

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

### **Decision notice**

**Date:** 16 March 2023

**Public Authority:** Council for Catholic Maintained Schools

**Address:** Linen Hill House  
23 Linenhall Street  
Lisburn  
County Antrim  
BT28 1FJ

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

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1. The complainant requested information related to a Case for Change proposal. The Council for Catholic Maintained Schools ("CCMS") refused the request under the exemption for information intended for future publication (section 22 of the FOIA).
2. The Commissioner's decision is that CCMS has failed to demonstrate that the exemption in section 22 is engaged.
3. The Commissioner requires CCMS to take the following steps to ensure compliance with the legislation:
  - Provide the complainant with the requested information and/or; issue a new response to the complainant, not relying on section 22 of the FOIA.
4. CCMS 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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5. On 21 February 2023 the complainant wrote to the Council for Catholic Maintained Schools ("CCMS") and requested the following information:

"....all correspondence, minutes, notes and documentation in relation to the decision to:

- Develop a Case for Change proposal for St Malachy's Primary School, Drummullan, and
- Withdraw the Case for Change proposal for St Malachy's Primary School, Drummullan.

In particular I wish to receive all information and documentation, including written notes of conversations and correspondence relating to this issue, incorporating anything from the relevant CCMS Area Planning Advisor(s), the CCMS Areal Planning Programme Manager, the CCMS Senior Leadership Team, representatives of the Catholic Church, the Education Authority and the Department for Education."

6. CCMS' final position is that the request is refused under the exemption for information intended for future publication (section 22).

## Reasons for decision

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### Section 22 – information intended for future publication

7. Section 22(1) of FOIA states 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 paragraph (a)."

8. In his section 22 guidance, the Commissioner advises that section 22(1) will apply only where the specific information that has been requested is intended for future publication:

"A general intention to publish some information will not suffice. It is not enough for the public authority to note that it will identify some, but not all, of the information within the scope of the request for future publication. The information that the public authority intends to be published must be the specific information the applicant has requested."<sup>1</sup>

9. In its response to the complainant CCMS stated:

"I can confirm that we hold the information you are seeking. However, section 22 of the Freedom of Information Act 2000 exempts this information from disclosure. This is because the information is intended for publication at a future date."

10. In its submissions to the Commissioner CCMS confirmed that the requested information is "...part of a Development Proposal that has not yet been published, are still in draft form subject to change and are not in the public domain."
11. Having considered the available evidence, and with reference to paragraph 7 above, the Commissioner is not satisfied that CCMS has demonstrated that all the specific information requested is intended for future publication. It is not plausible to the Commissioner that the breadth of information requested will be published by CCMS at a future date and he considers that it has failed to make the case that it will.
12. In addition, the Commissioner considers that CCMS has failed to explain why it is reasonable, as per section 22(1)(c), that the information should be withheld from disclosure prior to the publication date.
13. Furthermore, the Commissioner considers that CCMS has failed to explain what factors it considered when weighing the balance of the public interest.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf>

14. The Commissioner considers that the factors above combine to form a picture of an attempt to apply the exemption on a general basis without regard for the specific factors which need to be in place for the exemption to be engaged.
15. CCMS has been given opportunities to set out its position in its initial response, at the internal review stage and during the Commissioner's investigation but it has failed to provide adequate arguments. The Commissioner does not consider it to be his role in such scenarios to supply the deficiencies of public authorities.
16. Having considered the facts of this case the Commissioner has concluded that CCMS has failed to demonstrate that section 22 is engaged. He, therefore, requires it to either disclose the requested information and/or to issue a new response to the complainant which does not rely on section 22.

## Other Matters

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17. Although they do not form part of this decision notice the Commissioner would like to note the following matters of concern.

### **Section 45 code of practice: Internal Review**

18. The code of practice issued under section 45 of the FOIA (the "code") contained recommendations for public authorities as to best practice in the handling of requests.

19. In relation to the handling of complaints about the handling of requests ("internal reviews") paragraph 5.8 of the code states:

"The internal review procedure should provide a fair and thorough review of procedures and decisions taken in relation to the Act. This includes decisions taken about where the public interest lies if a qualified exemption has been used..."<sup>2</sup>

20. Internal reviews provide authorities with an opportunity to resolve problems and can potentially avert the need for complaints to be submitted to the Commissioner.

21. In this case CCMS' internal review states:

"It is our opinion that the data meets the exemption."

22. The Commissioner considers that CCMS' internal review in this case fails to demonstrate that a thorough review of its handling of the request was carried out. It is, therefore, likely that CCMS' practice in this case does not conform to the recommendations of the code.

23. The Commissioner expects that, going forward, CCMS' internal reviews will conform to the code.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

## Right of appeal

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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: 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)

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 .....**

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