

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

### **Decision notice**

**Date:** 20 March 2023

**Public Authority:** The Governing Body of Colchester Royal Grammar School

**Address:** 6 Lexden Road  
Colchester  
Essex  
CO3 3ND

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

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1. The complainant requested a copy of a report relating to governance.
2. The Commissioner's decision is that Colchester Royal Grammar School has applied section 22(1) of FOIA correctly in this case, because it intends to publish the report in the future.
3. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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4. On 12 June 2022, the complainant wrote to Colchester Royal Grammar School ('CRGS') and requested information in the following terms:  

"I write under the Freedom of Information Act 2000 to request a copy of the report on governance at the academy as commissioned by the academy from the national governance association."
5. CRGS responded on 22 June 2022. It applied section 22 to the information – information intended for future publication. It stated that the report would be available once it was signed off by the Trust Board.
6. Following an internal review CRGS wrote to the complainant on 16 August 2022. It confirmed that section 22 applies to the requested information and it is therefore exempt from disclosure. It also stated that it expected the report to be published by the middle of the autumn term.

## Scope of the case

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7. The complainant contacted the Commissioner on 19 August 2022 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of the investigation to be whether CRGS was correct in its application of section 22 to the requested information.

## Reasons for decision

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### Section 22 – information intended for future publication

9. Section 22(1) of FOIA says that information is exempt information 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 (a).
10. Section 22 is a qualified exemption which means it is subject to the public interest test.
11. CRGS commissioned a report by the National Governance Association (NGA) to review its governance.
12. CRGS explained that at the time of the request, the report was not yet finalised. A draft was held by the NGA on behalf of the school. This means that the report was held by the school for the purposes of FOIA.
13. CRGS gave the complainant an approximate publication date in its internal review response.
14. The complainant did not receive the report and contacted CRGS on 18 October 2022 to ask if it had been published and requested a link where they could access it.
15. CRGS replied to the complainant on 10 November 2022, explaining it was not in a position to publish the information when it had originally intended to do so.

16. Under section 22 of FOIA, a public authority does not have to give the requester a specific or approximate date when the information will be published, it simply has to have had a settled intention to publish the information when it received the request
17. FOIA permits the use of section 22 when information is in draft stage, as the report was at the time of the request. This allows a public authority to review and use the information for its purposes before it is published.
18. CRGS explained in its submissions to the Commissioner that it was the first time the school had commissioned such a project. Therefore, it cannot be compared to other pieces of work it had undertaken previously in regards to its intent to publish the work.
19. It explained that once the review and associated work is complete, it intends to publish the work to be transparent.
20. The Commissioner is satisfied that at the time it received the complainant's request, CRGS intended to publish the report once it had been finalised, reviewed and its findings been considered by the school.
21. CRGS advised that the reason it hadn't published the report at the time of the request was that it was in draft stage. Once it was finalised, the plan was to review the information.
22. It explained it would then use the report to consider any other work it wished to carry out. Until this process has come to a conclusion, CRGS intends to withhold the report.
23. The Commissioner accepts the arguments CRGS has submitted and is satisfied the exemption was applied correctly. He has gone on to consider the public interest test.

**Public interest – CRGS' view**

24. When considering the public interest test, CRGS stated the report is of interest to some members of the school community but does not think it is of interest to the wider public.
25. It explained that obtaining a final report and then considering any work it may inform overrides this benefit.

**Balance of the public interest**

26. The Commissioner disagrees that the report may only be of interest to a select group; the school community. As schools receive public money, their performance and management may be of interest to a wider group

than that identified by the school. This may be of interest to schools in a similar position to CRGS both in the locality, and at a national level.

27. Transparency in the work of a public authority is important, as is the ability of the public to scrutinise their performance. The information the governance report contains and how this is used by CRGS may help aid the public to hold the school to account.
28. However, at the time of the request, the report was in draft stage. In this state, it is of limited value in regards to the principles outlined above.
29. CRGS did not hold a final version of the report. Once the report was finalised, it would need time to digest, review and consider its contents.
30. Under FOIA, a public authority can take the time to undertake these steps before it publishes requested information.
31. The Commissioner considers that there is greater public interest in CRGS being able to consider the final report and take any appropriate actions in line with its expected timetable.
32. Therefore, the Commissioner finds that the balance of the public interest favours maintaining the exemption in this case.

## Right of appeal

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33. 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)

34. 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.
35. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**