

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 July 2017

**Public Authority:** Queen Elizabeth School  
**Address:** Kirkby Lonsdale  
Carnforth  
Lancashire  
LA6 2HJ

### Decision (including any steps ordered)

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1. The complainant has requested information from Queen Elizabeth School ("QES") regarding an arrangement between a member of QES's governing body and a nearby primary school for the individual to assist the nearby school with a building project. QES did not provide the complainant with any recorded information until the Commissioner commenced her investigation.
2. The Commissioner's decision is that, on the balance of probabilities, QES has now provided the complainant with all of the information which it holds falling within the scope of the requests. However, she finds that QES has breached the FOIA in the following ways:
  - Within the statutory time-frame of 20 working days, it failed to confirm or deny whether information was held falling within the scope of the requests, and failed to provide the information which it did hold. Accordingly QES has breached sections 1(1)(a), 1(1)(b) and 10 of the FOIA respectively.
3. The Commissioner does not require QES to take any steps.

## Request and response

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4. On 29 September 2016, the complainant requested information of the following description:

*"Thank you for your email and for confirming that QES holds no written contract or terms of reference for [named individual] assisting [named primary school] on this building project. I am... requesting some clarification.*

*Given the absence of a written contract, was there an informal agreement between QES and [named primary school] about [named individual]'s involvement?*

*Was QES or [named individual] paid by [named primary school] or anyone else for his services?"*

5. On 2 October 2016, QES responded and provided some information broadly within the scope of the request. It explained that:

*"[Named primary school] were invoiced for the time [named individual] spent on the project."*

6. The complainant wrote to QES again on 2 October 2016 and explained that she did not consider that it had responded adequately to her request, which she reiterated.

7. On 3 October 2016 QES wrote to her and stated:

*"... there was an unwritten agreement about his involvement and... the fee initially agreed for his services was modified to a lesser cost charged for the actual time he spent on the project."*

8. On 6 October 2016 the complainant wrote to QES and requested: *"full cooperation regarding the basic information we are seeking... which we have still not received."*

9. On 7 October 2016 QES stated that it considered it had responded sufficiently. At this stage, QES encouraged the complainant to submit her complaint on a related matter involving [named individual].

10. On 9 October 2016, the complainant wrote to QES and clarified the information which she considered was outstanding under the FOIA, as follows:

*"Under the FOIA, we request the following information to be provided: we want to understand the detail of the contractual basis of [named individual]'s retention as Project Manager for [named primary school]'s*

*construction project, and his agreed terms of reference. We request copies of all invoices issued for [named individual]'s services on this project, and the dates they were paid. We also request copies of any documents or correspondence that describes the services that he would provide in exchange for this payment."*

11. On 13 October 2016 QES replied and addressed the status of the related complaint. It did not specifically refer to the FOI request, but commented that: *"The governing body will, of course, ensure that the complaints procedure is adhered to and that all appropriate and relevant paperwork [will be] presented to you as part of that process, once the complaint has been made."*
12. On 14 October 2016 the complainant explained to QES that she still wished to be provided with the information specified on 9 October 2016 under the FOIA, irrespective of the status of her complaint.
13. On 18 October 2016, QES responded as follows:
14. *"[QES] has already made clear that [named primary school] was invoiced for unspecified services. There are no accompanying documents that describe the services that [named individual] provided for this payment."*
15. The Commissioner considers that in providing its response of 18 October 2016, QES has effectively carried out an internal review into its handling of the requests, as is considered best practice under the FOIA.

## **Scope of the case**

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16. The complainant contacted the Commissioner on 12 December 2016 to complain about the way her requests for information had been handled.
17. The Commissioner considers that the scope of the case has been to determine whether QES has complied with the relevant sections of the FOIA in respect of the requests of 29 September 2016 and 9 October 2016 respectively. Specifically, she has considered whether, within the statutory time-frame of 20 working days, QES informed the complainant if it held any information falling within the scope of her requests, in accordance with section 1(1)(a) and section 10. She has also considered whether QES provided the information which it held to the complainant within 20 working days, in accordance with section 1(1)(b) and section 10.

18. The Commissioner has also gone on to consider whether QES has now provided the complainant with all of the recorded information which it holds falling within the scope of her requests.

## Reasons for decision

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### **Section 1 – General right of access to information; section 10 – Time for compliance with request**

19. Section 1 of the FOIA states that:

“(1) 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.”

20. Section 10 of the FOIA states that a public authority must “comply with section 1(1) promptly and not later than the twentieth working day following the date of receipt.”
21. The Commissioner notes that the complainant’s request for information dated 29 September 2016 did not specifically request any recorded information, although it would be reasonable to have expected QES to check any relevant invoices. However, in her request of 9 October 2016, the complainant requested copies of invoices, documents and correspondence.
22. In its responses of 13 October 2016 and 18 October 2016 respectively, however, QES did not explicitly confirm whether it held any such information, only reiterating that [named primary school] had been invoiced. QES did not contact the complainant again about her requests after this date.
23. Moreover, QES did not, within the statutory time-frame, provide the complainant with a copy of the invoices and correspondence which subsequently it was found to hold.
24. The Commissioner finds therefore that QES has breached sections 1(1)(a) and 1(1)(b) of the FOIA respectively in respect of the request of 9 October 2016. In failing to confirm whether information was held, and provide the information that was held, within the statutory time-frame, QES is also in breach of section 10 of the FOI in respect of the request of 9 October 2016.

## What information is held?

25. The Commissioner initially sought to determine whether QES held any recorded information falling within the scope of requests.
26. To investigate this complaint, the Commissioner asked QES to undertake searches for relevant information, and has asked QES a number of questions about the searches it has made to locate the information which the complainant seeks.
27. During the course of the investigation, QES has carried out what it describes as *"comprehensive searches of [our] filing systems, both manual and electronic, including files of current contracts, financial records, building project files and other files relating to [QES]."*
28. QES confirms that the electronic search terms used to search for information included "[named primary school]", "contract", "agreement", "terms of reference", "[redacted name]", "project", "construction" and "building".
29. In the course of these searches, QES located a copy of an invoice issued by QES to [named primary school] and dated 31 October 2015. This was then provided to the complainant, together with confirmation that it had been paid on 27 November 2015.
30. The complainant then returned to the Commissioner to request specific confirmation that QES had searched for relevant emails. She expressed surprise that no correspondence was held arranging [named individual]'s visits to the site and confirming his role.
31. QES confirmed to the Commissioner that it had already searched for emails, but explained that, in the course of now carrying out a further round of searches, it had subsequently located an email exchange dated 17 December 2013, comprising three messages, which it considered fell within the scope of the investigation. A copy of this was provided to the complainant with some explanation as to its contents.
32. QES apologised that the email exchange had not previously come to light and was unable to explain the reason for this.
33. QES explained at this stage that it was *"not aware of any further recorded information or correspondence existing, although in order to provide assistance, [named primary school] may of course hold other information, correspondence, or records of meetings to which [QES] do not have access and do not hold. From [QES]'s point of view, [named individual]'s work on this project was a small part of a taxing project*

*and [QES] were content with the verbal agreements which appropriately reflected the fluid nature of his involvement once the bid was submitted."*

34. The complainant returned to the Commissioner again and explained that she wished to *"clarify with QES whether the invoice.... dated 31/10/2015 included both the time [named individual] spent preparing the bids in January 2014, and the 1.5% fee for a successful project as described in the December 2013 email thread?.... Or is there an additional invoice for the time spent on the bids...?"*
35. The Commissioner put this to QES, which explained that the invoice *"[did] not include the fee for bid writing. The figure of £[redacted] (excluding VAT) represents just under thirty half days of [named individual]'s time charged at £[redacted] per day. This was the modified fee agreed on the basis that his role was largely to attend site meetings, a role which ended before completion of the project. As explained in our letter to the ICO dated 14 [June] 2017, the terms described in the email thread of December 2013 were modified by verbal agreement over several subsequent months.*
36. In addition to providing this explanation, QES carried out further searches and located an invoice dated 31 January 2014 which it confirmed related to bid-writing work, and which was paid on 24 February 2014. This has been provided to the complainant.
37. QES apologised that the invoice had not previously come to light and explained that it had *"initially interpreted [the complainant]'s FOI requests to be related to the actual building project which commenced once the grant had been obtained. The bid writing preceded the project's inception and therefore [QES]'s searches were directed towards the period of the building project."*

### **Has all the information been provided?**

38. The Commissioner has gone on to investigate whether QES has now provided the complainant with all of the recorded information falling within the scope of the requests which it held at the date of the requests.
39. In making this determination, the Commissioner applies the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held (and, if so, whether all of the information held has been provided) in cases which it has considered in the past.

*The complainant's view*

40. The complainant considers that it is likely that QES holds further recorded information falling within the scope of her requests. By way of background, the building project at the nearby primary school was funded by the Department for Education ("DfE") and the complainant has obtained copies of correspondence from the DfE relating to health and safety concerns at the site. She notes that the head teacher of the primary school referred to [named individual] as the *"Project Manager"* for the build and tasked him with responding to the DfE regarding its concerns.
41. Specifically, in an email sent by [named individual] to the DfE in May 2015, which has been viewed by the Commissioner, [named individual] explained that he was retained by the nearby primary school to assist in: *"overseeing the project, providing a link with the builder, client and extended design team, including the engineer, asbestos contractors and CDM co-ordinator."*
42. The complainant considers that this suggests that [named individual] had a significant role in overseeing the project at the primary school, which in turn leads her to expect that QES would hold information describing his role in some detail. She has argued: *"I do not believe it is possible to be a Project Manager of a £341,000 construction project that lasted for 7 months, and only have the one email thread from 2013 describing the role."*
43. The complainant has also argued that she would expect information to be held explaining the decision to reduce the individual's role and payment over the course of the building project.
44. The complainant further considers that QES having recently being able to provide a breakdown of the invoice of 31 October 2015 also lends weight to the view that more information would be held providing details of the individual's role and time spent on the project at the nearby school.
45. The complainant has also expressed a concern that there has been *"an element of will in QES failing to provide the documents we requested in October 2016."*

*QES's position*

46. The Commissioner is concerned to note that QES, having failed initially to confirm or deny whether information was held and then failed to provide any recorded information, subsequently located information on three separate occasions after being asked to carry out directed

searches. She has expressed these concerns to QES and asked it to state its final position with regard to information being held.

47. QES has stated that, in its view, it has carried out comprehensive, properly directed searches for information falling within the scope of the requests.
48. The Commissioner invited QES to consider whether there was a need to widen the scope of its searches but it has stated that it does not consider this to be necessary.
49. QES has offered to provide its files to the Commissioner for her consideration in this matter and denies wilfully withholding information.
50. It considers that the lack of recorded information accurately reflects [named individual]'s *"very subordinate role"* in the building project.
51. The Commissioner notes that QES, as explained previously, has also suggested that it is possible that other relevant information might be held by other public bodies or individuals. However, QES has also commented: *"[QES] has also discussed the matter with [named individual] and can confirm it is not aware of any further email or written correspondence being in existence. The scope of our searches is detailed in our previous response to the ICO."*
52. It has commented that, in summary, the complainant *"has everything relevant to her requests from the decision to commission [named individual] to make the bid to the end of his involvement in the project as defined by the final invoice."*

#### *The Commissioner's decision*

53. In this case, it is understandable why the complainant would consider that additional information would be held, given the nature of the arrangement and the funds involved. However, equally, the Commissioner is aware that the School has carried out searches on more than one occasion, and has also approached the individual in question about the request. The Commissioner considers that on the balance of probabilities, and in the absence of substantive evidence to the contrary, QES has now provided the complainant with all of the recorded information which it holds. For this reason, the Commissioner does not require QES to take any steps.



## Other matters

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54. The Commissioner notes that QES did not initially recognise and/or deal with the complainant's requests as having been made under the FOIA, instead telling her that they would be dealt with once she had submitted a complaint to QES on a related matter. This was despite the complainant having been specific about the legislation under which she was making her request. The Commissioner reminds QES to be mindful of its responsibilities under freedom of information legislation.
55. The Commissioner also notes that QES has uncovered information in this case piece by piece, which has been frustrating and time-consuming for the complainant. While noting QES's view that it has sought to be transparent and helpful, and that members of staff have spent numerous hours searching for and reorganising information in order to check what is held with regard to these requests since the Commissioner commenced her investigation, she reminds QES of its responsibilities to store information in an easily identifiable way.

## Right of appeal

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56. 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)

57. 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.
58. 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** .....

**Alun Johnson**  
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