

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 April 2014

Public Authority: Bath and North East Somerset Council
Address: The Guildhall
High Street
Bath
BA1 5AW

Decision (including any steps ordered)

1. The complainant requested various communiqués concerning a school governing body. The Council disclosed some information to the complainant, but with some of the content redacted under the exemption provided by section 40(2) (personal information) of the FOIA. In relation to other information, the Council stated that this had been provided to the complainant previously and relied on section 21 (information accessible by other means).
2. The Commissioner's decision is that the Council cited sections 21 and 40(2) correctly. However, he has also found that the Council breached sections 10 and 17 of the FOIA by failing to respond to the request within 20 working days of receipt.

Request and response

3. On 7 January 2013 the complainant wrote to the Council and requested information in the following terms:

"(1) Any enquiry from any source received by Governor Support relating to St Johns CEVC School, Keynsham, BS31 2NB - the originator of the enquiry, the question(s) asked, the source of the information for providing the response and the recipient(s) of the response - including cc/bcc - provided during the period 03/10/2012 - 31/12/2012 inclusive.

(2) Any enquiry received by Governor Support in relation to Foundation Governor appointment(s) at St Johns CEVC School, Keynsham, BS31 2NB - the originator of the enquiry, the question(s) asked, the source of

the information for providing the response and the recipient(s) of the response - including cc/bcc - provided during the period 03/10/2012 - 31/12/2012 inclusive.

(3) Any enquiry received by Governor Support in relation to a member of staff performing the role of Foundation Governor at St Johns CEVC School, Keynsham, BS31 2NB - the originator of the enquiry, the question(s) asked, the source of the information for providing the response and the recipient(s) of the response - including cc/bcc - provided during the period 03/10/2012 - 31/12/2012 inclusive.

(4) Any enquiry received by Governor Support relating to committee make-up, governor eligibility / disqualification criteria for sitting on any specific committee, the potential for governors to profit from their knowledge and membership of any specific committee at St Johns CEVC School, Keynsham, BS31 2NB - the originator of the enquiry, the question(s) asked, the source of information for providing the response and the recipient(s) of the response - including cc/bcc - provided during the period 03/10/2012 - 31/12/2012 inclusive.

(5) Any enquiry received by Governor Support from [name redacted] / Chair of Governors St Johns CEVC School, Keynsham BS31 2NB - the question(s) asked, the source of the information for providing the response and the recipient(s) of the response provided - including cc / bcc- during the period 03/10/2012 - 31/12/2012.

(6) Any 'bundled' correspondence forwarded to Governor Support by [name redacted] governor / Chair of Governors St Johns CEVC School, Charlton Park, BS31 2NB during the period 03/10/2012 - 31/12/2012."

4. The Council responded on 12 March 2013, more than 20 working days from receipt of the request. In response to requests (1) and (6) the requested information was disclosed to the complainant, but with some of the content redacted under section 40(2) (personal information) of the FOIA. For requests (2) to (5), the Council stated that this information had previously been disclosed to the complainant.
5. The complainant responded on 6 April 2013 requesting an internal review. The complainant referred in this response to the delay in responding to his request, as well as issues about the information that was withheld from him.
6. The Council responded with the outcome of the internal review on 29 April 2013. The conclusion of this was to uphold the previous response to the request, albeit that the delay in responding was acknowledged.

Scope of the case

7. The complainant contacted the Commissioner on 5 October 2013 to complain about the response to his information request. The complainant later confirmed that he wished the scope of this case to cover all of his requests. In relation to requests (1) and (6), the complainant wished the Commissioner to consider whether section 40(2) had been cited correctly in relation to the redactions and in relation to requests (2) to (5), he wished the Commissioner to investigate whether the Council was correct in stating that all relevant information it held had previously been disclosed to him.
8. Whilst the Council did not cite the exemption provided by section 21 (information accessible by other means) during its correspondence with the complainant, that it was refusing to disclose the information specified in requests (2) to (5) on the basis that this information had been disclosed to the complainant previously indicated that it was effectively relying on that exemption. At the behest of the Commissioner, the Council contacted the complainant again on 24 March 2014 and advised him that it was relying on section 21 of the FOIA.
9. The analysis in this notice therefore covers whether section 40(2) was cited correctly in relation to requests (1) and (6) and whether section 21 was cited correctly in relation to requests (2) to (5). The breach of the FOIA through the delayed response to the request is also recorded.

Reasons for decision

Sections 10 and 17

10. Section 10(1) of the FOIA provides that a response to an information request must be provided within 20 working days of receipt. Section 17(1) provides that a notice refusing a request must be provided within the same timescale.
11. In this case the request was made on 7 January 2013, but a substantive response was not sent until 12 March 2013. In failing to respond to the request within 20 working days, the Council breached sections 10(1) and 17(1) of the FOIA.

Section 21

12. Section 21 of the FOIA provides an absolute exemption in relation to information that is reasonably accessible to the requester other than through a request made under the FOIA. For section 21 to apply, *all* of

the requested information must be reasonably available to the requester.

13. The position of the Council in this case was that all the information specified in requests (2) to (5) was available to the complainant as it had been provided to him previously. The task for the Commissioner here is to reach a conclusion as to whether *all* of the information specified in requests (2) to (5) had been provided.
14. The Council stated that this information was supplied to the complainant on 30 November 2012. In evidence for this, the Council supplied to the ICO a copy of an email sent to the complainant on 30 November 2012, with which other emails relevant to the request were supplied to him.
15. In response to this, the Commissioner noted that this request had specified a time frame that included December 2012. Clearly the information disclosed on 30 November 2012 could not have included information recorded in December 2012. This issue was raised with the Council and it was asked to provide a fresh response to requests (2) to (5) to cover the entire time period specified in the request. The Council did so and, in the same response to the complainant as referred to above at paragraph 8, clarified that it held no further information within the scope of the whole time period specified in requests (2) to (5) other than that which had already been disclosed to the complainant.
16. During his correspondence with the Council about this case, the Commissioner also asked the Council to state whether it was confident that all information within the scope of requests (2) to (5) had been provided to the complainant and, if so, to explain why. In response to this, the Council stated that it was able to be confident on this point as the knowledge held by the small team that dealt with the matters referred to in the requests meant that they were aware of the correspondence that was held.
17. On the issue of the searches carried out for relevant information, the Council stated that a search was carried out by the small team referred to in the preceding paragraph. It also stated that a further search was carried out following the receipt of correspondence from the ICO about this case, which would have covered any information originating from December 2012.
18. The conclusion of the Commissioner is that all of the information falling within the scope of requests (2) to (5) had been provided to the complainant prior to the date of those requests. Whilst the Council should not have relied solely on a response dated 30 November 2012 when the time frame specified in the request also covered December 2012, the Commissioner accepts on the basis of the existing knowledge

of the relevant team within the Council and on the basis of two searches having been carried out, that the Council had identified all relevant information and disclosed it to the complainant previously. The Commissioner therefore finds that the exemption provided by section 21 of the FOIA was cited correctly and the Council was not obliged to disclose this information to the complainant again in response to requests (2) to (5).

Section 40

19. In relation to content redacted from the information disclosed in response to requests (1) and (6), the Council cited section 40(2) of the FOIA. This section provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process. First the information must constitute the personal data of a third party and, secondly, disclosure of that personal data must be in breach of at least one of the data protection principles.
20. Turning first to whether the information is the personal data of any individual, section 1(1) of the Data Protection Act 1998 (the "DPA") provides the following definition of personal data:

"personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller".
21. Having reviewed the redacted content, the Commissioner believes that it is clear that all of it constitutes personal data. The redactions are either email addresses containing the name of an individual, or else are content from emails where the name of the sender is not redacted even where their email address is. This information is, therefore, personal data in accordance with section 1(1) of the DPA.
22. Turning to whether disclosure of that personal data would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle, which requires that personal data is processed fairly and lawfully and whether disclosure would be, in general, fair to the data subject. In forming a conclusion on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subjects, any consequences of disclosure upon those individuals and whether there is any legitimate public interest in the disclosure of this information.

23. On the issue of what the expectations of the data subjects would be, the Commissioner believes that these individuals would clearly have held an expectation that the redacted content would not be disclosed. The information in question consists of their personal email addresses, which individuals would generally not expect to be disclosed into the public domain, and some email content. The redacted content is that which the Council considered to be more sensitive and, accordingly, it believed that the data subjects would hold a particular expectation of privacy, even though some of this appears to have been views expressed by these individuals when acting in the role of school governors. The Commissioner agrees that the data subjects would not have held any reasonable expectation that the redacted content would have been disclosed into the public domain in response to an information request, even where these views were expressed in a school governor capacity.
24. Turning to the possible consequences of disclosure upon the data subjects, the expectation of privacy referred to above is also relevant here. The view of the Commissioner is that disclosure, in view of this strong expectation of privacy, would be likely to result in distress to the data subjects.
25. As to whether there is any legitimate public interest in this information, the question here is, if there is public interest in disclosure, does this outweigh the factors against disclosure covered above. As noted previously, the information in question here is limited redactions from emails, the remainder of which were disclosed. To the extent that there may have been some public interest in information pertaining to a school governing body, the view of the Commissioner is that this interest will have been satisfied by the disclosure of the majority of the content of these emails. He believes there to be little, if any, public interest in the disclosure of the quite minor redactions.
26. The Commissioner's view is that the data subjects would hold a reasonable expectation that this information would not be disclosed, that disclosure counter to that expectation would be likely to result in distress and that there is little, if any, legitimate public interest in disclosure. For these reasons he finds that disclosure would be unfair and in breach of the first data protection principle. His overall conclusion is, therefore, that the exemption provided by section 40(2) is engaged and the Council was not obliged to disclose the redacted content.

Other matters

27. As well as finding above that the Council breached sections 10 and 17 through its failure to respond to the request within 20 working days of

receipt, the Commissioner has also made a record of this breach. This issue may be revisited should evidence from other cases suggest that there are systemic issues within this Council that are preventing it from responding to information requests promptly.

Right of appeal

28. 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: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

29. 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.
30. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF