

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 July 2017

**Public Authority:** Pembrokeshire College  
**Address:** Merlins Bridge  
Haverfordwest  
Pembrokeshire  
SA61 1SZ

#### Decision (including any steps ordered)

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1. The complainant has requested information from Pembrokeshire College ("the College") regarding details of the College's employment of a named individual and the qualifications of a student. The College provided some information but withheld some, citing section 40(2) of the FOIA (third party personal data).
2. The Commissioner's decision is that the College has provided the complainant with all of the recorded information it is able to and has correctly applied section 40(2) to the withheld information.
3. The Commissioner does not require the College to take any steps.

#### Request and response

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4. On 13 March 2017, the complainant requested information of the following description:

*"For my FOI request I would be very grateful if you would please supply the following information in writing:*

*1. Please identify if possible the names, together with the position held, of the representatives from Pembrokeshire College who met/spoke with the HSE? That meeting/phone call would have occurred between 9/11/16 and 21/2/17. Please include the date/s that this occurred.*

2. *Is it possible to identify the evidence that demonstrated to the HSE that [named individual] of [redacted address] owner of [named company] first become associated with the college on [specified date]?*

3. *Please supply the date/s that sickness cover was required in the [redacted] Department for the academic year 2015-2016?*

4. *Did [named individual] of [named company] cover any periods of sick leave at the college including the significant date of 2/2/16 whether paid or unpaid? I am assuming that time sheets would have been submitted when not under contract.*

5. *Was [named individual] at the college on 2/2/16?*

6. *What courses [named student] took at the college together with the results of any qualifications with dates? Has [named student] ever taken the gas safe course and tests? Has [named student] enrolled for the gas safe course with fees paid in 2016?"*

5. The College responded on 3 April 2017. It provided the complainant with some information falling within the scope of the request as follows:

- With regard to request 1, it informed her that *"an appropriate College manager"* had been in communication with the HSE by email on 31 January 2017.
- With regard to request 2, it identified that the evidence would have been found in the College employment records.
- With regard to request 3, it explained that sickness cover was provided on a Monday, Tuesday and Thursday in the [redacted] department (within the Faculty of [redacted]) from 23 February 2016 – 27 April 2016.
- With regard to request 5, it referred the complainant to the HSE investigative report.
- No information was provided with regard to requests 4 or 6; the College explained that it considered that it should withhold that information as personal data.

6. The complainant requested an internal review on 4 April 2017. She asked that copies of relevant documents be provided to her, redacted if necessary. She explained that she had expected the College's response to request 1 to include a copy of the email of 31 January 2017, telephone logs and the names of people at the College who had corresponded with the HSE. With regard to request 2, she had expected to see College employment records and other details of [named

individual]'s appointment/contract. She requested documents relating to requests 4 and 6. She also requested a reply to request 5.

7. The College sent the complainant the outcome of its internal review on 7 April 2017.
8. With regard to request 1, it provided a copy of the email of 31 January 2017. It withheld the name of the sender but explained that the information contained in the email had been provided by a member of the Human Resources Department, which fell within the responsibility of Ms Caroline James, Director of Resources and Community Services.
9. It refused to provide any further information regarding request 2, applying the exemption under section 40(2) of the FOIA (third party personal data).
10. With regard to request 4, the College stated that it had already provided evidence (in the email of 31 January 2017) that the individual had not undertaken any work at the College prior to the specified starting date, and that it could not release any personal information.
11. With regard to request 5, the College stated that no information was held.
12. With regard to request 6, the College provided a link to the Gas Safe Register as it believed the complainant might be able to check an individual's registration status. The College explained however that any information it held in this regard would be exempt under section 40(2) of the FOIA, as before.
13. The College also stated on 8 April 2017 that it considered that it had provided all the information that it was able to.

### **Scope of the case**

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14. The complainant contacted the Commissioner on 10 April 2017 to complain about the way her request for information had been handled.
15. The Commissioner considers that the scope of the case has been to consider whether the College has provided the complainant with everything which it holds regarding requests 1 and 5 in accordance with section 1 of the FOIA, and whether it has correctly withheld the information that it holds regarding requests 2, 4 and 6 under section 40 (2) of the FOIA.

## Reasons for decision

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### Requests 1 and 5 - is information held?

16. 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.”

17. The Commissioner has sought to determine whether the College has provided the complainant with all of the recorded information falling within the scope of requests 1 and 5 which it held at the date of her request.

18. 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.

19. To investigate this complaint, the Commissioner has asked the College a number of questions about the searches it has made to locate the information which the complainant seeks.

#### *Request 1 – information regarding person(s) liaising with the HSE*

20. The College has explained that it was contacted by the HSE as part of the HSE’s investigation into work carried out at the complainant’s home. The HSE had sought to establish when [named individual] had started work at the College in order to investigate the complaint.

21. The College has explained that it ascertained that an individual member of staff spoke to the HSE on the telephone at the end of January 2017. It has no recorded log of the telephone call itself. The member of staff then sent an email on 31 January 2017 to the HSE, which stated when [named individual] had started work at the College. This email has been disclosed to the complainant with the name of the sender redacted.

22. The Commissioner notes that the complainant does not seek the name of the sender, but has queried whether in fact more than one member of staff had been in correspondence with the HSE.

23. The College has explained that it has conducted searches and investigations, including checking with the HSE, and has determined that the HSE only had contact with the member of staff who sent the email.
24. The Commissioner is satisfied that the only recorded information the College holds with regard to this request is the email of 31 January 2017, which has been redacted and provided to the complainant. Accordingly she is satisfied that the College has complied with section 1 of the FOIA in respect of request 1.

*Request 5 – information regarding whether [named individual] was at the College on 2/2/16*

25. The complainant has explained that [named individual] was heard to say on 2 February 2016 that he was going to the College as he had a teaching job there.
26. The College has explained that [named individual] did not start work there until after that date.
27. The Commissioner understands that the complainant is of the view that [named individual] might have started at the College on an unpaid basis prior to this date. Focusing on the request, she notes that the College has conducted extensive searches and investigations to establish whether it holds any information or evidence regarding him being at the College on 2 February 2016, and has indeed carried out further checks during the course of the investigation, but has not found any evidence.
28. The Commissioner is satisfied that the College does not hold any recorded information in respect of request 5.

**Requests 2, 4 and 6 – Third party personal data**

29. The exemption at section 40(2) of the FOIA provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).
30. The Commissioner will therefore consider whether the withheld information is personal data. If so, she considers that the most relevant data protection principle in this case is the first: that the processing (in this case the disclosure) of personal data would need to be fair and lawful. Her considerations will primarily concentrate on the issue of fairness.

## Is the withheld information personal data?

31. 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..."

32. In this case, the College has explained what information it holds falling within the scope of requests 2, 4 and 6 and which it has withheld under section 40(2) of the FOIA.

*Request 2 – evidence regarding [named individual]'s first employment at the College*

33. The College has stated that it holds information falling within the scope of this request. Specifically, it has explained that the individual's offer letter, contract of employment, details of his induction, time sheets and record of pay all confirm when he commenced employment, and were consulted before informing the HSE of his start date. These documents have been withheld from the complainant under section 40(2) of the FOIA.

34. The Commissioner considers that the information withheld by the College is personal data since it relates to the named individual and he could be identified from it.

35. The Commissioner has therefore considered whether disclosure of the information would breach any of the data protection principles; specifically, the first, as explained in paragraph 30 above. In considering whether disclosure would be fair, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure including whether damage or distress could be caused and whether there is legitimate public interest in the disclosure of the information in question.

36. Whether an individual might reasonably expect to have his or her personal data released depends on a number of factors. These include whether the information relates to an employee in his or her professional role or to him or her as individuals, the individual's seniority, and/or whether he or she is in a public-facing role.

37. In this case, it is evident that the withheld information relates to the individual's role at the College and not to his private life.
38. However, the College considers that the individual would have no reasonable expectations that details of his employment would be disclosed to the wider world. He was not employed in a senior role but as an assessor.
39. The College considers that there is little value to the wider public in the withheld information. It understands that the complainant has a personal interest in ascertaining the date on which [named individual] started work at the College, as she considers that her account of what he told her on 2 February 2016 has been disbelieved, but the College does not consider that there is wider value in this. Moreover, the information does not relate to the individual's role as the owner of the business whose work was the cause of the complainant's dissatisfaction initially.
40. The Commissioner accepts that assessors at the College would have no routine expectation that their offer letters, contracts of employment, details of induction, time sheets and records of pay would be disclosed to the wider world, and considers that disclosure would potentially be an invasion of [named individual]'s privacy and could be distressing.
41. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the named individual and that it would not be fair to disclose the requested information in this case.
42. The Commissioner upholds the College's application of the exemption provided at section 40(2) of the FOIA to this information.

*Request 4 – evidence of [named individual] covering any periods of sick leave including on 2 February 2016*

43. The College has explained that it checked the individual's timesheets, staff timetable, contract of employment and the pay roll budget in order to check whether it held evidence of this. It has withheld these under section 40(2) of the FOIA.
44. The Commissioner considers that the information withheld by the College is personal data, since it relates to an individual employed at the College who would be identifiable from it.
45. The Commissioner has therefore considered whether disclosure of the information would breach any of the data protection principles; specifically, the first, as explained above.

46. As with the information withheld in respect of request 2, the withheld information relates to the individual's employment at the College and not to his private life.
47. The College considers that the individual would have no reasonable expectations that details of his employment would be disclosed to the wider world, since he is not in a senior post.
48. The College considers that there is little value to the wider public in the withheld information.
49. The Commissioner accepts that the individual would have no routine expectation that specific details of his working arrangements would be disclosed to the wider world, and considers that disclosure would potentially be an invasion of his privacy and could be distressing.
50. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the member of staff and that it would not be fair to disclose the requested information in this case.
51. The Commissioner upholds the College's application of the exemption provided at section 40(2) of the FOIA to this information.

*Request 6 – information regarding courses taken by [named student] including enrolment on Gas Safety course*

52. The College has stated that it holds information falling within the scope of this request. Specifically, the enrolment records for [named student] are a record of the courses he has studied and any qualifications obtained. The College has referred the complainant to a public website for evidence of whether he is a 'gas safe registered engineer'.
53. The Commissioner notes that [named student] was a student at the College as at the date of the request.
54. In her view the withheld data is unquestionably personal data and disclosure would be unfair. A student has no expectations that his or her College enrolment records, with details of courses and qualifications, will be made public and there is very little value to the wider public in this.
55. The Commissioner upholds the College's application of the exemption provided at section 40(2) of the FOIA to this information.

**Conclusions**

56. The Commissioner is satisfied that the College has provided the complainant with all of the recorded information it holds falling within



the scope of her requests which it is able to, and accordingly has complied with section 1 of the FOIA. It has correctly withheld some information under section 40(2) of the FOIA. The Commissioner is satisfied therefore that the College has complied with the legislation and does not require it to take any steps.

## Right of appeal

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57. 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)

58. 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.
59. 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**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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