

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 9 February 2021

**Organisation/
Public authority:** Mayor and Commonalty and Citizens of the City
of London (City of London Corporation)

Address: PO Box 270
Guildhall
London
EC2P 2EJ

Decision (including any steps ordered)

1. The complainant has requested information from the City of London Corporation ("CoL") relating to a proposed development of the City of London School for Girls ("CLSG"). CoL has explained that it is not a public authority for the purposes of the FOIA in respect of the information described in the request. It has therefore refused to respond to this request under the FOIA although it has corresponded with the complainant and other local residents on this matter outside of the FOIA.
2. The Commissioner's decision is that CoL is not a public authority for the purposes of the FOIA or EIR in respect of the information described in the request. She therefore upholds CoL's position and requires no steps to be taken in this case.

Request and response

3. On 10 June 2019, the complainant wrote to CoL and requested information in the following terms:

"[Name of complainant] would like to make an FOI request for all agenda reports and minutes from all City Committee's relating to the

City of London School for Girls Expansion plans, which the school announced publicly in November 2018.

Your first reaction may be that most of these items are on the private parts of the relevant agendas. However, we believe that they should have been discussed in public.

Section 100A(1) of the Local Government Act 1972 creates a presumption that all meetings shall be open to the public (a presumption that the City applies to its non-local authority functions). Sections 100A(2) and 100A(4) then provide for exceptions from that principal of openness in cases where "confidential" or "exempt" information – as defined in part 1 of Schedule 12A of the act - would be disclosed to the public, and the City relies on those sections. However, part 2 of the schedule lists qualifications to these exemptions and one (section 9) says "information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission"

Section 9 applies here – because the School, which is a City institution, will be making a planning application to the City's Planning Committee. We understand that the school is funded by the City's private money not its public funds, but the condition that "the local planning authority may grant itself planning permission" still applies. So we believe that these papers should be in the public domain.

The documents include, but are not confined to,

*Reports to the Board of Governors of the CLSG

* Projects Sub Committee, 12 December 2018: Gateway 1/2/3/4 approval in the non-public session - item 23 on the agenda [here](#).

*Policy & Resources Committee, 13 December 2018: Gateway 1/2/3/4 approval item 24 on the agenda [here](#).

*Court of Common Council, 10 January 2019: Gateway 4b approval in the non-public session - see item 21 on the agenda [here](#).

*Any subsequent papers on the subject before City committees."

4. In the course of an exchange of correspondence, CoL responded on 21 June 2019 to assert that the requested information was not caught by the Freedom of Information Act. It explained:

"Firstly, please note that the work of the CoL is funded from one of three sources which it controls. One is the City Fund (a public, tax-based fund); another is City's Cash (a combination of funds including

endowments which have been built up over the centuries); and the third is the Bridge House Estates (which maintains the five City bridges across the Thames and supports charities by funding the grant giving activities of the City Bridge Trust). Only our City Fund activities, i.e. our functions as a local authority, police authority and port health authority, fall within scope of the FOIA. Please see the FOIA, Schedule 1, Part II, paragraph 9. For further information about the CoL's finances and budgets, please see the website at www.cityoflondon.gov.uk/finance.

The CoL can confirm that the management of the City of London School for Girls (CLSG), including this project, are not part of our functions as a local authority, police authority or port health authority, and are not funded through City Fund. As a result, the information falls outside the scope of the Freedom of Information Act (FOIA)."

5. There was an exchange of correspondence following which, on 11 August 2019, the complainant narrowed their request. They sought information of the following description:

"We now ask to see the papers (business plans, feasibility studies, option appraisals, etc) that were *approved* by Resource Allocation and Project subcommittees. These cannot be described as "early considerations in a piecemeal, and potentially premature manner" because they have been approved and represent the current substantive proposals on which the school is consulting."

6. On 19 August 2019, CoL wrote to the complainant to advise that it was passing the correspondence to the City Solicitor. On 10 September 2019, CoL wrote again to reiterate its position that it disagreed with the complainant's view that the request was caught by the requirements of FOIA. It added that it did not propose to exercise discretion on this matter.

Scope of the case

7. The complainant contacted the Commissioner on 13 August 2019 in respect of their second request for information. In their view they should be able to access this information under FOIA or, if applicable, EIR.
8. While the City of London is a public authority in respect of certain of its activities, the question in this case is whether it holds the requested information for the purposes of the FOIA or the EIR.
9. CoL has confirmed that there was no planning application received and that therefore no information relating to a planning application exists. The Commissioner is satisfied that this is the case. There were pre-

application discussions held between officers of CoL in its capacity as local planning authority and CLSG but this information has been shared as part of CLSG's consultation with the local community. What remains are certain reports shared between the Board of Governors of CLSG and CoL (and committees and sub-committees thereof). The Commissioner has therefore considered whether this information is held by CoL for the purposes of the FOIA. She has also considered whether it would be caught by the EIR.

Reasons for decision

10. The definition of 'public authority' is given in section 3(1) of the FOIA. In particular it states that under the FOIA a "public authority" means-
 - (a) subject to section 4(4)¹, any body which, any other person who, or the holder of any office which-
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5, or
 - (b) a publicly-owned company as defined by section 6.
11. Section 5 allows the Secretary of State to designate a public authority by order.
12. Section 6 states that a company is a "publicly-owned company" for the purposes of section 3(1)(b) if it is wholly owned by the Crown or is wholly owned by any public body listed in Schedule 1 (other than a government department or any authority which is listed only in relation to particular information).
13. The FOIA gives members of the public the right to access recorded information held by public authorities and places a duty on public authorities to respond to requests for such information.
14. If a public authority receives a request for information it is usually legally obliged to provide it within 20 working days, unless any of the exemptions contained within the FOIA apply. If a public authority

¹ This sets out how organisations are no longer formally designated in FOIA as "public authorities".

believes an exemption does apply to the information that has been requested then it must explain why the exemption applies.

15. As stated by CoL, Part II, Paragraph 9 of Schedule 1 of FOIA sets out that the legislation applies to "the Common Council of the City of London, in respect of information held in its capacity as a local authority, police authority or port health authority". The complainant argues that, in respect of the requested information, CoL is acting as a local authority, namely in its planning authorisation role.
16. In the recent case of *Fish Legal v Information Commissioner & Others* (GIA/0979/2011 & GIA/0980/2011) ("Fish Legal"), the Upper Tribunal Administrative Appeals Chamber (the "UT") ruled that the Commissioner has jurisdiction to both investigate and decide whether a body is a public authority.
17. The Commissioner is satisfied that she has jurisdiction to decide this question in this case. The First Tier Tribunal (the "FTT") may also hear appeals against the Commissioner's decisions and the UT may hear appeals against the decisions of the FTT.
18. CoL's functions in respect of CLSG were conferred under a High Court (Chancery Division) Scheme dated 1 March 1892 which established CLSG as a result of a substantial legacy which was bequeathed to the Mayor and Commonalty and Citizens of the City of London for this purpose. CLSG continues to be funded privately.²
19. As noted above, the request had been narrowed to certain reports. These were Reports to the Board of Governors of CLSG and one Funding Report which was shared with the Board of Governors as well as reported to the Court of Common Council and its other committees and sub committees (including Project Sub-committee and Policy and Resources Committee).
20. However, the Commissioner is satisfied that these reports would relate to the operation of the school of which CoL is proprietor and not to any function which is caught by FOIA, namely that of local authority, police authority or port health authority. The information relates solely to CoL's management of the school as proprietor in its general corporate capacity regarding the proposed expansion as opposed to it considering whether to grant planning permission which it has acknowledged would fall within its local authority functions. The Commissioner recognises that the

² <https://www.clsq.org.uk/about-us>

complainant has set out a series of points to support their position that CoL is acting as a local authority in this matter but she disagrees. It is acting instead as a proprietor of a private school.

21. Turning to whether it is caught by the EIR, the Commissioner notes that the EIR give members of the public the right to access environmental information held by the vast majority of public authorities and places a duty on public authorities to respond to requests for environmental information³.
22. The Commissioner is satisfied that the EIR do not apply to the disputed information. As per paragraph 20, the information relates solely to CoL's management of the school as proprietor in its general corporate capacity. In reaching this conclusion, the Commissioner has taken into account that no planning application was made; the information does not constitute any consultation with the planning authority as part of a consideration as to whether to submit a planning application; and it was not part of the pre-application discussions held between officers of CoL in its capacity as local planning authority. The information was therefore not used as part of any planning application consideration activity by CoL.

Conclusion

23. The Commissioner has therefore concluded that CoL is not obliged under FOIA or the EIR to respond to the request described above. The information described in the request relates to CoL's work as proprietor of CLSG's which is a private school, and is held by it solely for that purpose.

³ <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/#3>

Right of appeal

24. 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 123 4504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Alexander Ganotis
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