

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 January 2016

**Public Authority:** Neath Port Talbot Council  
**Address:** Civic Centre  
Port Talbot  
SA13 1PJ

#### Decision (including any steps ordered)

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1. The complainant requested various items of information via a number of requests in respect of the proposed closure of the Sixth Form at St Joseph's RC Comprehensive School in Port Talbot. Neath Port Talbot Council provided some information, confirmed that it did not hold information in respect of other items and redacted parts of one particular document by virtue of section 43 of the FOIA.
2. The Commissioner's decision is that Neath Port Talbot Council has complied with its obligations under section 1(1) of the FOIA. As the Council has now provided the information withheld by virtue of section 43, the Commissioner has not made a formal ruling on this matter. However, in failing to provide relevant information within the required 20 working days, the Council has breached section 10(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

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4. On 27 October 2014, the complainant wrote to the Council and requested the following information in respect of the proposed closure of the Sixth Form at St Joseph's RC Comprehensive School, Port Talbot:

*"Copies of all the minutes of meetings dating back to January 2012 held between the LEA and/or the LA and/or their representatives with the Bishop of Menevia – Thomas Burns and/or the Trustees and/or their*

*representatives (some meetings could possibly have taken place without either the Bishop or the trustees in attendance) so any and all minutes relating to the proposed closure of the Sixth Form at St Josephs Catholic Comprehensive in Port Talbot and the proposed 21<sup>st</sup> Century new build school since January 2012...*

*Copies of all letters and/or emails dating back to January 2012 from and to the LEA and /or the LA and /or their representative from and to the Bishop of Menervia and/or the Trustees and/or their representatives concerning the proposed closure of the Sixth Form at St Josephs RC Comprehensive in Port Talbot and the proposed 21<sup>st</sup> Century New Build School..."*

5. The complainant received the Council's response on 25 November 2014 which confirmed that it was refusing the request by virtue of section 12 of the FOIA on the basis that the costs of complying with the request would exceed the appropriate limit.
6. The complainant expressed dissatisfaction with this response on 27 November 2014 and submitted a formal request for an internal review on 3 December 2014. Whilst there is no evidence of a formal internal review response until 11 May 2015, it appears that the Council withdrew its reliance on section 12 of the FOIA and provided the complainant with some information relevant to her request in January 2015. This prompted a further request for additional information concerning the matter of the closure of the sixth form at St Joseph's on 28 January 2015.
7. In the period between the end of January and 11 May 2015, correspondence between the two parties continued with the complainant submitting a further six requests for information all linked to the same issue. She was not satisfied with the responses to any of her requests for information and outlined the nature of her dissatisfaction with all responses on 13 April 2015. The requests have not been reproduced in this notice, but can be found in the attached annex.
8. Following an internal review the Council wrote to the complainant on 11 May 2015. It stated that it had already supplied all information it holds in respect of the complainant's requests and referred it to its response of 3 March 2015 where it set out its reasons in respect of its reliance on section 43 of the FOIA.

## **Scope of the case**

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9. The complainant initially contacted the Commissioner 14 January 2015 to complain about the way her original request for information had been

handled and following the Council's internal review of 11 May 2015, the Commissioner was able to accept her complaint as eligible for formal investigation under section 50 of the FOIA.

10. The complainant subsequently confirmed to the Commissioner that she had a number of procedural concerns regarding the Council's handling of her requests for information including the delay in conducting the internal review and that her subsequent requests were treated as new requests when in fact she considered that they fell within the scope of her original request.
11. In addition to her procedural concerns regarding the Council's handling of her requests for information, the nature of her dissatisfaction with the Council's various responses was detailed in her request for an internal review of 13 April 2015. In summary however, she was not satisfied that the Council had provided her with all information falling within the scope of her requests, or its reliance on section 43 of the FOIA to redact the financial information from the Statement of Case (SOC).
12. The Commissioner would wish to highlight that during the course of his investigation, the Council disclosed an unredacted copy of the SOC to the complainant. The complainant has however asked the Commissioner to include an analysis of the Council's reliance on section 43 within this notice. The Commissioner considers that as the Council is no longer relying on section 43 of the FOIA in respect of this information, such an analysis is of limited value. The scope of his investigation will therefore focus on whether the Council has complied with the requirements of section 1(1) of the FOIA and its procedural handling of the requests.

## **Reasons for decision**

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### **Section 1 – General right of access to information held**

13. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
14. Where there is a dispute regarding whether relevant information or additional information is held, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.

15. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner does not expect the public authority to undertake a complete search of all of its records, however he does expect the public authority to conduct a reasonable and proportionate search in all cases.
16. In this particular case, the complainant considers that the Council has not sent her all information it holds falling within the scope of her requests. She has stated that she does not accept that the Council has not created/retained copies of minutes, notes and memos of meetings regarding the matter.
17. In support of this, the complainant has provided the Commissioner with a copy of an email sent from named Council official A to named Council official B on 25 September 2014, which states:  
  
*"We will forward a draft/proposed agenda by close of play today. My PA, [named official C], is available to scribe. However, I assume that the GB will have a clerk to take notes / minutes and we would not want to compromise / trespass on her/his responsibilities. Could you please confirm."*
18. The complainant has argued that this adds weight to her view that the Council has failed to identify all information falling within the scope of her request and believes that it may indicate that minutes of other meetings were also created.
19. Additionally, the complainant considers it unlikely that the Council only received a verbal complaint from an unknown individual against the Head teacher of the school, and that there must hold a written record of it.
20. The complainant has also asked the Commissioner to investigate whether the Council has complied with its obligations under section 1(1) of the FOIA in respect of three specific letters referred to in the SOC as she finds it difficult to accept that it does not hold copies of letters referred to in an official document.
21. The complainant considers that the information she has received from the Council is weighted from the Council's point of view and has noted that there is very little from that of the Diocese which she believes adds further weight to her argument that additional relevant information is held.
22. The Commissioner therefore contacted the Council to provide details and evidence of its search and to address the specific areas of concern raised by the complainant in paragraphs 17 to 21 of this notice.

23. The Council has confirmed that it contacted all of its officers who could have had any conceivable dealings with the proposals subject to the request, and provided a detailed list of all of those contacted. The lengthy list includes the Director of Education, Heads of Participation and Transformation within the Education Directorate, and their secretary.
24. All of those contacted were required to check their manual and electronic records (including archived emails) to ascertain, what, if any information they held relevant to the requests. Each officer either provided relevant information or confirmed that they did not hold anything falling within the scope of the requests.
25. Following the Commissioner's notification of the complaint, this process was repeated, particularly, (although not solely), in relation to the specific documents which the complainant had identified as being in existence at some point in the past, but which had not been disclosed to her during the FOIA process. A search was also undertaken for documents which the complainant expected to exist. However, the Council has confirmed to the Commissioner that no further recorded information relevant to the requests was identified.
26. The Council also clarified that in some instances, the Council did hold documents at '*some point in time*' but they were no longer held at the time of the complainant's requests.
27. Further, and in relation to documents that the complainant considered '*should have been created*' in the course of its business, and which she claims still exist, the Council's Director of Education has specifically stated that in respect of:  
  
*"Meetings between the local authority, St. Joseph's RC School and 6<sup>th</sup> Form centre and Diocese,"*  
  
*...the local authority officers did not minute any of the meetings held between the Governing Body of St Joseph's RC School and 6<sup>th</sup> Form centre, the trustees and the Diocesan officials. To the best of my knowledge, all relevant emails, notes and correspondence held by the local authority in relation to the meetings in question have been made available via the FOI request.*
28. In terms of the complainant's concerns regarding an agenda and minutes of the proposed meeting of 26 September 2014, the Council sent the Commissioner a copy of the draft agenda and confirmation that a copy had been provided to the complainant in its original pack of information. In reference to the proposed meeting, the officer in question has confirmed that his secretary did not attend the subsequent meeting and no minutes were taken at the meeting by any officer of the

Council. The Council added that representatives of the diocese may have made their own minutes of the meeting for their use, however if any were created the Council is not in possession of them.

29. In respect of the complainant's request concerning a complaint against the Head teacher, the Council has stated:

*No formal note was kept of the discussion. A scribbled contemporaneous account, which was subsequently destroyed, was used to inform the email sent to [named individual A] [already provided via FOI]."*

30. With reference to the three letters referred to in the SOC, the Council confirmed to the Commissioner that its Directorate does not hold copies of two of the three letters referred to in the SOC. It also informed the Commissioner that a copy of the letter dated 13 May 2014 was sent to the complainant on 26 January 2015. As the complainant had stated that she had not received any of these letters, the Commissioner asked the Council to re-send the letter of 13 May 2014 and the complainant has now confirmed receipt of this letter.

31. With regard to the complainant's concerns that the information provided by the Council is generally weighted from its point of view, as opposed to that of the Diocese, the Council considers that this implies that it has been selective in its disclosure of the information, and has reiterated to the Commissioner that it has fully disclosed to the complainant all information it holds relevant to her request.

32. The Commissioner has considered the complainant's arguments and the details and evidence of the search undertaken by the Council. Whilst he is sympathetic to the complainant's point of view based on the arguments and evidence as detailed in paragraphs 17 to 21 of this notice, he considers that the Council conducted a reasonable and proportionate search of its records and has concluded that on the balance of probabilities, that it has identified and provided all relevant information it holds and in so doing, has complied with its obligations under section 1(1) of the FOIA.

### **Section 10 – time for compliance**

33. Section 10 of the FOIA states that, subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
34. The Commissioner notes that the complainant submitted her original request on 27 October 2014, however the Council after initially relying on section 12 of the FOIA, changed its position and sent her the

information in late January 2015. In failing to comply with the required timescale, the Council breached section 10(1) of the FOIA.

## **Other matters**

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### **Did the complainant's subsequent requests fall within the scope of her original?**

35. The complainant considers that much, if not all of the information in her subsequent requests fell within the scope of her original. The Commissioner has therefore investigated these concerns as if that is the case, not only will the Council have breached section 10 of the FOIA, the resultant piecemeal disclosure of information would not be indicative of good practice and may suggest that a closer adherence to both the section 45 Code of Practice in relation to the handling of requests for information, and the section 46 Code of Practice regarding record keeping could be adhered to more closely.
36. The Commissioner therefore considered each of the subsequent requests with a view to whether or not the information requested was likely to fall within the scope of the original. Having considered each of the requests, the Commissioner concluded that it was feasible that at least part of the following requests may have fallen within the scope of the original, and therefore invited the Council to comment:
  - 28 January 2015
  - 11 February 2015 at 13.11
  - 11 February 2015 at 14.27
  - 16 February 2015 at 14.49
  - 16 February 2015 at 20.47
37. The Council addressed each request in turn, item by item and the Commissioner is satisfied from the explanations provided that the information held and subsequently sent to the complainant, did not fall within the scope of the original request with the exception of an email from [named individual A] to [named individual B] dated 22 April 2014. This was however disclosed in response to the complainant's request of 28 January 2015.
38. The Commissioner also considers that there was a considerable amount of information, which if held, would have fallen within the scope of the original request. However, as the Commissioner's discussion of section 1(1) and outlined in paragraphs 13 and 32 of this notice has concluded that the information was not held, the Council could not be expected to provide this information at the time of the original request or at any point thereafter.

## Right of appeal

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39. 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)

40. 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.
41. 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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**