

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 June 2013

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

Decision (including any steps ordered)

1. The complainant has requested a number of pieces of information from Rickmansworth School ("the School") including letters with Howarth Homes and agents involved in the disposal and construction of the School sports hall, quarterly phone bills for the School mobile phone, a particular member of staff's expenses claims and lunch-time supervision claims. The School initially refused the request on the basis of section 40(2) and 43(2) of the FOIA but following the Commissioner's involvement all of the relevant information with the exception of the letters of engagement was disclosed. The School concluded that the remaining information was not held and the Commissioner accepts that there is no further information held by the School within the scope of the request.

Request and response

2. On 8 July 2012, the complainant wrote to the School and requested information in the following terms:
 1. *"Any letters of engagement between Rickmansworth School and*
 - a. *Howarth Homes;*
 - b. *Agents facilitating the disposal of Scots Hill Court to Howarth Homes;*

c. Wakelin Associates, as architects in relation to the design and construction of the sports hall.

2. The quarterly phone bills by total cost only (i.e. not itemised) for the mobile phone provided at the School's expense for the exclusive use of [name redacted], to include rental and any other charges, for the last four years.

3. Photocopies of [name redacted] expenses authorised for reimbursement by the Chairman of Governor's or any other governor.

4. Copies of [name redacted] lunch-time supervision claims for the past five years."

3. The School responded on 20 September 2012 to state it required further time to consider the public interest test in relation to section 43(2). A further response was then issued on 17 October 2012. In this the School stated that it considered the section 40(2) and 43(2) exemptions applied and outlined the public interest arguments considered in relation to the commercial interests exemption.
4. The complainant requested an internal review of this decision on 18 October 2012 and following an internal review the School wrote to the complainant on 5 November 2012. It stated that it upheld its decision to withhold the requested information.

Scope of the case

5. The complainant contacted the Commissioner on 17 January 2013 to complain about the way his request for information had been handled.
6. The Commissioner initially considered the scope of his investigation to be to determine if the School held information relevant to the request and had correctly applied the cited exemptions. During the course of the Commissioner's investigation the School revisited the request and decided it was now in a position to disclose all of the requested information.
7. The information requested in parts 2, 3 and 4 of the request was subsequently disclosed to the complainant. The information requested in part 1 of the request (the letters of engagement) had initially been refused on the basis of section 43(2) but the School withdrew its application of this exemption and accepted the information could be disclosed. However, the School explained it had been unable to locate the information and could not therefore provide it.

8. The Commissioner therefore considers the scope of his investigation to be to establish whether information is held in relation to part 1 of the request.

Reasons for decision

9. Section 1(1)(a) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request,"

10. The Commissioner has considered whether the School has complied with this section of the FOIA in stating that it could not locate any information in response to part 1 of the complainant's request.
11. Initially the School explained it could not locate any relevant information in relation to part 1 of the request and could not confirm if any of the information would have been held. The complainant explained why he believed information would be held by the School and stated that the letters would be no more than three to five years old and likely to relate to the building of a new sports hall and disposal of land. The complainant considered that as there were large sums of money involved in the project it was likely some of the requested information would have been retained by the School if it were held in the first place. The complainant also listed a number of school personnel and governors involved in meeting and discussions at the time who were still linked to the School and would be able to assist in searching for the records.
12. The Commissioner therefore wrote further the School and in determining whether it held the requested information he considered the standard of proof to apply was the civil standard of the balance of probabilities. In deciding where the balance lies in cases such as this one the Commissioner may look at:
 - Explanations offered as to why the information is not held; and
 - The scope, quality, thoroughness and results of any searches undertaken by the public authority.
13. The Commissioner wrote to the School to ascertain what searches it had carried out to determine that no information was held. The School clarified that the information requested in part 1 was not necessarily

linked as some of it related to transactions with commercial partners and other points to the construction of the sports hall.

14. The School confirmed that it had approached a number of Governors at the School to ask them to search for any relevant letters they may hold individually but they had been unable to find anything. The School explained that some of the former Governors who may have been involved in discussions and had possession of letter have been unable to be contacted for a number of reasons. That being said, the School was of the opinion that any letters that may have existed would have been retained by the School in the first instance and Governors would only have been likely to have held copies of the same letters.
15. As well as contacting and attempting to contact Governors and former Governors of the School; searches were also carried out within the School to attempt to locate any relevant information.
16. The School explained to the Commissioner that when searching for any letters relating to the sale of Scots Hill Court it checked the paper files at the School as this was where letters covering the time period of the request would be most likely to be kept as they would not have been scanned and stored electronically. The School explained that it obtained the paper files relating to Scots Hill Court from its archive but was unable to locate the letter of engagement. Similarly for the architects (Wakelin Associates) the School was able to locate paperwork dating back to 1992 as it has had an ongoing relationship with them but the original letter of engagement could not be found.
17. The School has stated that it did search electronic records, in particular the School's accounting system, using the search terms "Wakelin Associates", "Howarth Homes" and "Sequence" (the land agents) to determine if letters of engagement could be found. The School has explained it was able to locate invoices and details of payments but not the specific letters of engagement requested.
18. As well as this the School also went back through the minutes of Governor's meetings which took place in 2007 and 2008 where the sale of Scots Hill Court was discussed. In some of these meetings, members asked for information about the letters of engagement but any questions asked were not answered in the minutes and no supporting papers or the letters themselves were attached with the minutes.
19. The School has further stated that it does not consider that letters of engagement would have ever been in place with Howarth Homes due to the relationship it had with the School whereby Howarth Homes were the purchasers of the land and not the provider of services to the School. As such the School asked two external bodies to undertake

searches for these documents: staff at the Local Authority and staff at the Hertfordshire Shared Internal Audit Service (SIAS) team.

20. Two employees of the Local Authority who provide support to educational establishments with regard to finance were asked to undertake a search for any relevant letters of engagement but after searching were unable to locate the requested information.
21. Similarly two member of Hertfordshire SIAS team conducted searches and in order to facilitate this they were given access to all electronic records and paper records held by the School and minutes from Governor's committees and full Governor meetings were reviewed.
22. Taking into account the explanations provided by the School and on balance the Commissioner accepts that the School has been unable to find any information relevant to the first part of the complainant's request. The Commissioner is not able to comment on whether the School may have held the information at some point or should still hold the information now but can only base his decision on whether the School has carried out sufficient searches to establish that it does not hold the information now and based on the explanations provided by the School he is satisfied the School has conducted adequate searches to reach this position.
23. Taking into account all of the above, the Commissioner therefore considers that the School complied with section 1(1)(a) of the FOIA.

Right of appeal

24. 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

25. 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.
26. 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

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF