

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2015

Public Authority: Wood Fold Primary School
Address: Green Lane
Standish
Wigan
WN6 0TS

Decision (including any steps ordered)

1. The complainant has requested information from Wood Fold Primary School ("the School") broadly relating to the suspension of a member of the School's governing body.
2. The Commissioner's decision is that the School has correctly applied section 40(2) to the information it holds that falls within the scope of requests 4 and 5. The Commissioner has also determined that the School holds no further recorded information within the scope of requests 2 and 3.
3. The Commissioner requires the School to take no steps.

Request and response

4. On 16 March 2014 the complainant wrote to the School and requested the following information:

"Please provide the following information within 20 working days.

1. *Copies of all correspondence, including e-mails, between school and the Governors, and [redacted name] of Two Heads better than One.*
2. *Full details, including copies of any correspondence that was used, to establish that value for money was being demonstrated by appointing [redacted name] of Two Heads better than One, rather than one of the other 4 organisations considered.*

3. *Reasons for ignoring [redacted name] very expensive advice regarding advising parents of [redacted name] suspension within 7 days of the decision to suspend.*
 4. *Copy of the schools ethos and your reasons for deeming [redacted name] to be in breach of this.*
 5. *In what way has [redacted name] brought the office of Governor into disrepute, when only the Governing body was aware of the allegations made.*
 6. *If [redacted name] was appointed purely on the basis of his business card and a telephone interview, and having no recommendation from anyone, what was so impressive about the business card that made his appointment so imperative as to preclude contact with the other organisations”.*
5. The School responded on 29 April 2014. In response to requests 1, 2 and 6 the School provided the complainant with information that fell within the scope of these requests. In relation to request 4, the School provided the complainant with some information and withheld the rest under section 40(2) of FOIA. With regards to requests 3 and 5, the School withheld all information under section 40(2) of FOIA.
 6. The complainant subsequently asked for an internal review on 7 May 2014. The School sent the outcome of its internal review on 16 June 2014. Upon its review, the School located further information that fell within the scope of request 3. It disclosed this information to the complainant. It further upheld its previous decision that it was correct to apply section 40(2) to requests 3 and 5 and part of request 4.

Scope of the case

7. The complainant contacted the Commissioner on 12 August 2014 to complain about the way his requests for information had been handled.
8. Specifically the complainant disputed the School's application of section 40(2) to requests 3, 4 and 5. He also argued that the School held further information within the scope of request 2.
9. During the Commissioner's investigation the School located a letter that it considered to fall within the scope of request 3. The School determined that the letter could be disclosed to the complainant and subsequently sent him a copy.

10. The School also located a copy of the Governor's Code of Conduct which fell within the scope of request 4. The School has confirmed to the Commissioner that this information has also been sent to the complainant.
11. The Commissioner's investigation has therefore had to consider whether the School holds any further information within the scope of requests 2 and 3. He has also considered whether the School was correct to apply section 40(2) to the information it holds that falls within the scope of requests 4 and 5.

Reasons for decision

Request 2 and 3

12. Section 1(1) of 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, and

(b) if that is the case, to have that information communicated to him".

13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
15. With reference to request 2, the complainant disputed the School's claim that he had received all recorded information that fell within the scope of his request.
16. The Commissioner subsequently returned to the School and asked it to confirm whether it held any further information relevant to request 2.
17. The School confirmed that it held no further recorded information. The School stated that it has no business purpose or statutory requirement to hold further information other than what was originally provided to the complainant.

18. As explained at paragraph 9, during the Commissioner's investigation the School withdrew its application of section 40(2) to request 3. Instead it considered that a letter that fell within the scope of request 3 could be disclosed to the complainant and it confirmed that no further recorded information was held. The Commissioner has therefore considered whether any further recorded information within the scope of request 3 is held.
19. In response to the Commissioner's investigation, the School explained that a verbal conversation took place between an individual and a member of the Governing Body on 12 December 2013 in which it was noted that the decision to notify the parents of the decision to suspend is not documented within the School Governance Regulations Section 17.
20. The School confirmed that the verbal conversation was not recorded and there was no other recorded information within the scope of request 3 held by the School.
21. After considering the School's position, the Commissioner is satisfied that on the balance of probabilities, the School has provided the complainant with all the recorded information it holds that falls within the scope of requests 2 and 3.

Request 4 and 5

22. Section 40 of FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
23. The School sought to rely upon section 40(2) to information it held within the scope of request 4 and 5. The arguments provided by the School were not substantial. The Commissioner has therefore taken into account his dual role as regulator of both the FOIA and the Data Protection Act 1998 (the "DPA") to protect personal data in this case.

Is the withheld information personal data?

24. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

"...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,

and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual..."

25. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
26. The information sought by requests 4 and 5 specifically relates to the suspension of a member of the Governing body. After reviewing the withheld information, it is clear to the Commissioner that the information would identify a living individual. The Commissioner is therefore satisfied that the withheld information is personal data.

Would disclosure breach the data protection principles?

27. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
28. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

29. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
30. The Commissioner notes that in this case the individual concerned would have no expectation that details surrounding her suspension from the Governing Body would be disclosed to the public in response to an information request.

The consequences of disclosure

31. The Commissioner considers that if the information were disclosed the individual concerned would be easily identified. This would cause an invasion of privacy and is likely to cause serious distress to the individual concerned.

The legitimate interest

32. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainants) accessing the withheld information.
33. The Commissioner considers that the information captured by requests 4 and 5 is information that is in the legitimate public interest. He considers that a member of the Governing Body plays a senior role within the School. The parents of the children attending the School will have an interest in ensuring members of the Governing Body are acting properly and in accordance with the Governor's Code of Conduct.
34. The Commissioner also considers that there will be a public interest in ensuring that the School's disciplinary procedures have been followed correctly.
35. The Commissioner has also considered the interests of the individual concerned. The information requested relates to a sensitive private matter between the School and the individual concerned. The individual would have no reasonable expectation that information falling within the scope of requests 4 and 5 would be disclosed to the public in response to an information request. The Commissioner considers that the legitimate public interest does not override the expectations of the individual that the details regarding her suspension would be kept private.
36. Taking this into account, the Commissioner considers that the disclosure of this information would be unfair, and in breach of the first principle of the DPA. The Commissioner is therefore satisfied that the School correctly applied section 40(2) to the information that falls within the scope of requests 4 and 5.

Right of appeal

37. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

38. 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.
39. 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

Rachael Cragg
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