

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2011

Public Authority: Rickmansworth School
Address: Scots Hill
Rickmansworth
Hertfordshire
WD3 3AQ

Decision (including any steps ordered)

1. The complainant requested details of the tendering process used by Rickmansworth School (the School) when selecting cleaning contracts in 2010.
2. The Information Commissioner's decision is that the School failed to comply with section 1(1)(a) promptly and within the statutory timelines for handling the request and in so doing breached section 10(1) of the FOIA.
3. After the Information Commissioner (the Commissioner) intervened, the School provided the complainant with the requested information. As such, the Commissioner does not require the School to take any further steps to comply with the legislation in respect of this request.

Request and response

4. On 20 October 2010, the complainant wrote to the School and requested information in the following terms:
 - *'Details of the tendering process you used when selecting cleaning contracts at Rickmansworth School in 2010.'*
 - *The information provided in the Invitation to Tender documentation in 2010 for the cleaning contract.*
 - *The complete submission made by Birkin Cleaning Services Ltd in tendering for the cleaning contract in 2010. In particular I would like*

to see the documentation they provided as evidence of sound human resource management; equal opportunities and a harassment free environment. I would like to see a copy of their Employee Handbook they submitted.

- *Summary details of all the other cleaning tender applications in 2010 and an evaluation matrix of all the applications.*
 - *The notes from all the meetings held at which the tenders were discussed.*
 - *The notes from all the meetings at which the cleaning contractor was selected.*
 - *I would like to see a list of the reasons why the tender from Birkin Cleaning Services Ltd was chosen and the reasons for the rejection of each of all the other tenders'.*
5. The School responded on 10 November 2010. It informed the complainant that it was passing a copy of his request to Birkin Cleaning Services Ltd (Birkin) as *'some of your questions are more properly addressed to them'*. The School also stated that it considered that complying with the request, *'would be likely to prejudice the commercial interests of the School and that the disclosure you seek is likely to constitute an actionable breach of confidence'*. The School did not elaborate or explain why it was relying upon section 41 (information provided in confidence) and section 43(2) (information likely to prejudice commercial interests) and made no reference to the public interest test attached to the latter.
6. The complainant wrote to the School on 17 November 2010 and stated that he disagreed with the exemptions cited and correctly noted that the School had provided no evidence or information to support the same. He contended that,
- 'the tendering process you use should be open to scrutiny and likewise the information you supplied in inviting to tenders should also be open to inspection. Furthermore, it is in the public interest to see how decisions to spend money on School services have been made and the consequences of those decisions'*.
7. The School responded to the complainant's letter and informed him that it was not obliged to provide further details in support of its refusal notice and that it had nothing further to add. It also provided the Commissioner's address, should he wish to take the matter further.
8. On 22 November 2010, the complainant wrote to Hertfordshire County Council requesting an internal review of the School's response. The

Council replied to the complainant on 25 November, correctly advising him that schools are responsible for responding to FOIA requests made to them, and for the conduct of internal reviews. The complainant was advised to make a request for an internal review to the School's Chair of Governors.

9. The complainant wrote to the Chair of Governors on 26 November and requested an internal review of the School's response to his request.
10. The Chair of Governors provided the complainant with his internal review decision on 7 January 2011. The complainant was told that, *'as your request relates to information about a contractual arrangement that the School has with a third party, I consider that the confidentiality of that arrangement could be compromised by releasing details of it'*. The Chair of Governors also stated his belief that, *'it is correct and proper for the School to ensure that its commercial arrangements remain confidential'*.

Scope of the case

11. On 16 January 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
12. The School told the Commissioner what information it held. It also confirmed that it had a number of emails from the former Premises Manager and that on reflection, did not object to disclosing them to the complainant. With regard to the submission by Birkin made during the tendering process, the School stated that, *'this is the property of Birkin Cleaning Services and not ours to disclose. It is commercially sensitive'*.
13. The School confirmed that it did not hold any summary details of the other cleaning tender applications and that an evaluation matrix had not been produced as part of the tendering process. The School confirmed that it did not hold any notes of relevant meetings, and provided the Commissioner with minutes of the School Premises Committee, the details of which the School considered to be commercially sensitive.
14. The Commissioner explained that having considered the withheld information and the arguments provided by the School, neither section 41 nor section 43(2) were engaged in this case. He therefore advised the School to provide the complainant with the information requested.
15. On 20 June 2011 the complainant set out in detail his complaint. He advised that he believed that the School was attempting to avoid

complying with his request and that it had, *'purposefully supplied incorrect information to confuse but give the ICO the impression that the request has been complied with'*. The complainant stated that he was pursuing the request in the public interest to find out how the School arrived at its decision to select the successful cleaning contractor.

16. The School subsequently confirmed that it was no longer relying upon the exemptions claimed and that it was arranging for *all* information which it held concerning Birkin to be disclosed to the complainant (i.e. more information than that covered by the complainant's request).
17. As the School withdrew its reliance on section 41 and section 43(2), the Commissioner has not examined these exemptions in this notice.
18. Therefore, the scope of the Commissioner's investigation is to establish whether the School has complied with its obligations under sections 1(1)(a) and 10(1) of the FOIA.

Reasons for decision

19. Section 1(1)(a) and 1(1)(b) of the FOIA deal with the general right to access information. Any person making a request for information is entitled to be informed whether the information is held and to have that information communicated to them unless the public authority issues a refusal notice under section 17(1) of the FOIA citing an appropriate exemption.
20. Section 10(1) of the FOIA makes provision for section 1(1) to be complied with no later than 20 working days following receipt of that request.
21. In order to assess whether the complainant had been provided with all the relevant information held by the School concerning the tender process for the cleaning contract, the Commissioner asked a number of questions about how the School had gone about the tender process and the information that had been compiled and retained throughout that process.
22. The School answered the questions. It confirmed that its procedure for inviting tenders and selecting contractors is to obtain three quotes from interested companies and then arrange for each company to give a presentation. The School confirmed that the brief given to the three bidders (one of whom was the School's cleaning contractor at the time

23. The School advised the Commissioner that its former Premises Manager had several general meetings with the two companies not familiar with the School and had showed them around the site to familiarise them with it. Only the successful cleaning company (Birkin) had, at its own suggestion, completed a detailed survey of each room in the School to enable them to supply their quotation. Having received the three quotations and presentations, the School confirmed that it had felt that Birkin, *'offered the best all-round package'* for the School. The School confirmed that it had not recorded written reasons as to why it had selected Birkin for the contract, explaining that its decision had been based on the presentations given and a visit that the School Bursar and former Premises Manager had made to another school which was already using Birkin's services.
24. During the course of his investigation, the Commissioner had sight of contemporary information and evidence provided by the School (and also provided to the complainant) which confirms the School's account of how the tendering process was carried out. In minutes of the School Premises Committee of 5 July 2010 (mistakenly dated 5 June 2010) under the heading, 'Cleaning Contract', the amount of the bids submitted by the three cleaning companies is noted, as is the very brief (one or two lines) assessment made by the School of the presentation performances of each company. In an email to School staff dated 26 April 2010, the former Premises Manager noted that he was *'very impressed'* with Birkin, explaining that they had visited the School on three occasions to look at the School's requirements *'and even went as far as sending in their surveyor to survey the whole school at no cost to us'*.
25. It is clear from the information provided by the School to the Commissioner that the tender process in this instance was not conducted in a particularly formal manner, in that no detailed notes or minutes were made of the presentations given (aside from the brief information subsequently recorded in the minutes referred to above).
26. In his email to the Commissioner of 20 June 2011, the complainant asserted that,
- 'the School must have the details of the tender applications in order for a decision to be made on which contractor to select. Each contractor must have supplied information on the tender and the cost of the contract. I would have expected notes to have been made at the time the contractors gave their presentations and no doubt the contractors*

would have submitted additional information in support of their presentation'.

27. The Commissioner considers that the complainant's expectations as to how the School would have gone about the tender process are entirely reasonable. It is reasonable to expect the School to have made (and retained) appropriately detailed records of each stage of the tender process to meet audit and accountability requirements.
28. However, the fact that the School did not make such records, and conducted the tender process largely on the basis of which company was able to provide the best quotation for the contract, is not a matter which it is either appropriate or necessary for the Commissioner to comment upon. The School is only obliged to provide the complainant with any information held at the time of his request (as opposed to information which it may reasonably be expected to hold). In correspondence with the Commissioner, the School stated that the appointment of the cleaning company (Birkin) *'was conducted entirely properly and will be subject to the School's next audit'*. It is, as the School notes, for the audit process to examine the way in which the School carried out the tender for the cleaning contract, not the Commissioner.
29. Following confirmation from the School in July 2011 that it would be providing the complainant with *all* the information it held relating to Birkin, the complainant duly received numerous documents, including the internal emails from the former Premises Manager, the minutes of the Premises Committee and two brochures that had been provided to the School by the two unsuccessful cleaning companies.
30. As the complainant pointed out, some of the information the School provided (such as the Birkin customer contract and welcome pack) did not fall within his request as it post-dated the awarding of the cleaning contract. However, the Commissioner recognises that the provision of this information (amongst the relevant documentation) was made in an attempt to be helpful and he considers that it would be unfair for the School to be criticised in this respect.
31. In a telephone discussion with the Commissioner on 19 July 2011, the School confirmed that its present Premises Manager (who had not been in place at the time of the tender process) had been asked to retrieve any relevant emails and provide these to the complainant. The School also said it would contact the former Premises Manager in case he was aware of the existence of any relevant documentation. The Commissioner has had sight of emails showing that the School duly contacted the previous Premises Manager and that he was very helpful in confirming how the School had gone about the tender process.

32. From the outset of his investigation, and during each contact with the School, the Commissioner emphasised the importance of the School ensuring that it had carried out comprehensive and thorough checks and searches of all possible locations where information relevant to the request might be found. Unfortunately, such rigorous searches demonstrably did not happen as information disclosed during the Commissioner's investigation revealed the existence of further information that had not been disclosed.
33. In its substantive response to the Commissioner of 16 September 2011, the School stated that it had checked the contents of the cleaning file and that copies had been sent to the complainant. It also confirmed that, *'we have checked and there is neither further information nor emails'*. The School reiterated to the Commissioner that it had *'made every possible effort'* in searching for information relevant to the complainant's request, including making enquiries of all parties at the School who had been involved in the tendering process and the appointment of Birkin. The School added that, *'For the avoidance of doubt, no information has been concealed and none destroyed'*.
34. The complainant then contacted the Commissioner and confirmed that he would like him to issue a decision notice to address how the School had handled his request. He maintained that the School was still withholding information relevant to his request and highlighted the fact that in the memo to the School staff by the former Premises Manager dated 26 April 2010, three cost models were referred to as having been included in the Birkin quote. This cost models information had not been previously provided to the complainant (or to the Commissioner).
35. The Commissioner contacted the School concerning the cost models information and the School emailed relevant staff, relaying the Commissioner's questions.
36. In response, the Premises Manager confirmed that Birkin had (in April 2010) provided the School with a cleaning services proposal which had comprised the three cost models referred to above. Upon retrieving this information, the School immediately forwarded it to the complainant by recorded delivery.
37. Having had sight of the internal School emails, it is clear that the School's failure to retrieve the cost models information and disclose it to the complainant at a much earlier stage of the Commissioner's investigation was due to human error and inadequate searches being made. The failure to make effective checks and searches occurred repeatedly in this case, with relevant information being found on an ad hoc basis and often only following queries being made by the complainant and the Commissioner.

38. It is clearly unsatisfactory that relevant information held by the School should only come to light some five months into the Commissioner's investigation and following a number of previous checks and assurances that all relevant information had been found and provided. Nor should full and proper compliance with a request be dependent upon a complainant having to repeatedly query the reliability and accuracy of the response provided by the public authority.
39. The Commissioner is entirely satisfied, on the basis of the evidence seen, that the serious shortcomings in the School's response (in terms of providing all relevant information to the complainant in a timely manner) were the result of human error and a failure to conduct comprehensive, rigorous and organised checks and searches at the very outset of receiving the request, rather than due to any deliberate attempt to hide information from the complainant or prevent him having sight of the same.
40. Nevertheless, it is understandable (as the School has acknowledged) that the complainant should believe otherwise. In this context, the Commissioner has noted that it was the School's disclosure of a particular memo which alerted the complainant to the existence of the three cost models information. Had the School been attempting to hide such information from the complainant, then it would not have disclosed a document to him which clearly referred to this information.
41. The Commissioner notes that the School, and in particular the Deputy Headmaster, made extensive efforts to rectify its previous shortcomings in this case and he notes the cooperation and assistance provided throughout his investigation.
42. For the reasons explained above, the Commissioner is satisfied that the School has failed to comply with its obligations under section 1 and section 10 of the FOIA. However, the School's provision (albeit belatedly) to the complainant of all the held information relevant to the request, means that the Commissioner does not require the School to take any further steps to comply with the legislation in this matter.

Other matters

43. The Commissioner appreciates that a public authority's ability to appropriately manage requests for information will inevitably be influenced to some extent by the number of requests it receives and the experience it has of such requests. Prior to this case, the School had received very few, if any, FOIA requests. This lack of experience of FOIA will have been at least partly responsible for the poor quality of the

initial response which the complainant received and the protracted nature of the eventual compliance detailed above.

44. The above notwithstanding however, the series of shortcomings evidenced in this case show that the School needs to take steps to ensure that it is more familiar and better prepared to respond to future FOIA requests. Particular procedural failings included not considering the required public interest test when originally applying the prejudice to the commercial interests exemption, and failing to offer the complainant an internal review of the School's response before referring him to the ICO. This inadequate response was compounded by the internal review subsequently undertaken by the Chair of Governors, which appeared to conflate the section 41 and section 43(2) exemptions without considering the public interest test attaching to the latter.
45. In correspondence with the Commissioner, the School was originally under the mistaken impression that the submission it held from Birkin was not for the School to disclose because it is the property of the cleaning company. As the Commissioner explained, whilst it would have been entirely reasonable for the School to consult or seek the view of Birkin as to whether the company would have any objection to disclosure of the submission to the complainant (under section 43(2) considerations), any such view would not have been determinative and responsibility for deciding whether the information should be disclosed lay with the School.
46. As detailed above, the most serious shortcoming in this case was the failure of the School to carry out appropriately thorough and rigorous checks and searches to ensure that all relevant information had been found and considered for disclosure. This meant that assurances given to the complainant and the Commissioner were subsequently found to be incorrect.
47. The Commissioner expects that the School will learn lessons from the mistakes made in the handling of this request and use the same, in addition to the Commissioner's guidance on the ICO website, to improve its FOIA handling systems and approach and prevent the identified shortcomings from arising again in future.

Right of appeal

48. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

49. 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.
50. 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

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