

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 January 2018

Public Authority: St Thomas More Catholic Primary School

Address: Appleton Road
Eltham
London
SE9 6NS

Decision (including any steps ordered)

1. The complainant has requested a Memorandum of Understanding, dated 7 October 2015, from St Thomas More Catholic Primary School, Eltham ("the School").
2. The School provided part of the document, but redacted in full the section entitled *Financial Responsibility* under section 40(2) of the FOIA – Third party personal data.
3. The Commissioner's decision is that only some of the information has been correctly withheld under the exemption. The School has correctly withheld some specific salary information, but the remainder of the section either does not comprise third party personal data, or may fairly be disclosed without breaching any principle of the Data Protection Act 1998.
4. The Commissioner requires the School to take the following step to ensure compliance with the legislation:
 - Disclose the section entitled *Financial Responsibility* to the complainant, apart from the four amounts of money which are specified since these relate to specific salary information, as detailed in this notice.

5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 23 May 2016, the complainant wrote to the School and requested information in the following terms:

"Can I please have a copy of this Memorandum of Trust that was previously discussed."

7. The School provided the complainant with a partial copy of a Memorandum of Understanding dated 7 October 2015, which was the document referred to ("the MOU"), on 22 September 2016. It withheld the whole of section 7, which was entitled '*Financial Responsibility*' ("section 7.")
8. Following a subsequent request for further information from the complainant, and some ensuing correspondence between the parties and the local authority, in the course of which the complainant expressed her dissatisfaction that the School had withheld section 7, the School conducted an internal review, and wrote to the complainant on 20 October 2016. It upheld its position regarding section 7.

Scope of the case

9. The complainant contacted the Commissioner on 13 March 2017 to complain about the way that the School had handled both this request for information and her subsequent request of 28 September 2016, which is the subject of a separate ICO decision notice.
10. Following the involvement of the Commissioner, it became apparent that the complainant had not received the School's internal review response of 20 October 2016. This was re-sent to the complainant on 12 July 2017 by recorded delivery. The complainant then confirmed to the Commissioner that she remained unhappy with the School's withholding of section 7 of the MOU.
11. The Commissioner considers that the scope of the case has been to consider whether the School has correctly withheld the whole of section 7 of the MOU dated 7 October 2015 under section 40(2) of the FOIA.

Reasons for decision

Section 40(2) – Third party personal data

12. Section 7 of the MOU has been withheld by the School under section 40(2) of the FOIA – Third party personal data.
13. The exemption at section 40(2) 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).

Is the withheld information personal data?

14. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
15. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus, or impacts on them in any way.
16. With regard to the withheld data, the School considers that the withheld data are the data of "*various individuals in the school.*"
17. The Commissioner has considered whether individuals are identifiable from the withheld data.
18. By way of background and context, the MOU is a document which concerns a partnership arrangement between the School and St Thomas More Catholic Secondary School, Eltham ("the secondary school"), including some details regarding the roles which two members of staff from the secondary school were to take up on the School's leadership team, as part of a sharing of services. The stated purpose of this relationship between the two schools was "*to reach a stage of sustainable school leadership that is at least 'Good'.*" The Commissioner understands that the term 'Good' relates to a potential OFSTED rating.
19. Under the partnership arrangement, as is a matter of public record, an individual from the secondary school assumed the part-time post of Executive Headteacher at the School (also referred to as Executive Principal), and another individual from the secondary school assumed the full-time post of Headteacher at the School, reporting to the Executive Headteacher. The arrangement was put in place for a year and was to be subject to review.

20. Section 7 of the MOU, which was withheld by the School, explains the financial responsibility for these arrangements. The remainder of the MOU, as explained, has been made available to the public.
21. In cases where a public authority has applied section 40(2) of the FOIA as a 'blanket' exemption to a piece of information, the Commissioner will consider in detail what has been withheld. Accordingly the Commissioner has considered whether any or all of the section comprises personal data.
22. Section 7 comprises ten sentences and a small table of information.
23. The focus of section 7 is the financial details of the arrangement between the schools, including some salary information. It particularly relates to members of the senior leadership team at the School.
24. The identities of the Executive Headteacher and the Headteacher are known within the school community and in any event are a matter of public record.
25. The Commissioner is satisfied the majority of section 7, including the table of information, comprises personal data since it relates to living individuals who can be identified from the information.
26. However, the last sentence of section 7 (sentence 10) contains no personal data. The Commissioner therefore determines that the exemption at section 40(2) of the FOIA does not apply to this sentence and it should be disclosed to the complainant.
27. The Commissioner will now consider the remainder of section 7 to consider whether the exemption is engaged.

Would disclosure breach the Data Protection principles?

28. The Data Protection Principles are set out in Schedule 1 of the DPA. It is the first principle which is the most relevant in this case and which has been considered by the School. It states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
29. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individuals, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.
30. It is important to note that sentence 2 contains a specific figure. It is an amount of money which is the total of the three figures in the second

column of the table ("the total figure"). That is, it can be calculated by adding the three figures in the second column together.

31. The total figure is therefore the total of the amounts of money which comprise the salary information contained in the table, and therefore forms part of the specific salary information of the individuals.
32. The Commissioner will consider the specific salary information separately, and will first consider the remainder of sentence 2 together with the remaining withheld sentences.

Sentences 1, 3, 4, 5, 6, 7, 8 and 9; sentence 2 (excepting the total figure)

Reasonable expectations

33. As explained, the individuals whose data is in question are the Executive Headteacher and the Headteacher. There are, in addition, references to the governing bodies of both schools, but since the governing body of a school is in effect the public authority itself, it is not necessary to consider references to them as their personal data since no individual member is specified.
34. As already noted, the Headteacher and Executive Headteacher are identifiable by name from the schools' websites, and, in any event, are mentioned in those parts of the document already disclosed.

Consequences of disclosure/Damage and distress

35. The school's arguments regarding fairness have focused on the issues of disclosing "*personal salary information*" and "*job reconfiguration.*" In the School's view, "*information relating to salary matters is information of a personal and private nature*" and "*the data subjects hold an expectation of confidentiality and have no reasonable expectation that details relating to their salary or changes to their job will be disclosed into the public domain both at the time it was collected and into the future.*"
36. The school stated that the individuals concerned have not consented to the disclosure of their personal information and that disclosure could cause distress.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

37. The Commissioner has considered the nature of the withheld information. Broadly, these sentences record the decision that has been made by the schools' governing bodies - that is, the decision to enter into the partnership arrangement - and explain how the costs of the

Executive Headteacher and Headteacher carrying out their new roles at the School will be met.

38. The information under consideration in this part of the notice therefore only constitutes 'salary information' in the very general sense of setting out which public authority is meeting the cost of the arrangement.
39. The Commissioner does not consider that it is unfair under the legislation to disclose the general financial responsibility for the partnership arrangement between the schools. It is a matter of public record that the governing bodies have made certain decisions regarding staffing at the schools. It is also a matter of public record, having been disclosed in the other sections of the MOU already made available to the public, that the Headteacher and Executive Headteacher have been "*released from the services*" of the secondary school in order to take up their leadership roles at the School.
40. In the circumstances of this case, with due regard to the nature of the requested information, the Commissioner is satisfied that the legitimate interests of the public in the actions of public authorities are sufficient to justify any negative impact to the rights, freedoms and interests of the individuals concerned. She therefore considers that disclosure of information relating to the financial arrangement between the schools would be fair.

Schedule 2 DPA

41. Having determined that it would be fair to disclose the requested personal data, as it relates only to the general financial arrangements between the schools, the Commissioner has gone on to consider whether a condition in Schedule 2 of the DPA would be met. In relation to the conditions in Schedule 2, the Commissioner considers that the most relevant condition in this case is the sixth.
42. Schedule 2 condition 6 permits disclosure where it is: "necessary for the purposes of the legitimate interests pursued by the data controller or by a third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."
43. In other words, for the condition to be met, disclosure must satisfy a three-part test:
 - there must be a legitimate interest in disclosing the information;
 - the disclosure must be necessary for that legitimate interest; and

- even where the disclosure is necessary it must not cause unwarranted interference or harm to the rights, freedoms and legitimate interests of the data subjects.
44. The Commissioner is satisfied that she has considered the first and third parts of the test in concluding that disclosure is fair. This leaves the second part of the test. Accordingly, the Commissioner has considered whether it is necessary to disclose the requested information in order to meet the identified legitimate interests of the public.
45. In considering what the legitimate interests in disclosure are in this case, the Commissioner is satisfied that the legitimate interests in disclosure are the transparency and accountability of the School to the public.
46. The Commissioner is satisfied that disclosure of the information is necessary in order to meet this interest.
47. Taking into account the general nature of the information, the Commissioner does not consider that disclosure would have an excessive or disproportionate adverse effect on the legitimate interests of the data subjects.

The Commissioner's decision

48. The Commissioner has therefore determined that the remainder of section 7 (with the exception of the specific items considered below) should be disclosed to the complainant.

Specific salary information: the total figure in sentence 2 of section 7, and the table of information

Reasonable expectations

49. Whether an individual, or group of individuals, might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to an individual in their professional role or to them as individuals, and in the case of employees, the individual's seniority or whether they are in a public-facing role.
50. The total figure specified in sentence 2 of the section, together with the table of information, comprise information which relates to the salaries of identifiable individuals.
51. Specifically, the table sets out three amounts of money payable under the terms of the partnership arrangement: the specific salary of the

Headteacher, and two other amounts which the School has explained are payable to an individual/individuals.

52. The School has stated that the data subjects have an expectation of confidentiality regarding their salary.

Consequences of disclosure/Damage and distress

53. The School has stated that it has concerns about the complainant having access to the individuals' salary information. It states that: *"the school is concerned about disclosing such personal information and the risk such an act would have on the personal information of the headteachers affected. As a result the school strongly objects to the specific salary of the headteachers being disclosed."*

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

54. The Commissioner has issued guidance¹ about requests for the salary information of public officials.
55. The guidance makes clear that *"senior employees should expect their posts to carry a greater level of accountability, since they are likely to be responsible for major policy decisions and the expenditure of public funds."*
56. There is always a legitimate interest in public authorities conducting their business with transparency.
57. The guidance also explains that: *"the public authority must consider whether there is a legitimate interest in the public or the requester having access to the information and then balance this against the rights of employees."*
58. In other words, balanced against the interests in disclosure must be a consideration of unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the senior-level individuals concerned.
59. Some information regarding the salaries of headteachers is already in the public domain.

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https://ico.org.uk/media/1187/section_40_requests_for_personal_data_about_employees.pdf

60. However, schools do not routinely publish headteachers' specific salaries. Furthermore, guidance from local authorities makes clear that schools' governing bodies have some flexibility to set the salaries of a school's leadership team depending on numerous factors and accordingly there is likely to be wide variation.

The Commissioner's decision

61. The Commissioner has considered the withheld information. The first column of the table breaks down the payments which are to be made and, while the second and third rows do not obviously identify an individual/individuals, she is satisfied by the School's explanation that they do relate to salary information.
62. As previously explained, the second column sets out specific amounts of money, the total of which is shown at the end of the second sentence of the section.
63. In this case, the Commissioner is not satisfied that there is sufficient public need for the precise salary of the School's Headteacher, and information which relates to specified payments to other individuals, to be made public to the wider world. It is sufficient to satisfy legitimate public interests that the general terms of the partnership arrangement are in the public domain.
64. However, she has determined that the first column of the table, which explains the breakdown of the payments, can be disclosed. Having considered the arguments surrounding the question of fairness as it relates to the first data protection principle in Schedule 1 of the DPA (set out in detail previously in this notice) she has determined that this would not be unfair to the individuals concerned.
65. She has therefore determined that the total figure (set out in sentence 2) and the second column of the table of information have correctly been withheld under section 40(2) of the FOIA.

Right of appeal

66. 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

67. 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.
68. 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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