

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2022

Public Authority: St Anne's CE Primary School
Address: School Road
Oldland Common
South Gloucestershire
BS30 6PH

Decision (including any steps ordered)

1. The complainant has requested lesson materials relating to the School's PHSE and RSE teaching.
2. The School refused to provide the requested information, citing section 43(2) (commercial interests) of FOIA.
3. The Commissioner's decision is as follows:
 - The School failed to comply with section 10(1) (time for compliance with request) as it failed to provide a valid refusal notice within 20 working days.
 - The School also failed to comply with section 17(1) (refusal of request) as it failed to provide a valid refusal notice.
 - The withheld information engages section 43(2) and that the public interest favours maintaining the exemption.
4. The Commissioner does not require the public authority to any steps.

Request and response

5. On 9 March 2022, the complainant wrote to St Anne's CE Primary School ('the School') and requested the following information:

"Please could you provide me with a copy of the school's RSE and/or PSHE policy?

In addition to this, please can you provide me with copies of all the materials you use for the delivery of RSE and PSHE? This should include teachers' notes, lesson plans, worksheets, teaching props, slides and anything else used for the preparation and delivery of lessons and other teaching."
6. The School responded on 24 April 2022. It responded and provided its PSHE and RSE policies. It confirmed that it followed the 'jigsaw programme' for its PHSE and RSE teaching and that it held information relevant to the second part of the request, however, it refused to provide this information.
7. The complainant requested an internal review on 10 June 2022.
8. The School provided the outcome to its internal review on 7 October 2022. It upheld its decision not to release information relating to the jigsaw programme because it is a 'commercial interest,' essentially relying upon section 43 (commercial interests) of FOIA in order to withhold the requested information.

Reasons for decision

9. During this investigation, it became apparent that the School holds limited information relating to the jigsaw programme. The School has confirmed that it can only access jigsaw's actual teaching resources online, with read-only access, via jigsaw's own electronic platform. It does not hold copies of these resources on its own databases. In accordance with the Commissioner's guidance,¹ this information is not 'held' for the purposes of FOIA.
10. At the time that the request was made, the School only held 'knowledge progression maps,' which outlines the learning objectives for each term,

¹ [Determining whether we hold information | ICO](#)

for each year group, on its own systems. That is the information that is being considered in this decision notice.

11. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely, to prejudice the commercial interests of any legal person.
12. The Commissioner's guidance² states 'A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.'
13. In this case, the School is concerned that disclosure would prejudice the commercial interests of the jigsaw programme.
14. The School has explained that the knowledge progression maps outline the topics, subject content, objectives and lesson content for each year group and each term. The School has explained that the withheld information represents 'the culmination of many years of expertise and development activity. They are unique and original and have been developed with a high degree of difficulty and investment. The dissemination of the material into the public domain would allow competitors to replicate the product unfairly.'
15. The Commissioner accepts that jigsaw operates in a commercially competitive environment and disclosure of this information would allow its competitors an insight into jigsaw's intellectual property that it would not otherwise have. Whilst competitors wouldn't have access to the actual lesson materials, they would have access to the format, objectives and content of jigsaw's entire programme. Competitors could use this information to tailor their own product in an attempt to poach customers from jigsaw.
16. When a public authority is applying section 43(2), on the basis that disclosure would, or would be likely to, prejudice the commercial interest of a third party, it cannot speculate about any prejudice that might be caused – it must consult the third party in question about the request. The School has done so and jigsaw has expressed concerns about disclosure and the affect this would have on its commercial interests.

² [Section 43 - Commercial interests | ICO](#)

17. The School has also stressed that it has a contractual obligation not to disclose the withheld information, which is subject to copyright. The Commissioner has dismissed these arguments, as confidentiality clauses do not act as a guarantee that information will not be disclosed under FOIA.
18. However, even having dismissed these arguments, the Commissioner is satisfied that the withheld information engages section 43(2). As section 43(2) is a qualified exemption, the Commissioner has gone onto consider whether the public interest lies in disclosure or in maintaining the exemption.

Public interest test

Public interest in disclosure

19. There is a public interest in public authorities being as transparent as possible. The School has also acknowledged that 'I acknowledge that there is public interest in the disclosure of the materials, insofar as the materials may relate to topics considered by some to be sensitive or controversial.'

Public interest in maintaining the exemption

20. The School has explained that, 'disclosure of copyrighted teaching materials into the public domain is likely to have a chilling effect on the production of such materials, which those producing such materials become unwilling to invest the significant time and resources in developing a product and protecting their intellectual property rights over it, only to have it released into the public domain. This effect would be of significant detriment to the education sector as a whole.'

The balance of the public interest test

21. The Commissioner considers the balance of the public interest lies in maintaining the exemption.
22. He accepts that there is an interest, and a right, for parents to know what their children are being taught, especially when it comes to personal, social, health and economic education, where there might be disagreements about what is being taught. However, he notes that the jigsaw materials will be required to meet the Department for Education's (DfE) statutory guidance on Relationships and Health Education and

Jigsaw provides documentation³ to show exactly how its programme does so.

23. The School has explained to the Commissioner that the statutory guidance from the DfE 'requires schools to consult with parents on Relationships and Health Education curriculum. Jigsaw supports this process by providing schools with leaflets, presentations etc, to explain the philosophy of and content within the Jigsaw Programme.'
24. The School has also explained that the withheld information is available to parents to study through engagement sessions. However, it would be incorrect to state that these activities constitute disclosure of the information into the public domain, like in response to a FOI request. If the offer of a meeting in school were accepted, it would be made clear that no copying, scanning or photographing of materials would be allowed.
25. Ultimately the Commissioner accepts that jigsaw must be able to operate in a commercial environment, which includes protecting its resources against plagiarism, so it can continue to provide its services to schools across the UK. Since the Commissioner is satisfied that there are alternative ways of meeting the public interest in this instance, he doesn't believe disclosure is required.
26. The complainant has cited, in their complaint, Suella Braverman's speech 'Equalities and rights: Conflict and the need for clarity'⁴ which emphasises the rights of parents to request, under FOIA, teaching materials. However, the key here is that whilst parents have the right to **request** information, each request must be taken on a case by case basis and disclosure will not always be appropriate. Furthermore, the speech also highlights that, if a parent is concerned with what their child is being taught, they can raise an internal complaint with the school which would be referred to the DfE, if necessary. Doing so would not prejudice the commercial interests of any third party.

³ [Frequently Asked Questions \(jigsawpshe.com\)](https://www.jigsawpshe.com)

⁴ [Equalities and rights: Conflict and the need for clarity - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Procedural matters

27. Section 10(1) of FOIA states that a public authority must provide its response to a request for information within 20 working days which the School failed to do.
28. Section 17(1) of FOIA states that, if a public authority is refusing to provide information, it must provide the complainant with notice which: states that fact, specifies the exemption it is applying, and states why the exemption applies. In the School's refusal notice of 4 April 2022, it failed to specify what exemption it was applying, and why this exemption applied. For that reason, the School's refusal notice failed to comply with the requirements of section 17.

Other matters

29. Furthermore, the Commissioner's guidance states that public authorities should provide internal review outcomes within twenty working days. This can be extended to forty working days in exceptional circumstances. The School failed to provide its internal review outcome within this deadline.

Right of appeal

30. 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

31. 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.
32. 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

Alice Gradwell
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