

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 May 2019

**Public Authority:** The Chair of Governors  
**Address:** Whitfield Aspen School  
Mayfield Road  
Whitfield  
Dover  
Kent  
CT16 3JL

### Decision (including any steps ordered)

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1. The complainant requested information relating to decisions made about pupils moving from Year R to Year 1. Whitfield Aspen School ("the School") released some information the complainant requested and withheld some information under Section 40(2). It stated that it did not hold any information regarding how the decisions were made.
2. The Commissioner's decision is that, on the balance of probabilities, the School has provided all the requested information which it holds and does not hold any further information. The School has therefore complied with its obligations under section 1(1)(a) and (b) of the FOIA.
3. The Commissioner does not require any steps to be taken.

### Request and response

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4. On 17 September 2018, the complainant wrote to the School and requested information in the following terms:

*"Names of the school governors on the panel review.*

*A separate break down of school year 2018-19 information for Year 1 Peacock and Caterpillar Classes to include the following details matched together, for example - Female/September/Kingdom.*

*Number of Male and Females per individual class.  
Month of birth for each Male and Female per class.  
Preschool of each child.*

*A separate break down of school year 2017-18 Reception Year for Foxes, Hedgehogs and Squirrel Classes to include the following details matched together, for example - Male/January/Freshfields.*

*Number of Male and Females per individual class.  
Month of birth for each Male and Female per class.  
Preschool of each child.*

*Copies of all information held by Whitfield Aspen School relating to the school changes the 2016-17 Year R to the 2018-19 Year 1."*

5. The School contacted the complainant on 21 September 2018 to confirm he sought information relating to the school changes 2017/18 Year R to 2018/19 Year 1, to which he agreed. It also provided him with the names of the Governors on the panel review.
6. The complainant requested additional information on 24 September 2018. The School responded to the freedom of information request on the same day. It provided the requested demographic information of children moving from Year R to Year 1. It withheld some information where the number of children within a pre-school was less than five, citing section 40(2) personal information. It stated that it did not hold any information on the decisions made about the changes.
7. The complainant requested an internal review on 28 September 2018. He did not challenge the application of section 40(2) but he believed the school did hold information regarding the decisions about school changes.
8. Following an internal review, the School wrote to the complainant on 26 October 2018 stating that it upheld its original position.
9. It explained that it cannot and does not document in detail every decision it makes, as it would be unrealistic and impossible. It stated that the decisions were made considering many educational factors including the knowledge and experience of teachers in order to provide all children with the best possible education.

## **Background to the case**

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10. The School advised the Commissioner it had been asked to increase its numbers by the local authority due to local housing expansion. There

were three Reception classes for 2017/18, but taking this forward into three Year 1 classes in 2018/19 was not viable due to cost and space. Therefore, it had to merge three classes into two.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 30 October 2018 to complain about the way his request for information had been handled.
12. The Commissioner's investigation has focussed on whether, on the balance of probabilities, the School holds any information falling within the scope of the request regarding decisions made about school changes from 2017/18 Year R to 2018/19 Year 1.

## **Reasons for decision**

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13. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, subject to the application of any exemptions, to have that information communicated to them.
14. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or held such information at the time of the request).
16. The School provided answers to questions about the searches they carried out to locate the information requested. The Headteacher and the Chair of Governors on separate occasions asked staff involved in the decisions around merging the three Reception classes into two Year 1 classes if they recorded minutes of the discussions. They advised the Commissioner that the staff members stated they did not make either a paper or electronic record of the decision-making process. The end result of the meeting was two class lists for Year 1 classes.
17. The School advised that the decisions were made using a table-top exercise involving post-it notes with pupil names on. They were placed into two classes by staff who selected pupils in order to ensure they were balanced. Once the class lists had been compiled, there was no

business need to retain the post-its, as they were only used as place holders during the list building exercise. They were destroyed on the day the decisions were made.

18. The School advised the Commissioner that as this was the first time it had undertaken this exercise, there was no guidance regarding the retention and deletion of records of this type in its formal records management policy.
19. The School reported that it did not consider the need to keep a formal record when discussing merging classes. It described the nature of the decisions as transient, unlike the formal record of class lists that were produced.
20. The School have decided that due to this issue having arisen, they intend to devise and publish a new class placement policy, which the Commissioner welcomes.

### **The Commissioner's view**

21. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in paragraphs 14 and 15 above, the Commissioner is required to make a finding on the balance of probabilities.
22. The Commissioner is satisfied that the School used post-its to make the decision about which children went into each class, and that they were destroyed after the class lists were compiled. It is important to note here that the information was destroyed prior to the request being received and therefore no offence has taken place.
23. She is also satisfied that no other documentation was created at this time, as the School did not have a practical need for this to be recorded. This is due to the class lists standing as a record of the results of the decisions that were made.
24. The Commissioner is satisfied that on the balance of probabilities, the School has provided the complainant with all the information it holds with respect to the request, excepting the information it withheld under section 40(2).

## 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@justice.gov.uk](mailto:grc@justice.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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**