



Mr T Gregory

Office of the General Counsel

Governance and Law
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https://www.whatdotheyknow.com/request/slgs_craig_inquiry_corresponden#incoming-999131

Dear Mr Gregory

FS50688962
Freedom of Information Act 2000
Complainant: Tom Gregory

I write further to the receipt of your complaint to the Information Commissioner in relation to your request of 10th May 2017 for KCC to provide copies of all correspondence between any KCC employee and member(s) of the SLGGS Governing body, jointly and severally, which specifically references or discusses the Inquiry/Disciplinary Report known as the "Craig Enquiry" or any other memo/correspondence produced by Dr Iain Craig in relation to his investigation into the Simon Langton Girls Grammar School in Canterbury.

Further to the internal review response provided on 29th June 2017 and given the passage of time the council has no objections to releasing the enclosed documents subject to the following relevant redactions.

Section 36(2)(c) FOIA – prejudice to effective conduct of public affairs

The Council relies on section 36(2)(c) FOIA – otherwise prejudice to the conduct of public affairs in relation to the process of procuring and carrying out the investigation to emails 1, 9 and 17. The Council maintains the arguments of the internal review response as to why disclosure of the emails would have a prejudicial effect.

Section 36(2)(b)(i) FOIA – prejudice to effective conduct of public affairs

In addition the Council also seeks to rely upon section 36(2)(b)(i) FOIA – would inhibit the free and frank provision of advice to email 16.

Mr Watts' opinion was sought on the application of this exemption on 4th December 2017. He was appraised of the specific emails and the contents they contained. He had access to the information if he needed to review it in furtherance of his decision. After giving his qualified person's opinion Mr Watts conducted a public interest test. On balance whilst he recognised that there is considerable interest in the disclosure of the email, he was not satisfied that it is in the public interest for the disclosure to be made.

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Section 40(2) FOIA – exemption of personal data.

The Council seeks to apply the section 40(2) FOIA exemption to a number of emails. The majority of this data is in relation to private email addresses of individuals. In email 2, personal information of the Chair of the Governors has been withheld. In email 7, the initial two emails have been withheld as they contain personal information of the subject of the investigation. In emails 14 and 15 personal information of third party complainant to the school has been withheld.

Some sensitive personal data has been withheld in emails 7, 10, 12 and 16.

In considering whether it would be fair to disclose this information, there is an argument that it is of interest to the wider public to understand the background to the investigation; however this needs to be balanced against the rights and freedoms of the data subjects. The data subjects would expect their data to be processed fairly. My view is although there is a legitimate interest in disclosure of the information, as it would aid transparency and accountability, this does not outweigh the reasonable expectations of the data subjects.

Section 41(1) FOIA – information provided in confidence

In order for section 41 to be engaged, the Council has to have obtained the information from a third party and the disclosure of that information must constitute an actionable breach of confidence.

The information was obtained from another person, they are the subject of the investigation, complainants and consultees.

In Email 1 the section 41(1) FOIA exemption is applied to the attachment 'notes on files'. The reasons for this were detailed within the internal review.

The Council also seeks to apply s41(1) FOIA to the outcomes of the consultation attachment of email 6 and to the emails 9, 12, 14 and 15 as information has been provided to the Council from third parties in confidence.

Case law on the common law of confidence suggests that a breach of confidence will not succeed, and therefore will not be actionable, in circumstances where a public authority can rely on a public interest defence. The Council considers in this case that the public interest in disclosure does not outweigh the competing public interest in maintaining the duty of confidence. There is a strong public interest in protecting the privacy of individuals. Whilst the information would reveal the allegations made of wrongdoing and misconduct, which carry significant public interest weight in favour of disclosure, there is also a strong argument that the impact of disclosing private, personal information will be an infringement of the confider's privacy, and there is a strong public interest in protecting the privacy of individuals. There is the concern that should this information find its way into the public domain, the confider's Article 8 rights, a right to privacy and a family life, may be infringed and further to this some individuals may become the victims of unwanted attention from those who disagree with their point of view.

The Information Commissioner has been sent a copy of this letter and enclosures for her information.

Yours Sincerely,

DJ Burring

**Denise Burring
Solicitor
Office of the General Counsel**

