

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 October 2015

**Public Authority:** St Giles C of E Primary School  
**Address:** Starkholmes Road  
Matlock  
Derbyshire  
DE3 4DD

#### **Decision (including any steps ordered)**

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1. The complainant has requested the school to confirm whether any teachers or members of the senior leadership team were suspended, subject to disciplinary action or dismissed between September 2013 and the date of his request.
2. The council responded to the request, advising the complainant that the answer to each question was less than five. It stated that it considered a more accurate response was exempt from disclosure under section 40 of the FOIA.
3. The Commissioner's decision is that the school issued an appropriate response in this case and was correct to refuse to disclose a more accurate response under section 40 of the FOIA.
4. The Commissioner therefore requires no further action to be taken.

#### **Request and response**

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5. On 18 February 2015, the complainant wrote to the school and requested information in the following terms:

- "Between September 2013 and the current date were any teachers or members of the senior leadership team at St Giles school suspended?"
  - Between September 2013 and the current date were any teachers or members of the senior leadership team at St Giles school put through disciplinary procedures?
  - Between September 2013 and the current date were any teachers or members of the senior leadership team at St Giles school dismissed from their post as a result of disciplinary measures?"
6. The school responded on 20 March 2015. It stated that it was willing to confirm that the answer to each question is 'less than five'. It advised the complainant that it considered a more accurate response is exempt from disclosure under section 40 of the FOIA.
7. The complainant requested an internal review on 20 March 2015. He stated that he requires a 'yes' or 'no' answer to each question and if not confirmation from the school as to whether the answer to each question is 'greater than zero and less than 5' or whether 'less than five' includes the possibility of zero being the answer.
8. The school carried out an internal review and notified the complainant of its findings on 30 April 2015. It stated that it remained of the view that it had issued an appropriate response in the circumstances and advised the complainant of his rights to refer the matter to the Commissioner.

### **Scope of the case**

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9. The complainant first contacted the Commissioner on 24 April 2015 to complain about the way his request for information had been handled. The Commissioner accepted the complaint for full investigation following the school's internal review response of 30 April 2015. The complainant is dissatisfied with the school's handling of his request and more specifically the application of section 40 of the FOIA.
10. The Commissioner notes that the complainant made an earlier request for very similar information on 15 January 2015. However, at the time the complainant approached the Commissioner, no internal review had been requested for this particular request. The complainant was therefore advised that the Commissioner's investigation is limited to his second information request of 18 February 2015, as detailed above, and the school's application of section 40 of the FOIA.

## Reasons for decision

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11. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and disclosure of that data would be in breach of any of the data protection principles outlined in the Data Protection Act (DPA).
12. Personal data is defined 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 that individual and any indication of the intentions of the data controller or any other person in respect of the individual..."
13. The Commissioner considers the first data protection principle is most relevant in this case. The first data protection principle states -  
  
"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -  
  
(a) at least one of the conditions in Schedule 2 is met, and  
  
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."
14. The Commissioner must first consider whether the requested information is personal data. If he is satisfied that it is, he then needs to consider whether disclosure of this information would be unfair and/or unlawful. If he finds that disclosure would be unfair and/or unlawful the information should not be disclosed and the consideration of section 40 of the FOIA ends here. However, if he decides that disclosure would be fair and lawful on the data subjects (the students involved and witnesses that gave evidence) concerned, the Commissioner then needs to go on to consider whether any of the conditions listed in schedule 2 and 3 (sensitive personal data) if appropriate are also met.

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

15. The Commissioner has considered whether a 'yes' or 'no' answer to each question or a more accurate number to the 'less than five' response that was issued to the complainant would constitute the personal data of a living individual or individuals.

16. The Commissioner considers a 'less than five' response to each question in this case is an appropriate response. A more accurate number or response to the questions asked, given the circumstances described and the very small number of individuals this could relate to at a small primary school which is specifically named in the request, would potentially release personal information about an individual or a small number of individuals from which this individual or these individuals could be identified, either from this information alone, or a combination of this information and other information otherwise available to the public.
17. The Commissioner will now go on to consider whether disclosure of this information would be unfair and/or unlawful.

*Would disclosure be unfair and/or unlawful?*

18. The school confirmed that if a precise number or a 'yes' and 'no' response was disclosed into the public domain it would be possible for members of the public to identify a small number of individuals that could be potentially the subject of this request. It stated that this would then undermine the staff's expectation of confidentiality in such circumstances and would be unfair of those concerned.
19. The Commissioner has given this matter careful consideration. It is first important to highlight what disclosure under the FOIA effectively means. Disclosure under the FOIA is to the world at large not just to the applicant. Therefore, the relevant consideration here is whether the requested information can be released into the public domain for anyone to see not just to the applicant that is requesting it.
20. It is the Commissioner's view that the disclosure of information relating to disciplinary matters, suspension and indeed dismissal is information of a personal and private nature. He accepts that in such circumstances the data subjects will hold an expectation of confidentiality and will have no reasonable expectation that details relating to their specific conduct in a particular situation will be disclosed into the public domain. Given the expectations teachers and senior staff in schools will hold, the Commissioner is of the view that disclosure would be unfair.
21. As stated above, disclosure under the FOIA is to the world at large and once information is released in this way there is little that can be done to control the use of this information and the length of time it remains in the public domain. Disclosure of this type of information could have long lasting damaging effects of the careers of those involved going forward and this would be unfair. Disclosure of this type of information would also be likely to cause those involved in such situations considerable distress and upset.

22. For these reasons, the Commissioner is satisfied that the disclosure of a more specific response to the questions asked would be unfair and in breach of the first data protection principle.
23. The Commissioner accepts that members of the public may wish to know the circumstances surrounding the departure of a particular teacher or senior member of staff within a given school. He also accepts that there is a legitimate interest in understanding more clearly any issues that may have occurred at a particular school, particularly if you are a parent of a child or children that is or has been taught there. However, such legitimate interests must be weighed up against the distress disclosure would cause and the intrusion into the private lives of those data subjects. It is the Commissioner's view in this case that disclosure would cause significant distress and intrusion and any legitimate interest in this type of information is outweighed by these effects.
24. The Commissioner is also of the view that there are already appropriate mechanisms in place for dealing with disciplinary matters and the procedures that are currently in place are best placed to address such matters rather than public disclosure under the FOIA.

## Right of appeal

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25. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**