

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 June 2012

Public Authority: Passmores Academy

Address: Tracyes Rd
Harlow
Essex
CM18 6JH

Decision

1. The complainant requested information relating to a television programme called Educating Essex which was filmed at Passmores Academy.
2. The Commissioner's decision is that Passmores Academy was entitled to rely on section 43(2) of the FOIA (commercial interests) to withhold the relevant information within the scope of parts one, two and six of the complainant's request. He considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The Information Commissioner (Commissioner) also considers that Passmores Academy was entitled to withhold the personal contact telephone numbers of the twOfour production team and two Channel 4 employees under section 40(2) with section 40(3)(a)(i) of the FOIA.
3. By failing to confirm that it held some information within the scope of part one of the complainant's request Passmores Academy breached section 1(1)(a) of the FOIA. In relation to parts one, three, four and five of the request the Commissioner is satisfied that, on the balance of probabilities, Passmores Academy does not hold any further information within the scope of the request.
4. The Information Commissioner does not require Passmores Academy to take any steps as a result of this decision.

Request and response

5. On 23 September 2011, the complainant wrote to Passmores Academy and requested the following information:

'1. Copies of all round-robin correspondence that was sent to parents of pupils at the school relating to the show.

2. Copies of agreements/arrangements in place whereby the school could have some control/veto over what was shown in the documentary and what was edited out.

3. Copies of any correspondence allowing school staff any type of access to a pre-broadcast screening of the show where it would be possible for staff to put forward proposed edits to the programme.

4. A summary of any scenes that were edited out of the series because of concerns from the school or parents.

5. Copies of any correspondence held by the school that was received from parents of pupils at the school expressing any concern/displeasure about the filming/programme. (Clearly some details may need to be redacted from these to comply with S.40).

6. Details of any financial arrangements whereby expenses, fees, costs would be paid to the school by the production company/Channel 4 or an intermediary.'

6. Passmores Academy responded on 21 October 2011. It stated that it did not hold information in relation to parts one, four and five of the complainant's request. It refused to provide the information requested in parts two, three and six of the complainant's request under section 43(2) of the FOIA.
7. The complainant requested an internal review on 27 October 2011.
8. Passmores Academy wrote to the complainant upholding its original decision in relation to parts one, two, four, five and six of the request. In relation to part three of the request it stated that it did not hold any information, as had been suggested in its initial response, but if it had have held any information it would have been exempt under section 43(2) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He argued that Passmores Academy would hold information in relation to parts one, three, four and five of his request. He also argued that section 43(2) of the FOIA was not engaged in relation to the withheld information and, even if section 43(2) of the FOIA was engaged, the public interest favoured disclosure. The complainant also noted that the initial response to the request and the internal review were provided by the same person.
10. In the course of his investigation the Commissioner determined that Passmores Academy did hold some information within the scope of part one of the request. This consisted of the information contained within the 'Child Contributor's Consent Letter' at schedule 2 of the 'Access Agreement'. Passmores Academy considered that this information fell within the scope of another part of the complainant's request and it had refused to provide it under section 43(2) of the FOIA.
11. Passmores Academy also argued that section 40(2) with section 40(3)(a)(i) of the FOIA applied to the main school contacts and the names and contact details of the majority of employees of twOfour and Channel 4 which are included in the 'Access Agreement'. The Commissioner informed Passmores Academy that he did not consider that section 40(2) with section 40(3)(a)(i) of the FOIA was engaged in relation to this information other than for the personal telephone numbers of the members of the twOfour production team and two employees of Channel 4. On this basis Passmores Academy disclosed the remaining information to the complainant. Therefore, the Commissioner has only gone on to consider whether personal telephone numbers of the twOfour production team and two employees of Channel 4 could be withheld under section 40(2) with section 40(3)(a)(i) of the FOIA.
12. In the course of his investigation the Commissioner has considered all of the arguments made by the complainant and Passmores Academy including those not specifically referenced within this decision notice.

Background

13. This request for information relates to a television documentary called Educating Essex which was filmed at Passmores Academy over the course of a school year. The programme was produced by twOfour and broadcast by Channel 4.

Reasons for decision

Does Passmores Academy hold any information within the scope of parts one, three, four and five of the complainant's request?

14. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to them.
15. The Commissioner considers that determining whether a public authority holds any requested information is a question of fact. The appropriate standard of proof to apply is the civil standard of the balance of probabilities. The burden of proof is on the public authority to demonstrate to the appropriate standard that it does not hold the requested information.
16. The complainant has explained to the Commissioner that he finds it difficult to accept that Passmores Academy has not retained any information of the description specified in parts one, three, four and five of his request. He does not believe that Passmores Academy would not have had any involvement in the content or distribution of letters to parents of the school regarding the filming of the programme. He argues that some parents must have objected to their children taking part in the programme. He also argues that Passmores Academy must have objected to some of the scenes that were to be included in the programme and have had negotiations with twOfour, the production company, regarding this.
17. The Commissioner asked Passmores Academy to explain what searches it had carried out to locate information within the description provided in the request in both manual and electronic records and to explain why these would have been likely to retrieve any relevant information.
18. In relation to part one and five of the request the Commissioner made additional enquiries regarding the process by which the letters were sent out to parents and about which organisation the letters were returned to. In particular, the Commissioner asked Passmores Academy how it was possible for the production company to contact all of the relevant parents without Passmores Academy's input. In relation to part three and four of the request the Commissioner made further enquiries about how Passmores Academy and twOfour interacted regarding the content of the programme.
19. In relation to part one and five of the complainant's request Passmores Academy has explained the following:

- The production company produced the letters that were sent to parents and provided these to Passmores Academy.
 - Passmores Academy used mail merge to produce labels for the letters which were then put onto the envelopes and sent out to parents.
 - The letters included a return slip and a stamp addressed envelope to be returned directly to the production company.
20. The Commissioner considers that this explains why the letters that were sent to students, or a template letter used in a mail merge application, were not held on the relevant parts of Passmores Academy's electronic systems. However, having reviewed the withheld information which is contained within an 'Access Agreement' between twOfour and Passmores Academy the Commissioner notes that Schedule 2 of the agreement contains a document entitled 'Child Contributor's Consent Letter'. Although this document is in the format of a consent form this was sent to parents as described above and was sent back to the production company indicating whether the parent agrees to their child contributing to the programme. Therefore, the Commissioner considers that the 'Child Contributor's Consent Letter' constitutes correspondence that was sent to parents of the school within the scope of part one of the complainant's request.
21. In failing to confirm that the information contained within the 'Child Contributor's Consent Letter' was held, Passmores Academy was in breach of section 1(1)(a) of the FOIA. Passmores Academy considered that this information fell within the scope of another part of the complainant's request and it had refused to provide it under section 43(2) of the FOIA. This is considered later in this notice.
22. The Commissioner also notes Passmores Academy's explanation that from the outset of the project it took the position that it would not be involved in discussions with parents/carers as to whether students should be involved in the project. This was so that there was no perception by parents that they were under any pressure from Passmores Academy to consent to students being involved in the programme.
23. Passmores Academy was informed by twOfour of any parents/carers that did not want their child to be involved in the programme. In relation to part five of the request there was no correspondence received by Passmores Academy from parents concerning this issue.
24. In relation to part three and four of the request Passmores Academy has explained that any discussions between the school and the production company concerning the content of the programme took place in person.

No minutes of these meetings were taken and no correspondence concerning the editing process was sent between twOfour and Passmores Academy.

25. Relevant members of staff at Passmores Academy and the Principal carried out electronic searches of their email inboxes and manual searches of relevant filing cabinets for the information described in parts one, three, four and five of the complainant's request. They did not locate any further information within the scope of the request.
26. The Commissioner is satisfied that Passmores Academy has carried out appropriate manual and electronic searches for the information the complainant has requested. He considers that to some extent the explanations Passmores Academy has provided about how parents were contacted and about its relationship with twOfour explain why it does not hold further information within the scope of the request. The Commissioner is satisfied that, on the balance of probabilities, Passmores Academy does not hold any further information within the scope of parts one, three, four and five of the complainant's request.

Parts one, two and six of the complainant's request – Section 43(2) of the FOIA

27. Section 43(2) of the FOIA states that information is exempt if its disclosure under the FOIA would, or would be likely, to prejudice the commercial interests of any person. Section 43(2) of the FOIA is a qualified exemption and is therefore subject to a public interest test.
28. Before considering the exemptions applied by Passmores Academy the Commissioner has considered what information falls within the scope of the complainant's request. The second part of the complainant's request was as follows:

'2. Copies of agreements/arrangements in place whereby the school could have some control/veto over what was shown in the documentary and what was edited out.'

29. The information relevant to this part of the request is contained within the 'Access Agreement' between twOfour and Passmores Academy. The Commissioner has considered whether an objective reading of the complainant's request leads to an interpretation that only the provisions relating to controls or vetos the school had over the editing process are within the scope of the request or whether all of the information contained within the 'Access Agreement' is within the scope of the request. The Commissioner considers that an objective reading of the request leads to the latter interpretation. As the request asks for copies of the agreements 'whereby' these provisions were made rather than

limiting the request to only cover information relating to the provisions concerning controls over editing, the Commissioner considers that Passmores Academy correctly interpreted the request to include within its scope all of the information contained within the 'Access Agreement'. The Commissioner notes that Passmores Academy and Channel 4 have proceeded on this basis in their submissions to the Commissioner.

30. The financial arrangements between Passmores Academy and twOfour are also contained within the 'Access Agreement'. Therefore, parts one, two and six of the complainant's request overlap and the information held by Passmores Academy within the scope of the request is all of the information contained within the 'Access Agreement'.
31. The Commissioner has gone on to consider whether Passmores Academy was entitled to withhold the information within the 'Access Agreement' under section 43(2) of the FOIA, excluding the information that has been disclosed and the information withheld under section 40(2) with section 40(3)(a)(i) of the FOIA.

Is section 43(2) of the FOIA engaged?

32. Passmores Academy does not consider that its own commercial interests would be prejudiced if the withheld information were to be disclosed. It has argued that disclosure of the information would be likely to prejudice Channel 4's and twOfour's commercial interests.
33. The Commissioner's view is that when considering prejudice to a third parties commercial interests, it will not be sufficient for a public authority to provide speculative arguments about the prejudice that may be caused to the third party. He requires evidence from the public authority that the arguments either derive from the third party themselves or are based on the public authority's prior knowledge of the third party's concerns.
34. In this case Passmores Academy has liaised extensively with Channel 4 in relation to the original request and in relation to the Commissioner's enquiries. It is clear that the arguments about the prejudice to Channel 4's and twOfour's commercial interests derive directly from Channel 4. The Commissioner considers that it was appropriate for Channel 4 to respond to Passmores Academy both in relation to its own commercial interests and twOfour's commercial interests. This is because twOfour was acting for Channel 4 in relation to the production of the programme, Channel 4 has a detailed understanding of twOfour's commercial interests, and the same considerations apply in relation to Channel 4's and twOfour's interests in this case. He is also aware that Channel 4 has been in contact with twOfour regarding this request.

35. Passmores Academy is relying on the lower threshold that Channel 4's and twOfour's commercial interests 'would be likely' to be prejudiced by disclosing the withheld information.
36. There are two main arguments put forward by Channel 4, and provided by Passmores Academy, as to why disclosing the withheld information would be likely to prejudice the commercial interests of Channel 4 and twOfour. The first is based on the content of the information in the 'Access Agreement' being commercially sensitive as it is the result of significant experience and expertise in producing observational documentaries. It argues that this provides Channel 4 and twOfour with a competitive advantage against competing production companies and broadcasters which would be undermined if this information were to be disclosed. It also argues that disclosing this information would undermine its negotiating position in discussions with potential contributors in relation to access arrangements for similar programmes in the future.
37. Secondly, Passmores Academy has argued that the disclosure of the financial arrangements and the fee paid to Passmores Academy would be likely to prejudice Channel 4's and twOfour's negotiations with other contributors and organisations in relation to financial arrangements for future programmes.
38. Within the scope of these two arguments Channel 4 has made further detailed submissions in relation to the information contained in certain clauses which it considers to be particularly commercially sensitive.
39. The complainant has argued that the information is not commercially sensitive. Whilst the complainant accepts that section 43(2) of the FOIA may be engaged in relation to financial arrangements he considers that the public interest favours disclosure. He argues that the fee paid to each organisation involved in programming will differ due to the different circumstances in each case and that disclosing the fee paid in this case would not set a precedent.
40. In relation to Channel 4's first argument the Commissioner has considered the nature of the information contained within the 'Access Agreement'. In particular, he has considered to what extent the information therein constitutes standard contractual clauses or carefully negotiated clauses that have been developed using expert knowledge gained through Channel 4 and twOfour's experience in making observational documentaries.
41. Channel 4 has argued that the 'Access Agreement' is a product of the expertise of twOfour's production team and specialist advice from Channel 4's Legal and Compliance team. It has stated that:

'It was carefully negotiated with Passmores to ensure compliance with Ofcom's Broadcasting Code (including preserving the broadcaster's editorial integrity) but also to accommodate the commercial interests of Twofour and Channel 4 whilst giving paramount consideration to the welfare of the programme (including under 18's).'

42. In relation to the 'Code of Conduct' at Schedule 1 of the Access Agreement, which is a statement of how twOfour and Channel 4 intended to work with Passmores Academy in relation to the production of the programme, Channel 4 has stated that it:

'was drafted by Twofour and Channel 4 with the benefit of years of experience of working on delicate, trust-based access documentaries where, after careful negotiations, specialist "rig" filming has been permitted in institutions, such as police stations and hospitals...it contains specialist knowledge which gives Twofour and Channel 4 a competitive edge in relation to programmes of this nature. For these reasons we consider the Access Agreement to be commercially sensitive in its entirety.'

43. Channel 4 has highlighted the importance of editorial integrity and in not creating the impression that contributors have a degree of editorial control or a preview right as a matter of course. It has argued that disclosing the withheld information would create this impression and would seriously fetter traditional programme-making thereby prejudicing Channel 4's and twOfour's commercial interests.
44. In relation to clauses concerning assistance from contributors, exclusivity, publicity, copyright, liability and remedies Channel 4 has argued that these are carefully negotiated in each case. It argues that disclosing the details of these clauses would prejudice future negotiations by setting expectations that future contributors will be able to negotiate similar terms. It would also reveal information about Channel 4's strategy in dealing with programme-making issues that arise in filming observational documentaries which are addressed in detail within the 'Access Agreement'.
45. The Code of Conduct at Schedule 1 of the 'Access Agreement', which governs the relationship between the production company and the school, contains information about twOfour's editorial ambitions for the programme which Channel 4 has stated are fundamental to programme-making. The clauses relating to this are carefully negotiated to enable twOfour to meet its editorial ambitions. It also includes details of filming and recording methods, the approach taken to working with under-18's, how consent issues are addressed, dealing with sensitive issues, raising concerns, dealing with the press and what expert advice available to the

school. It argues that all of these clauses are carefully negotiated and, if disclosed, would affect Channel 4's and twOfour's bargaining positions in relation to future programming of this nature and reveal its strategy in resolving some of these issues to competitors.

46. In relation to the 'Child Contributor's Consent Letter' and the 'Contributor's Consent Letter' at Schedule 2 of the 'Access Agreement' Channel 4 has argued that it contains carefully considered provisions appropriate to the nature of the programming. It argues that disclosing this information would reveal to its competitors twOfour's and Channel 4's editorial strategy and the way in which it deals with contributors which would be likely to prejudice its commercial interests.
47. Channel 4's second argument relates to the financial arrangements in place with Passmores Academy. It has explained that it is not standard practice in the UK to pay contributors for their involvement in observational documentary films. It argues that disclosing the amount paid to Passmores Academy would be likely to prejudice its negotiations with other contributors and organisations in the future by undermining its bargaining position and setting an expectation that such arrangements are the norm rather than a carefully negotiated exception. Therefore, it argues that it would be likely to prejudice both twOfour's and Channel 4's commercial interests in relation to future programming. It has stated that this is especially the case as this type of documentary tends to be recommissioned for further series at different locations. Therefore, it is likely that the series will be recommissioned and that the withheld information in this case would be directly relevant to both twOfour's and Channel 4's negotiations with contributors to any new series.
48. The Commissioner considers that, for the reasons outlined by Channel 4, the disclosure of the information contained within the 'Access Agreement' would be likely to prejudice Channel 4's and twOfour's commercial interests. He considers that the agreement is carefully negotiated and that the clauses are based on Channel 4's and twOfour's expertise and specialist knowledge in producing observational documentaries. He considers that disclosure of the information would be likely to prejudice negotiations in relation to similar programme making in the future and particularly in relation to a further series of this programme which is likely to be recommissioned. He also considers that it would be likely to prejudice Channel 4's and twOfour's commercial interests by revealing commercially sensitive information about their approach to programme making, particularly with under-18's, and the editorial processes which are fundamental to their success. This information would be likely to be used by competing production companies and broadcasters thereby undermining Channel 4's and

twOfour's competitive advantage in producing observational documentaries and prejudicing its commercial interests.

49. In relation to disclosing information about financial arrangements between Passmores Academy and twOfour the Commissioner notes that paying a fee to contributors is by no means the norm for this type of programming. He is of the view that disclosing the amount Passmores Academy were paid would prejudice twOfour's and Channel 4's bargaining position in negotiations with contributors in the future, particularly in relation to any future series of this programme. Although the Commissioner recognises the complainant's argument that fees paid to contributors would depend upon the circumstances of the case he considers that disclosing the fee paid in this particular case could be seen as a benchmark figure and would be likely to be used by future contributors to inform their negotiations.
50. For the reasons outlined above, the Commissioner considers that section 43(2) of the FOIA is engaged in relation to all of the information contained in the 'Access Agreement' withheld under this exemption. The Commissioner has therefore gone on to consider the public interest test.

Public Interest Test – is the fact that the information would not be covered by the FOIA if the request had been made to Channel 4 a relevant public interest factor in favour of maintaining the exemption?

51. Channel 4 has stated that if the request had been made directly to it the information would not be covered by the FOIA as it is held by Channel 4 for the purposes of 'journalism, art or literature' and Channel 4 are only subject to the FOIA in respect of information held other than for these purposes as outlined in Part VI, Schedule 1, of the FOIA. It has argued that this is a relevant public interest factor in favour of Passmores Academy maintaining the exemption under section 43(2) of the FOIA in this case.
52. In support of its arguments, Channel 4 has quoted Lord Neuberger of Attotsbury MR in the Court of Appeal decision in *Sugar v BBC & Information Commissioner*. In outlining the purpose of derogation for public service broadcasters he stated:

'The purpose of limiting the extent to which the BBC and other public sector broadcasters were subject to FOIA was "both to protect freedom of expression and the rights of the media under article 10 of the European Convention on Human Rights, and to

ensure that [FOIA] does not place public sector broadcasters at an unfair disadvantage to their commercial rivals.¹

53. Channel 4 has gone on to argue that:

'It would therefore defeat the purpose of limiting the extent to which Channel 4 is subject to the Act for programme-related information if a requester was able to circumvent these provisions by simply approaching another public authority for the information who was not afforded the same exemption under the Act. Clearly, Government did not intend for this to be the case and recognises that this sort of information is highly commercially sensitive to public service broadcasters and has sought to ensure that the Act does not place such broadcasters at an unfair disadvantage to their commercial rivals.'

54. The Commissioner has considered Channel 4's arguments. He draws a distinction between the use of the term 'commercial' to describe non-public service broadcasters and the use of the term 'commercial' in the context of 'commercial interests' under section 43(2) of the FOIA. The Commissioner considers that in the above quotation Lord Neuberger of Attotsbury MR is using the term 'commercial' as a way to describe non-public service broadcasters. He does not consider that he was suggesting that the purpose of the derogation provisions within the FOIA is to protect the commercial interests of public service broadcasters.

55. The Commissioner considers that it is well-established that the derogation provisions are designed to protect freedom of expression and the rights of the media under Article 10 of the European Convention on Human Rights (ECHR) and that this is the meaning of Lord Neuberger of Attotsbury's statement outlined above. This is supported by Lord Wilson's leading judgement in the Supreme Court's decision on appeal from the Court of Appeal in that case. He stated:

'In the event the public service broadcasters were included in the Bill. But, in the course of the passage of the Bill through Parliament and following representations to the Home Office both by the BBC and by Channel 4, their inclusion was made subject to the designation. The designation had two, linked, purposes. Its general purpose, reflective of the genesis of its three specified concepts in the EU Directive dated 24 October 1995 in relation to access to personal data, was to protect the right of the public

¹ *Sugar v British Broadcasting Corporation and another* [2010] EWCA Civ 715, para 45.

service broadcasters to freedom of expression, in particular under article 10 of the ECHR. Its particular purpose, foreshadowed in the background material quoted above, was (as confirmed in a letter dated 13 January 2000 from an officer in the Home Office, which had responsibility for the Bill, to an officer in another department) that the public service broadcasters should not be placed at a disadvantage in relation to their commercial rivals.²

56. The Commissioner has considered whether the potential disclosure of information relating to 'journalism' would put Channel 4, as a public service broadcaster, at a disadvantage in relation to commercial broadcasters. He does not consider that it would. Both public service broadcasters and commercial broadcasters are in the same position concerning requests for information relating to 'journalism' both where they were made directly to the broadcaster and where they are made to an organisation the broadcaster has entered into a relationship with.
57. If a request for information relating to 'journalism' was made directly to a commercial broadcaster it would not have to provide the information as it is not subject to the FOIA. If a request for information relating to 'journalism' was made to a public sector broadcaster it would not have to provide the information as it is not subject to the FOIA in relation to information held for the purposes of 'journalism'.
58. If a commercial broadcaster or a public sector broadcaster enters into a relationship with a public authority they do so with an awareness that the public authority is subject to the FOIA and that the information held by the public authority pertaining to this relationship may be subject to disclosure. Therefore, there is a level playing field for both commercial broadcasters and public service broadcasters when they enter into relationships with public authorities. Channel 4 is not at a disadvantage in relation to commercial broadcasters when it enters into relationships with public authorities. Therefore, the Commissioner disagrees that a public authority disclosing information which would not be covered by the FOIA if the request was made directly to a public service broadcaster frustrates the purposes of derogation.
59. The Commissioner does not consider that the fact that information would not be covered by the FOIA if the request had been made directly to Channel 4 is a relevant public interest factor in favour of Passmores Academy maintaining the exemption under section 43(2) of the FOIA in

² *Sugar (Deceased) (Represented by Fiona Paveley) (Appellant) v British Broadcasting Corporation and another (Respondents)* [2012] UKSC 4, para 37.

this case. He has not taken this into account as a relevant factor in considering the balance of the public interest in this case.

Public Interest Test

60. Passmores Academy, taking into account the arguments provided by Channel 4, considers that there are public interest factors in favour of disclosing the information. It considers that there is a general public interest in transparency and accountability for decisions taken by public authorities. It also considers that in this particular case there is a public interest in understanding more clearly the terms on which Passmores Academy agreed to take part in the programme and the extent to which it had any editorial control over its content. Finally, Passmores Academy accepts that there is some public interest in understanding the fee that it received for taking part in the programme but considers that the fact that this was not a substantial amount reduces the public interest in disclosing the amount that Passmores Academy was paid.
61. Passmores Academy, taking into account the arguments provided by Channel 4, also considers that there are public interest factors in favour of maintaining the exemption. It considers that disclosing information concerning Channel 4's and twOfour's editorial processes and programme-making strategy would be highly detrimental to their commercial interests. It has argued that disclosing the withheld information would undermine Channel 4's and twOfour's rights under Article 10 of the ECHR and prejudice its ability to negotiate terms of access for similar programming in the future. It has also argued that there is a public interest in Channel 4 and twOfour maintaining their bargaining positions and their ability to negotiate favourable financial terms with contributors in the future. Passmores Academy considers that the disclosure of the information would discourage broadcasters from working with public authorities if the terms on which they engage with such contributors were subject to disclosure. Finally, Passmores Academy has also noted that no public money was spent in producing the programme.
62. On balance, taking into account the arguments provided by Channel 4, Passmores Academy considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
63. The complainant has argued that the public interest in favour of disclosure outweighs the public interest in maintaining the exemption. He states that the agreement between Passmores Academy and the production company would have been in place to protect the staff and pupils at the school and it is in the public interest for the public to see that the school took its responsibilities seriously. He does not consider that disclosing details of the financial arrangements would impact on

Channel 4's or twOfour's ability to continue to make similar programmes in the future and believes that there is a public interest in the public knowing how much the school received.

64. The Commissioner considers that there are public interest factors in favour of disclosing the information. He agrees with Passmores Academy that there is a general public interest in transparency and accountability and a particular interest in this case in understanding more clearly the terms on which Passmores Academy agreed to take part in the programme. He has afforded some weight to these factors. He also considers that there is a public interest in understanding the financial arrangements between Passmores Academy and the production company and how much the school received but agrees with Passmores Academy that this is limited due to the modest nature of the payment. The Commissioner also agrees with the complainant that there is a public interest in understanding whether the school took sufficient steps to protect the interests of its staff and particularly its students.
65. The Commissioner also considers that there are public interest factors in favour of maintaining the exemption. He considers that the prejudice to Channel 4's and twOfour's commercial interests would be likely to be substantial and on-going. In his view disclosing information contained in carefully negotiated clauses would reveal important information about Channel 4's and twOfour's editorial processes and approach to programme-making which could be used by its competitors thereby weakening Channel 4's and twOfour's respective competitive positions. He also considers that this information could be used by potential contributors to future programmes in negotiating access terms thereby weakening Channel 4's and twOfour's respective negotiating positions. He considers that this is especially the case as the information represents Channel 4's and twOfour's expertise in making observational documentaries and this type of programme is often recommissioned to be filmed in new locations with new contributors. He has afforded significant weight to these factors.
66. The Commissioner is also of the view that disclosing the information concerning financial arrangements would be likely to prejudice Channel 4's and twOfour's ability to negotiate favourable terms with contributors in the future, particularly in relation to future series of this programme which is likely to be recommissioned. This is especially the case as the payment of a fee is the exception rather than the norm. He has afforded some weight to this factor but to some extent accepts the complainant's argument that the prejudice will be limited as the circumstances for each programme differ and, if a fee is appropriate, the fee will be based on the specific circumstances of the particular project. Nevertheless, as the fee was modest there is a limited public interest in disclosing the amount Passmores Academy received and the amount paid would be

directly relevant to negotiations relating to a new series of this programme which is likely to be recommissioned.

67. On balance, the Commissioner considers that the public interest in favour of maintaining the exemption outweighs the public interest in disclosing the information. Therefore, Passmores Academy is not required to disclose the information withheld under section 43(2) of the FOIA.

Section 40(2) with section 40(3)(a)(i) of the FOIA

68. Section 40(2) with section 40(3)(a)(i) of the FOIA states that third party personal information must not be disclosed if to do so would contravene any of the data protection principles in Schedule 1 of the Data Protection Act 1998 (DPA). The first principle of the DPA states that personal data must be processed fairly and lawfully.
69. The information withheld under this exemption is the personal telephone numbers of the members of the twOfour production team and two Channel 4 employees.
70. In considering whether disclosure of this information would be fair the Commissioner has taken the following factors into account:
- whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
 - the individual's reasonable expectations of what would happen to their information; and
 - whether the legitimate interests of the public are sufficient to justify any negative impact to the rights and freedoms of the data subject.
71. The Commissioner considers that disclosing the personal telephone numbers for members of the twOfour production team and the two Channel 4 employees could cause unnecessary damage and/or distress to the individuals concerned. The individuals are not in public facing roles and it is clear from the information that has been disclosed that it is necessary for a number of these individuals to be contactable 24 hours a day in case of emergencies. Where the telephone numbers are mobile phone numbers, any inappropriate contact could intrude into the private lives of the twOfour production team and the two Channel 4 employees.
72. The Commissioner does not consider that members of the twOfour production team or the two Channel 4 employees would have had a reasonable expectation that their personal telephone numbers would be

disclosed into the public domain. The contact numbers were provided to Passmores Academy for the purposes of contact during filming of the programme. Whilst no specific assurances were given about the information not being disclosed the 'Access Agreement' containing the information makes clear that the contact numbers are for Passmores Academy's use in relation to the filming. It is unlikely that any individual at the time would have envisaged wider dissemination. At the time of the request the filming of the programme had been concluded for some time and the individuals would have had even less expectation that their personal telephone numbers would be disclosed.

73. Notwithstanding the data subject's reasonable expectations or any damage or distress that may be caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure. In the circumstances of this case, other than the broad general principles of accountability and transparency, there is no compelling legitimate interest in disclosing this information and the disclosure would only further accountability and transparency to a very limited extent as the individuals names and job titles, where applicable, have already been disclosed.
74. On balance, the Commissioner considers that there is no legitimate public interest in disclosure that outweighs the potential damage and/or distress to the individuals concerned or their reasonable expectations that this information would not be disclosed. Therefore, it would not be fair for Passmores Academy to disclose this information and to do so would breach the first principle of the DPA. Section 40(2) with section 40(3)(a)(i) of the FOIA is engaged and Passmores Academy is not required to disclose this information.

Other matters

75. The complainant asked the Commissioner to consider the fact that the initial response and the internal review were provided by the same person.
76. The Code of Practice issued under section 45 of the FOIA provides good practice guidance for conducting internal reviews. It states:

'The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue. Complaints procedures should be as clear and simple as

possible. They should encourage a prompt determination of the complaint.

Where the complaint concerns a request for information under the general rights of access, the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable. The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint.'

77. The Commissioner notes that the principal of Passmores Academy provided the initial response in this case. Therefore, there was nobody senior to the person that provided the initial response to conduct the internal review. The Commissioner also notes that as part of the internal review the principal asked Channel 4 to review its original submissions and on this basis Channel 4 provided further reasoning to Passmores Academy to support the application of section 43(2) of the FOIA.
78. Whilst there may be circumstances where it is appropriate for a member of the governing body to deal with requests for information and/or internal reviews the Commissioner does not consider that Passmores Academy failed to follow the good practice guidance provided in the Code of Practice in this case. The principal dealt with the initial response to the request as he had a good understanding of the information Passmores Academy may have held and the arrangements that were in place with twOfour and Channel 4 in relation to the programme. He also had prior relationships with Channel 4 which meant he could easily liaise with them in relation to the request. In this case, the Commissioner considers that it was reasonable for the principal to respond to the initial request and that it was not reasonably practicable for someone more senior to conduct the internal review as there was no such person.

Right of appeal

79. 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

80. 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.
81. 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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