

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2022

Public Authority: North Yorkshire County Council
Address: County Hall, Racecourse Lane
Northallerton
North Yorkshire
DL7 8AL

Decision (including any steps ordered)

1. The complainant requested information relating to Lady Lumley's School. North Yorkshire County Council (the "council") withheld the information under the exemptions for legal professional privilege (section 42) and prejudice to effective conduct of public affairs (section 36).
 2. The Commissioner's decision is that the council has correctly relied on section 36 of the FOIA.
 3. The Commissioner does not require the council to take any steps.
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Request and response

4. On 5 January 2022, the complainant wrote to North Yorkshire County Council (the "council") and requested the following information

"I would like to be sent copies of all documentation between NYCC, Ofsted and Lady Lumley's School, Pickering about the Ofsted inspection of the school in October 2019 and subsequent ramifications. This excludes communication from the Coast and Vale Learning Trust..."
5. The council confirmed that it was relying on the exemptions in section 36 and section 42 of the FOIA to withhold the requested information.

Reasons for decision

6. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on section 36 of the FOIA in this particular case.
7. The Commissioner notes that the council cited section 36(1)(b) in its correspondence with the complainant. The Commissioner is satisfied based on the wording of its responses and its previous handling of a similar request (cited below) that this was a typographical error and that it intended relying on the subsections below.
8. Sections 36(2)(b)(ii) and 36(2)(c) of the FOIA state that:

"2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –

(b) would, or would be likely to inhibit- (i) the free and frank provision of advice, or (ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs".

9. The Commissioner has previously considered a request for the information in a decision notice issued on 4 January 2022¹.
10. The decision notice in question found that the council had correctly applied section 36(2) to the requested information.
11. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a qualified person. In the case of this request, the Commissioner is satisfied that the council's Monitoring Officer is authorised as the qualified person under section 36(5) of FOIA and that he gave the opinion that the exemption was engaged. He also finds that the opinion given was reasonable for the same reasons set out in the decision notice cited at paragraph 9 above.
12. The Commissioner has considered whether, with the passage of time, circumstances have changed to the extent that the safe space protected by the exemption is no longer required. Having considered the council's submissions, he is satisfied that, whilst matters relating to the school have moved on, disclosure of the information would still be likely to result in the prejudice defined by the exemption. He also considers that the balance of the public interest still favours maintain the exemption.
13. As he has concluded that the council has correctly withheld all the information under section 36(2) the Commissioner has not gone on to consider the application of section 42.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4019337/ic-81792-g9r8.pdf>

Right of appeal

14. 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

15. 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.
16. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF