in the 16-18 year old age bracket who want to study 'A' levels. They are eligible "regardless of their family backgrounds or incomes, or achievements to date, and encourages all those who wish to continue to learn and improve their education, and to try and gain educational qualifications, to do so" in order to improve their life and opportunities.
23. The College explains that "Education institutions have been struggling over the last five years to recruit and retain qualified teachers and especially those with experience and that are able". Teachers are attracted to "education providers with good examination results" and good Ofsted ratings as are students and parents. "In the face of poor Ofsted rating, examination results and public criticism" it is difficult to attract and retain teachers.
24. In the 2021-22 and 2022-23 period the College's Coulsdon campus had poor Ofsted ratings and 'A' level outcomes in 2022-23. The College has "worked extremely hard" and succeeded in building back and improving since then. The College argues that it "is important to ensure that any limited and historic period of poor ratings/results, is not viewed out of context and prevented from starting any cycle of decline where this is not justified".
25. Both the campus and the number of students are small compared to other student cohorts in competitor providers. In order for the Coulsdon campus to be financially viable enough to offer 'A' level provision it needs a minimum number of students to enrol "both in total and minimum numbers per course on average". Attracting these students to enrol is "critical" in order to ensure sufficient numbers for viability "in those 'A' level courses which the government wishes to promote (and for which higher grant funding is made available)". The College needs to enrol 'A' level students (who often require help from parents and households) in order for the College to continue its activities at Coulsdon campus and to continue grant funded revenue and to maintain a range of 'A' level provision. Competitors often offer a narrower range of 'A' levels in more traditional subjects, operate selectively, and are further afield. If the campus ceased to operate it would have a "knock-on effect

on the local population, the potential A-level cohorts and the range of ongoing educational options available to them around A levels. This could have an effect on a potential student's "ability to access higher education opportunities in future, specifically university undergraduate degrees, with greater earning potential..."

26. The College has referred the Commissioner to [FS50866848](#) and identified the party/ies whose commercial interests would or would be likely to be prejudiced if the withheld information was disclosed. It confirmed that the party is the College and the prejudice would be to the commercial interests of the College. It considers that there will be a

"longer term commercial impact on the local student cohort due to potential consequences from disclosure and the impact on their educational opportunities, qualification options and future careers and thus earning potential".

27. The College has outlined why the interests are 'commercial', It quotes from the 'University of Central Lancashire (UCLAN) v ICO and Professor Colquhoun EA/2009/0034, (8 December 2009) that a "body which depends on student fees to remain solvent has a commercial interest in maintaining the assets upon which the recruitment of students depend". The College contends that -

"the same principle applies here: the College has a commercial interest in maintaining its ability to recruit students and therefore receive grant income per student which drive the College's revenue".

28. The College provided a number of bullet points to suggest the detriment that may occur to its commercial interests by disclosing the requested information, largely centred on the need to attain a sufficient level of student enrolment for its 'A' level courses that are dependent on government funding. It wishes to maintain viability in order to provide a wide range of 'A' level courses to all the "local eligible population".
29. The College explains in more detail that "the Withheld Information contains a granular breakdown of the specific A level results per A Level subject achieved by each of the Coulsdon campus College students in the academic year 2022/23 (the "Results"). The College offers broader 'A' level choices than normal and is not a large provider compared to many other competing College providers. Students and parents "would make inferences about the College" regarding the requested information.
30. Each student generates upwards of £6,000 per year and is "a crucial source of revenue which helps the College to continue to function".

Disclosure would be likely to influence student decisions about whether or not to attend Coulsdon College.

31. Disclosure is likely to result in the following -

- ...limiting its ability to receive funding in respect of students enrolling at the College;
- finding it harder to recover its sunk investment costs, including staffing costs, since return on investment would likely be lower than anticipated;
- experiencing extra pressure on its finances and possibly diverting funding from other planned business uses/needs; and
- being subject to an unjustifiable and unfair disadvantage against its competitors due to the unwarranted distortion in competition that would likely result.

32. The College considers there is a clear causal link to the impact on its commercial interests following the release of the withheld information and the likely effect on its ability to attract students. Students and parents take past performance into account when they choose where to study. It suggests that many students want to obtain good enough grades to attend university or further education/employment opportunities and wish to obtain the best grades they can to improve their prospects. The withheld information "would clearly be likely to influence prospective students' and their parents' views on what their likely prospects would be if they were to attend Coulsdon College". The College has already experienced an impact on student numbers following the 2023 Ofsted report.

The complainant's view

33. The complainant did not provide detailed argument other than the fact that they considered that the information should be provided to them in order to compare it with another College.

The Commissioner's view

34. The Commissioner accepts that the release of the requested information would be likely to prejudice (the lower level of prejudice) the College's commercial interests. The College has provided a causal link between the impact on its commercial interests following the release of the withheld information and the likely effect on its ability to attract students.

35. The Commissioner has therefore gone on to consider the public interest in this matter.

Public interest factors in favour of disclosing the requested information

36. The College identified certain factors that it considered were in favour of disclosing the requested information:

- Openness and transparency of the College's provision.
- Accountability for poor performance to drive improvements.
- Public awareness of the College's performance to enable prospective students to choose the best institution.

37. The complainant did not provide any public interest arguments though they clearly believe that the College should be transparent regarding the information they have requested.

Public interest factors in favour of maintaining the exemption

38. Set against these factors, the College acknowledged that it was accountable for its failings but that it was not in the public interest to continually publicise a historic failure which has been remedied. This would result in lack of recognition for improvement, a loss of confidence, loss of teaching staff and detriment to educational provision and outcomes. It would be likely to "negatively impact" on "the College's ability to generate income and funding".

39. The College has an important public task in educating young people. There would be a "significant risk to future enrolments which would in turn impact the College's income and would be likely to result in course closures and its ability to function as an education provider. The College argues that it is not in the public interest for this to happen and for its "future operation to be at risk" as Coulsdon is the only Sixth Form College that provides 'A' levels in the London Borough of Croyden. If a reduction in student numbers makes courses "unviable" this would reduce local student choice and these students may not be able to obtain a place elsewhere because the competitors may have selective entrance criteria. They may have their choices limited to more traditional subjects and not be able to choose their preferred course.

40. The College's view is that there is sufficient published information on past results both from itself and from the Department for Education's website [Compare the performance of schools and colleges in England](#) for parents and students to compare state funded provision. The College also has open events to view the campuses, meet teachers and learn

more about awarding bodies, programmes of study and additional help and support. "The latest Ofsted report for each institution is also available for parents to review..." All these enable prospective parents to make a judgement.

41. It does not consider that disclosure would be fair and in the public interest. The Department for Education does not publish at this granular level "due to concerns about student fairness and the impact of relevant education institutions". The College has conducted a "detailed review" of other similar educational establishments in its area and has found only one that "publishes their A level results with the granularity requested" by the complainant and "none give a detailed breakdown of all A level grades achieved by their students". The College does not accept that any "other College or school is required to publish it's A level results to the granular level the requester is seeking".
42. The College does not consider that the disclosure of the requested information would "further the public interest or add to public understanding and would be likely to lead to disproportionate and unjustified harm". It argues that "the public interest in protecting the commercial interests of an inclusive and local further education provider involved in educating young people to be very compelling".

The balance of the public interest

43. There is certainly a public interest in disclosure, this would promote transparency regarding the exact breakdown of results and a fuller picture of the College's results in 2023. He acknowledges that at the time the request was made it could not be considered 'historic'. However, the Commissioner remains satisfied that there is a stronger public interest in withholding the requested information. The College has explained in detail the nature of its educational ethos, its funding and how its commercial interests may be affected. He does not accept that the disclosure of the requested information in a relatively small cohort would add to the public's understanding when selecting an educational provider, given the detail already in the public domain on the gov.uk site and Ofsted reports.
44. As the Commissioner has decided that it is not in the public interest for the requested information to be disclosed, he has not gone on to consider the College's citing of sections 36(2)(c), 40(2) and 41(1) of FOIA to the same information.

Procedural matters

- 45. The College breached sections 1(1) and 10(1) of FOIA because it failed to confirm that it held the requested information within 20 working days.
- 46. The College also breached section 17(1) of FOIA by failing to issue a valid refusal notice within the statutory timeframe.

Other matters

- 47. The [section 45 Code of Practice](#) recommends that public authorities complete the internal review process and notify the complainant of its findings within 20 working days, and certainly no later than 40 working days from the receipt.
- 48. Although the complainant requested an internal review and this was acknowledged by the College, no review appears to have been carried out.
- 49. An internal review is not mandatory under FOIA but if a public authority offers one the Commissioner expects it to be carried out within the maximum recommended time.

Right of appeal

50. 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

51. 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.
52. 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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