

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 September 2013

**Public Authority:** Seckford Foundation Free Schools Trust  
**Address:** 1 Seckford Street  
Woodbridge  
Suffolk  
IP12 4LY

### **Decision (including any steps ordered)**

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1. The complainant made a freedom of information request to the Seckford Foundation Free Schools Trust for financial information regarding the Beccles Free School and Saxmundham Free School. The Trust refused to disclose some of the requested information by relying on the section 43 (Commercial interests) and section 22 (Future publication) exemptions. The Commissioner has investigated the complaint and found that the section 22 exemption is engaged and the public interest favours maintaining the exemption. However, the Commissioner found that the section 43 exemption was not engaged and that the information withheld under this exemption should be disclosed.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - The Trust must disclose to the complainant the information it holds falling within the scope of part iv of the request for both Beccles Free School and Saxmundham Free school.
3. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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4. On 6 July 2012 the complainant made a freedom of information request to the Seckford Foundation Free Schools Trust ("the Trust") which read as follows:

*"Please can you provide the following information. This request is made to the Seckford Free Schools Foundation Trust as a Freedom of Information Request.*

*In relation to Beccles Free School*

- i. Number of pupils in each of years 7,8 and 9 fully registered as pupils for entry in September 2012*
- ii. Number of pupils on which the funding agreement with DfE for Beccles Free School is based for the school year from September 2012 OR amount of diseconomy funding granted by DfE for the school year from September 2012*
- iii. Operating budget for the school year from September 2012*
- iv. Cost of building work required for Carlton Coville premises for the school*

*In relation to Saxmundham Free School*

- i. Number of pupils in each of years 7,8 and 9 fully registered as pupils for entry in September 2012*
- ii. Number of pupils on which the funding agreement with DfE for Saxmundham Free School is based for the school year from September 2012 OR amount of diseconomy funding granted by DfE for the school year from September 2012*
- iii. Operating budget for the school year from September 2012*
- iv. Cost of building work for Saxmundham middle school premises for the new school"*

5. The Trust responded to the request on 2 October 2012. It provided the number of registered pupils but said that the remaining information was exempt from disclosure under sections 21, 22, 36 and 43 of FOIA.
6. The complainant subsequently asked the Trust to carry out an internal review of its handling of the request and it presented its findings on 22 November 2012. The Trust now explained that as regards the second part of the request, its funding agreement did not quote pupil numbers. For both schools the Trust explained that the information in part 3 of the request was exempt from disclosure under section 43 (commercial interests). For part 4, the Trust confirmed that the information was

exempt under section 22 (Information intended for future publication). For both section 43 and section 22 the Trust said that it had concluded that the public interest favoured maintaining the exemption.

## Scope of the case

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7. The complainant initially contacted the Commissioner on 14 November 2012, prior to the completion of the internal review, to complain about the Trust's decision to refuse her request. Once the internal review was completed the complainant confirmed that she wished to pursue her complaint.
8. During the course of the Commissioner's investigation the Trust published its funding agreements for both schools on its website. The Commissioner considers that this resolves part 2 of the request and therefore this Decision Notice only covers whether the information in parts 3 and 4 of the request (for both schools) was correctly withheld.

## Reasons for decision

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### Section 43 – Commercial interests

9. The information in part 3 of the request (the operating budgets for the two schools) has been withheld under the exemption in section 43(2) of FOIA. Section 43(2) provides that information is exempt if disclosure would, or would be likely to, prejudice the commercial interests of any person.
10. In this case the Trust has said that section 43 is engaged because disclosure would be likely to prejudice its own commercial interests. In its internal review it gave the following reasons why it believed section 43 was engaged

*"We have decided to withhold disclosure on this ground because each school in a local area is subject to different funding decisions by the Department for Education. We believe that there are sometimes quite significant differences between the respective cost bases of individual schools in the same area. We are concerned that disclosure to you, followed by publication immediately thereafter of details of (for example) staff funding levels and other funding resources available to the school, may compromise our dealings with staff, prospective staff, and/or suppliers. That could have the effect of destabilising our School at a formative stage in its life and thus the commercial interests of the*

*School are better served by not disclosing the requested information in advance of its publication in accordance with existing legal requirements and within the prescribed timeframes."*

11. The Commissioner must be careful in explaining exactly why the exemption is engaged for fear of causing the prejudice envisaged by the Trust. The Commissioner would say that in its submission to him the Trust clarified that it was withholding the information because disclosure could impact on the confidence in the Trust's ability to run the two schools. This would prejudice its ability to attract pupils and get the best deal for goods and services.
12. The Commissioner has considered the arguments put forward by the Trust but finds that the prejudice it has described would only appear to apply to the Beccles School. The circumstances outlined by the Trust do not apply to the Saxmundham School and therefore for the operating budget of this school the Commissioner is not satisfied that the section 43 exemption is engaged for the reasons given.
13. As regards Beccles School the Commissioner does accept that there is a causal link between disclosure of the operating budget and the prejudice outlined by the Trust – that is to say the public authority is able to explain how, at least in theory, disclosure would lead to the prejudice claimed. However, when considering the likelihood of the prejudice occurring the Commissioner has taken account of the fact that at the time of the request steps had been taken to mitigate any prejudice that would occur and by the time the Trust responded to the request these steps were in place. Therefore, the Trust would be able to address any concerns by revealing details of the plans it had in place which in the Commissioner's view would be likely to dispel any lack of confidence in the ability of the Trust to run the school. Therefore, the Commissioner has taken the view that given the particular circumstances of this case disclosure of the operating budget for the Beccles School would be unlikely to prejudice the commercial interests of the Trust.

#### Section 22 – Information intended for future publication

14. The Trust has withheld the information it holds on the cost of building work (part 4 of the requests) under the exemption in section 22 of FOIA. It explained that at the time of the request the final cost of the construction work had not been agreed and so it did not have final and complete figures. However, it did hold details of the totals which it was allowed to spend, i.e. the grant from the Department for Education, and the complainant has indicated that it is this information which she wants the Trust to disclose.

15. Section 22(1) provides that information is exempt if-
  - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
  - (b) the information was already held with a view to such publication at the time when the request for information was made, and
  - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
16. Therefore the first thing to consider is whether the Trust intends to publish the information and that there was a settled intention to publish the information when the request was made.
17. In response to the Commissioner the Trust explained that it was, and continues to be, its intention to publish the cost of the building work through the audited information in its August 2013 accounts which it intends to publish in December 2013.
18. The Commissioner notes that the complainant was informed from the outset that it was the Trust's intention to publish the cost of the building work. Furthermore as it is a statutory requirement to prepare the accounts the Commissioner is satisfied that there was a settled intention to publish the information at the time the request was received.
19. As to whether it was reasonable to withhold the information until the publication date, the Trust explained that at the time of the request it was still in negotiations with the building contractors and so disclosure would have prejudiced its ability to negotiate competitively. It also said that releasing the information through its audited statutory accounts would provide the most accurate and reliable information relating to the cost of the building work and on this basis it believed withholding the information was reasonable.
20. In considering the reasonableness of withholding the information, the Commissioner's guidance states that authorities should first give separate consideration to whether or not such an approach is "...sensible, in line with accepted practices, and fair to all concerned to withhold the information prior to publication."
21. The Commissioner's guidance also advises that, in considering what is reasonable in all the circumstances, authorities may also wish to consider:

- Is it the right decision to manage the availability of the information by planning and controlling its publication?
  - Is it necessary to avoid any advantage that would be obtained by the requester in obtaining the information prior to general publication?
  - Does the timetable properly require internal or limited consideration of the information prior to its public release?
22. In this case the Commissioner is satisfied that the decision to withhold the information until publication was reasonable as the costs of the building work will need to be audited and it is sensible that the complete and reliable figures are released as planned rather than disclose the figures before they have been finalised which could be misleading. Premature disclosure would also be unfair to the school as it would have prejudiced the negotiation with the contractors as the building work was unfinished at the time the request was received.
23. The Commissioner is satisfied that the section 22 exemption is engaged and so has gone on to consider the public interest test.

#### The public interest test

24. As regards the public interest in maintaining the exemption the Trust said that in its view disclosure at the time of the request could prejudice its ability to negotiate a competitive contract in the interests of tax payers and public funds. It also said that disclosure of incomplete and inaccurate costs would not benefit the public interest as it may not have provided a true picture of the final costs involved.
25. In favour of disclosure the public authority noted that disclosure of information on the cost of building work contributes to the Trust's transparency and accountability to its community.
26. The Commissioner recognises that there is a public interest in terms of transparency and accountability in releasing the information as the issue of the cost of free schools is one of legitimate public concern. Disclosure would help inform public debate on this matter. However, at the same time the Commissioner finds that the public interest in disclosure is very much reduced given that there is a firm date for publication and which is in the relatively near future. Moreover, the Commissioner is not aware of any particular circumstances which would lead to any urgency in the information being released and the public interest in transparency and accountability will be satisfied when the information is released on the planned publication date.

27. On the other hand, the Commissioner accepts that the arguments for maintaining the exemption have weight as the Commissioner is satisfied that it would not be in the public interest to release the grants the Trust have received to complete the building work whilst the negotiation process is still ongoing and that it is better to release the final figures once they have been audited so as to provide a true picture of the costs involved. Therefore the Commissioner is of the view that it is in the public interest for the public authority to keep its original timetable for disclosure.
28. Having considered all the circumstances of the case the Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosure.

## Right of appeal

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29. 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: 0300 1234504  
Fax: 0116 249 4253  
Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

30. 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.
31. 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 .....**

**Pamela Clements  
Group Manager, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
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SK9 5AF**