

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

### **Decision notice**

**Date:** 8 November 2022

**Public Authority:** The Governing Body of Pembroke College  
Oxford

**Address:** Pembroke College  
Oxford  
OX1 1DW

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

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1. The complainant has requested Pembroke College Oxford (the college) to disclose correspondence relating to Mahfouz Marei Mubarak bin Mahfouz and his donations to the college, including the amounts of any donations. The college refused to disclose the requested information citing sections 40, 41 and 43 of FOIA.
2. The Commissioner's decision is that the college is entitled to withhold the requested information in accordance with section 41 and 43 of FOIA. He has however recorded a breach of section 10 and 17(1)(b) and (c) in this case.
3. The Commissioner does not require any further action to be taken.

#### **Request and response**

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4. On 5 September 2021, the complainant wrote to the college and requested information in the following terms:  
"1. Any email correspondence relating to Mahfouz Marei Mubarak bin Mahfouz, including any correspondence with either him or agents acting on his behalf, and any internal correspondence within Pembroke College related to donations mentioning him.

2. The dates and amounts of any donations made by Mahfouz Marei Mubarak bin Mahfouz, or any associates or entities controlled by him or acting on his behalf.”
5. The college responded on 8 October 2021. It stated that it was unable to disclose the requested information as this would breach the donor’s reasonable expectation of confidentiality.
6. The complainant requested an internal review on 12 December 2021.
7. The college carried out an internal review and notified the complainant of its findings on 18 February 2022. It refused to disclose the requested information citing sections 40, 41 and 43 of FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 14 September 2022 to complain about the way his request for information had been handled. He is unhappy with the college’s decision to withhold the requested information under the exemptions cited. He believes some information can be disclosed and there is a public interest in knowing how much the donor has donated to the college.
9. The Commissioner has reviewed the withheld information and received additional submissions from the college. He is satisfied that sections 41 and 43 of FOIA apply to all the withheld information. The following section will explain why.

### **Reasons for decision**

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#### **Section 41 – information provided in confidence**

10. Information is exempt from disclosure if it was obtained by the public authority from any other person and the disclosure of the information to the public would constitute a breach of confidence actionable by the public authority holding it or any other person.
11. With regards to emails between the college and third parties, the college said that these clearly represent information provided to it by a third party. In respect of internal emails, the college advised that these contain information provided by third parties so meet the relevant criteria.
12. The Commissioner is satisfied that the withheld information is information obtained by the college from a third party. Those emails

from third parties are clearly information obtained from another person. The internal emails discuss the information the third parties have supplied and again can therefore be said to be information obtained from another person. This is the approach outlined in paragraph 13 of the Commissioner's guidance.<sup>1</sup>

13. When determining whether disclosure would constitute an actionable breach of confidence it is necessary to consider whether the information has the necessary quality of confidence and whether it was imparted in circumstances importing an obligation of confidence. Then, whether disclosure would be an unauthorised use of the information to the detriment of the confider.
14. The Commissioner is satisfied that discussions between and about the donor and, the gifts provided to the college, is information which has the necessary quality of confidence. It is not trivial information – it is personal and private information relating to the donor and their engagement with the college. It is information which is also not otherwise accessible to the general public.
15. The withheld information would have been imparted in circumstances giving rise to an obligation of confidence. Given the personal nature of the information and what the college tells donors in relation to the information they publish in their annual reports and what information they do not, it is reasonable to say that there is an implicit obligation of confidence owed.
16. In terms of disclosure causing detriment to the confider, the Commissioner is satisfied that where the information relates to a personal or private matter, it should be protected by the law of confidence, even if disclosure would not result in any tangible loss to the confider. He considers any invasion of privacy resulting from a disclosure of private and personal information can be viewed as a form of detriment in its own right.
17. Although section 41 is an absolute exemption (and there is no requirement to consider the public interest test), it is accepted that if there is an overriding public interest in disclosure it can be a defence to an action of breach of confidentiality.
18. The Commissioner does not consider there are any overriding public interest arguments in disclosure which could act as a defence to an

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<sup>1</sup> [information-provided-in-confidence-section-41.pdf \(ico.org.uk\)](https://ico.org.uk/information-provided-in-confidence-section-41.pdf)

action of breach of confidentiality. He notes there is a public interest in understanding how such funds are acquired and from where. But the Commissioner is satisfied that this is to a large extent met by the information the college routinely publishes in its annual reports with the consent of donors. The information is private and personal in nature and relates to the donor's finances and personal interest in the college from a donation point of view. There is a significant expectation of confidentiality in relation to private discussions around the donations provided and no overriding public interest arguments have been put forward in this case which would act as a defence to an actionable breach of confidentiality.

19. For the above reasons the Commissioner is satisfied that section 41 of FOIA applies to all the withheld information, withheld by the college under this exemption.

### **Section 43 – commercial interests**

20. The college has applied section 43 of FOIA to the amounts donated. This exemption states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the public authority and/or a third party. It is also a qualified exemption and subject to the public interest test.
21. The college confirmed that in order to operate effectively it is necessary for it to fundraise. If prospective donors believed the college would disclose the amount they donated to the world at large, they would be less likely to provide future donations. Disclosure would be likely to discourage donors from making such donations in the future for fear of that information being made public. The college said that this would then be likely to hinder its ability to secure such donations going forward and its ability to raise vital funds. It confirmed that it is always competing with other educational institutions within Oxford and beyond to fundraise and there are other options for prospective donors to turn to if they lose confidence in the college.
22. For these reasons, the college is of the view that disclosure of the amounts donated in this case would be likely to damage its own commercial interests and therefore section 43 of FOIA applies.
23. The Commissioner is satisfied that disclosure of the amounts donated would be likely to prejudice the commercial interests of the college. He understands the college heavily relies on its ability to fundraise in order to generate funds and donors are currently aware that the college will only publish their names in their annual report (but not the gift amounts) unless they specifically object. This is their understanding when making such donations and expectations on the confidentiality of

their interaction with the college. The Commissioner accepts that disclosure of the amounts gifted would be likely to deter donors from making future gifts to the college and could damage the college's ongoing relationship with them. Donors could quite easily approach another institution and make gifts elsewhere; institutions which will happily engage and accept provided they meet the relevant donation criteria.

24. Disclosure would be likely to hinder the college's ability to attract future donations, which would in turn negatively impact on the college's ability to fundraise effectively. Disclosure would also be likely to prejudice the college's ability to compete with other institutions for such funds. For these reasons the Commissioner is satisfied that section 43 of FOIA applies.
25. In terms of the public interest test, the college confirmed that it acknowledges the public interest in openness, transparency and accountability particularly where the raising and expenditure of funds are concerned. However, it advised that it proactively publishes information about its donors in its annual report and it considers this is sufficient to meet the public interest in disclosure.
26. It said that it is not in the public interest to prevent the college from competing fairly in a highly competitive environment and from securing such valuable sources of funds in the future. A failure to fundraise as effectively would negatively impact on the services it can provide its students. The college confirmed that the public interest rests in maintaining the exemption and therefore the college's ability to provide services well and in a way that provides value.
27. The Commissioner considers there will always be significant public interest in the raising of and expenditure of public funds and the donations such institutions receive. Often such donations can be significant and from individuals or organisations that are of public interest themselves. He accepts that there is a need for accountability, transparency and accountability.
28. However, it is noted that the college already proactively publishes the identity of donors in its annual reports, unless the donor specifically objects. The Commissioner agrees that this does go some way to meeting the public interest arguments detailed above.
29. But in this case the Commissioner agrees with the college that the public interest rests in maintaining the exemption. He notes that the college will compete regularly and try and attract such donors just like many other institutions and public authorities. It is a valuable source of revenue for the college and it needs to be in a position to fundraise

effectively and without prejudice. It is not in the public interest to discourage future donations or hinder the college's ability to secure future gifts with this donor or others. It is accepted that donors can easily go to another institution and engage with them. Less fundraising will have a negative impact on the services the college is able to offer its students and hinder its ability to attract students to it.

### **Procedural matters**

30. Section 10 of FOIA requires a public authority to respond to an information request promptly and in any event no later than 20 working days from receipt. The college missed this deadline; issuing its response on 8 October 2021. The Commissioner therefore finds the college in breach of section 10 of FOIA.
31. Section 17 of FOIA outlines what is expected in the public authority's refusal notice. If a public authority is refusing to disclose information it is required to issue a notice stating that fact, specifying the exemption(s) in question and why the exemption(s) apply. The college failed to specify the exemptions upon which it relied and why they applied in its refusal notice to the complainant. The Commissioner has therefore recorded a breach of section 17(1)(b) and (c) of FOIA against the college.

### **Other matters**

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32. The Section 45 Code of Practice recommends public authorities to carry out internal reviews within 20 working days of receipt and certainly no later than 40 working days from receipt. The code explains that the additional 20 working days should only be used in the most complex and voluminous of requests. In this case the college exceeded the maximum 40 working days recommended by the code.
33. The Commissioner wishes to remind the college of the importance of the code and in completing internal reviews within the recommended timeframe.

## Right of appeal

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34. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

35. 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.
36. 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

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**