

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 August 2012

**Public Authority:** Surrey County Council  
County Hall  
Penrhyn Road  
Kingston upon Thames  
Surrey  
KT1 2DN

#### Decision (including any steps ordered)

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1. The complainant requested copies of two audits from Surrey County Council ("the council") relating to a particular school. The council refused to provide the information on the basis that it was exempt under section 40(2) of the Freedom of Information Act 2000 ("the FOIA").
2. The Commissioner's decision is that the council correctly relied on section 40(2), with the exception of a small part of the information that the Commissioner considered should have been disclosed. In relation to that information, the Commissioner finds the council in breach of section 1(1)(b) and 10(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation. Disclose the following information from the second audit report dated January 2011:
  - Paragraph 1.5 under the heading "Introduction" but the council should redact the information within that paragraph from "2005" until "respectively".
  - Paragraph 2.4 under the heading "Work undertaken".
4. The public authority 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 (or the Court of Session in Scotland) 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 23 September 2011, the complainant requested information from the council in the following terms:

*"I request copies of the two financial audits Surrey County Council carried out of Cordwalles Junior School that led to the council withdrawing the school's delegated authority for its budget.*

*This request is identical to a previous one (ref: 06068) made by my colleague [name] which you denied as it was 'exempt under section 40(2) by virtue of Clause 40(3)(a)(i) of the Freedom of Information Act'. Please advise me if this decision stands. If so, I reserve the right to appeal it".*

6. The council responded on 7 October 2011 and confirmed that it still maintained that the information was exempt.
7. The complainant asked the council to conduct an internal review on the same day.
8. The council completed an internal review and said that it wished to maintain its position. It explained in more detail why it considered that the information was exempt.

## Scope of the case

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9. The complainant asked the Commissioner to consider whether the council had correctly withheld the information.
10. For clarity, where the Commissioner considers that the information is already in the public domain, that information has been scoped out of the Commissioner's investigation.

## Background

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11. On 3 November 2005, the council completed an audit report relating to Cordwalles Junior School. The council also completed a second audit report in January 2011 relating to the same school. The council described the purpose of such reports as follows:

"Typically audit reports following irregularity investigations help to provide independent evidence to management to support a management case against an employee under formal disciplinary

procedures, or to help tighten control in areas where weaknesses are identified. Irregularity audit reports are not subject to the same distribution as general audit reports due to their confidential nature”.

12. No information has been published about the first audit report. However, by the time of the second audit report, the council had a procedure for publishing a full year summary of internal audit “irregularity investigations”. The meetings of the Audit and Governance Committee are regularly attended by the press and the reports themselves are freely available on the council’s website.
13. The council has published a summary relating to this case although its position is that the summary is anonymous and cannot be linked to the school in question. The Commissioner disagrees with that position. In the Commissioner’s view, the school can be identified from the information disclosed and he has therefore taken that into account in his analysis of the exemption. However, in view of the fact that the council continues to dispute the Commissioner’s finding in this respect, the Commissioner has explained more about why he believes that the summary can be linked to the school in a confidential annex to this notice. The confidential annex has been provided to the council only. It has also been necessary for the Commissioner to set out some other aspects of his analysis of the exemption in the confidential annex. The Commissioner has indicated where that has occurred in the analysis below.
14. The full audit reports that the council conducted form the subject of the complainant’s request in this case.

## **Reasons for decision**

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### **Section 40(2) – Third party personal data**

15. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (“the DPA”). The council applied this exemption to the contents of two audit reports relating to the school in question.

### **Is the withheld information personal data?**

16. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The council identified that the audit reports primarily contain the personal data of the headteacher at the school, as well as that of other persons involved in the issues. The

Commissioner accepts that this is the case in relation to the vast majority of the information within both audit reports. The overall theme of the reports is focused on an assessment of the headteacher's management.

17. Both the council and the Commissioner considered whether it would be appropriate in this case to consider the disclosure of redacted versions of these reports, attempting to isolate parts of the report that may not be personal data. However, the vast majority of the information is personal data, the majority of which is that of the headteacher. Given all the circumstances of the request, the Commissioner considered that it would be appropriate to consider the reports in their totality.

### **Would disclosure breach the Data Protection Principles?**

18. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.
19. For clarity, although the reports clearly contain the personal information of other individuals, the Commissioner considered that the headteacher is the main focus of the information and his considerations below therefore mostly concern fairness to the headteacher.

### **Reasonable expectations**

20. As set out in the Commissioner's published guidance on section 40(2), in considering whether a disclosure of personal information is fair it will be important to take into account whether such a disclosure would be within the reasonable expectations of the individual. Circumstances will vary in this context. Some individuals may give little or no thought to how their personal information will be used, whereas others will have clear expectations because the public authority has indicated the uses to which their personal data will be put. Even in the latter scenarios there can be no certainty of what is a fair or unfair disclosure in all circumstances and authorities will need to carry out an objective assessment of whether the expectation is reasonable. This will include consideration of the nature of the information and the role of the individual concerned. Factors that may have an impact are the seniority of the role, whether the role is public-facing and whether the position involves responsibility for making decisions on how public money is spent.

21. The expectations of an individual will be influenced by the nature of the information. One such distinction that may modify expectations is whether the information relates to the public or private life of the individual. In *The Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP* (16 January 2007; EA/2006/0015 & 0016), the Information Tribunal (now the First-Tier Tribunal (Information Rights)) said the following:

*"...where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives".*

This means that it is more likely to be fair to release information that relates to the professional life of the individual. It will still be a matter of degree however as there may be an expectation that information relating to personnel matters would not be disclosed. There will often be circumstances where due to the nature of the information and/or the consequences of it being released, the individual will have a strong expectation that information will not be disclosed. Information relating to an internal investigation or disciplinary matter will carry a strong expectation of privacy. This was recognised by the Information Tribunal in the case of *Rob Waugh v Information Commissioner and Doncaster College* (EA/2008/0038; 29 December 2008) when it said that,

*"...there is a recognised expectation that the internal disciplinary matters of an individual will be private. Even among senior members of staff there would still be a high expectation of privacy between an employee and his employer in respect of disciplinary matters".*

22. The council said that it did not consider that the disclosure of full reports would have been within the reasonable expectations of the individuals concerned. It said that nothing was said to the individuals concerned that would have given them an expectation that the reports would be put into the public domain, and given that the reports focused on a number of allegations, the council argued that there would have been a strong expectation of confidentiality. The council also pointed out that it had never been the council's standard procedure to publish full reports of this nature and that would have also contributed towards a legitimate expectation.
23. The council said that it recognised that there was a significant public interest in the disclosure of the reports because they relate primarily to an individual with a senior role (the headteacher) and concern various allegations surrounding the appropriateness of expenditure from the school's delegated budget. However, in line with the council's procedures, it had published a summary and it believes that the

individuals concerned would have understood from this, and the final actions taken, that no further information would be disclosed.

24. Part of the Commissioner's analysis has been set out in a confidential annex.

### **Consequences of disclosure**

25. The Commissioner's published guidance explains that in assessing fairness, authorities should consider the likely consequences of disclosure in each particular case. Personal information should not be used in ways that have unjustified adverse effects on the individuals concerned. It is often the case that the detrimental consequences resulting from a disclosure would be obvious. It will also be important to consider the level of distress that a disclosure would be likely to have and this will depend on the nature of the information.
26. The council argued that given the expectations above and the nature of the audit reports, disclosure of the reports in response to this request would be likely to have caused damage and distress.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

27. There is always some public interest in the disclosure of any information held by public authorities under the FOIA. This is because the disclosure of information to the public assists in the general aims of promoting transparency, accountability and more active public participation. However, where personal data is concerned, it is important to consider all the circumstances to ensure that the disclosure would be fair in the circumstances. In other words, individuals have a legitimate right to privacy and this must be balanced against the legitimate public interest.
28. Turning firstly to the issue of the extent to which the disclosure of this information would have been within the reasonable expectations of the individuals concerned, and the headteacher in particular. In relation to the headteacher, the Commissioner has had regard to the fact that the headteacher is in a senior position and had a public-facing role which involved significant responsibility for the spending of public money. The latter is even more significant in light of the fact that the allegations concern the appropriateness of expenditure from the school's delegated budget. The Commissioner also notes that on the whole, the information relates to the professional life of the headteacher.
29. The involvement of the above factors creates a strong public interest in the disclosure of the information. Nonetheless, as the Commissioner has already noted it is always a question of degree and there is some

information that even senior staff members with significant responsibilities would not expect to be disclosed for various reasons. The Commissioner considered that this was the case in the present circumstances.

30. The Commissioner has had regard to the comments of the Information Tribunal set out in paragraph 21 of this notice. He is satisfied that the information being withheld in this case falls within this category. It is clear that none of the individuals mentioned or involved in the report were given an expectation that the full report would be disclosed. In fact, they are likely to have had the opposite expectation since it has never been the council's procedure to publish the full reports and the published summary is likely to have been regarded as a compromise that rounded off the matter along with the final actions taken at the end of the investigation.
31. Part of the Commissioner's analysis has been set out in a confidential annex.
32. The Commissioner considered that the information was of a sensitive nature and the disclosure of it in response to the request would be likely to cause distress. Although the Commissioner has acknowledged that it is more likely to be fair to disclose information about an individual's professional life, the Commissioner was satisfied that the information in the reports would be damaging to the headteacher's reputation and career to an unfair extent. It would deprive the headteacher and others of a proper opportunity to move on since a disclosure under the FOIA would not be a limited disclosure, available for a certain period of time. The Commissioner also considers that it would be unfair to the individuals involved to put the full reports into the public domain without those individuals having a proper opportunity to challenge the allegations and findings in the report before publication.
33. As already mentioned in this notice, the council has published a summary and it said that it had taken this decision because it was aware of the strong public interest given the nature of the headteacher's role and the fact that the nature of the issues generally focused on the use of public money. In the Commissioner's view, a summary of that nature broadly satisfies the legitimate public interest in this matter. The level of detail contained in the full reports would represent a disproportionate and unwarranted further intrusion into the legitimate expectations of privacy that these individuals expected in the circumstances.
34. There was only a small amount of information where the Commissioner considered the balance of the public interest favoured disclosure. He

has discussed that information in more detail in the confidential annex to this notice.



## Right of appeal

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35. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

36. 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.
37. 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** .....

**Andrew White**  
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**Information Commissioner's Office**  
**Wycliffe House**  
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