

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 July 2021

Public Authority: Wellspring Academy Trust

Address: Digital Media Centre
County Way
Barnsley
S70 2JW

Decision (including any steps ordered)

1. The complainant has requested from Wellspring Academy Trust ('the Trust') the salaries, and details of expenses claimed, of the Vice-Principles and Principles within the Trust.
2. The Trust refused to provide the requested information, citing section 40 (personal information) of the FOIA as its basis for doing so.
3. The Commissioner's decision is that the Trust is entitled to rely on section 40 as its basis for refusing to disclose individual salary information. However, the Commissioner notes that not all of the information contained within the mileage and expenses forms in question constitutes personal information. Therefore the Commissioner has found the Trust in breach of section 1(1)(b) (general right of access to information held by public bodies) and section 10 (time for compliance with the request).
4. The Commissioner requires the Trust to take the following steps to ensure compliance with the legislation:
 - Disclose a redacted copy of the mileage and expenses forms.
5. The Trust 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 31 July 2021 the complainant requested information of the following description:
7. *"I'd like a full breakdown of expenses claimed by the staff at Springwell academy also the salaries of the staff too. As the school is funded by the government and the tax payer this information should be available."*
8. The Trust sought clarification from the complainant as to which academy their request for information related to. This clarification was subsequently provided.
9. On 20 August 2020 the Trust disclosed information in relation to this request; specifically the total expenses, including mileage, claimed by staff in the academic year of 2019/20 and the full time equivalent salary details, ascending in £5000 brackets, for each role and corresponding grade.
10. On 20 August 2020 the complainant requested information of the following description:

'I'd like information on the expenses and mileage claimed by both the Vice Principals of Springwell Lincolnshire, Mablethorpe and Lincoln schools and the Principal for Springwell Lincolnshire, Mablethorpe and Lincoln. Including their individual salaries. I'd like a breakdown of what expenses they claimed for and how much the items cost...'

The Commissioner understands that the Executive Principles and Vice Principles of the Trust make up what is known as 'the leadership group.'
11. The Trust responded on 28 August 2020, highlighting the information it had disclosed in response to the complainant's previous request for information. The Trust confirmed that it was unable to release individual salary and expenses details as this would constitute personal information.
12. On 28 August 2021 the complainant clarified to the Trust that they did not wish to receive the name of the individuals to whom their request relates, only the requested information. When the complainant did not receive a response they contacted the Trust on 21 October 2020 to chase this matter.
13. The Trust therefore conducted an internal review into its handling of the request and wrote to the complainant on 29 October 2020, upholding its original position. The Trust explained to the complainant that this was its final written refusal notice in line with section 14(2) (vexatious requests).

Scope of the case

14. The complainant contacted the Commissioner on 29 October 2020 to complain about the way that their request for information had been handled.
15. The Commissioner acknowledges that the complainant's request of 20 August 2020 was made as a result of disclosure received in response to their previous request made on 31 July 2020. Though she recognises there is overlap between these two requests for information, the Commissioner considers them to be separate requests, the latter of which is the subject of this notice.
16. The Commissioner considers the scope of her investigation to be to establish whether the Trust is entitled to withhold the requested information under section 40.

Reasons for decision

Section 40 – personal information

17. Section 40(2) of the FOIA states:

“Any information to which a request for information relates is also exempt information if-

- (a) It constitutes personal data which does not fall within subsection (1), and
- (b) The first, second or third condition below is satisfied.”

Subsection (1) refers to exempt information that constitutes personal data of which the applicant is the data subject.

18. In this instance the relevant condition is contained in section 40(3A)(a) which states:

“The first condition is that the disclosure of the information to a member of the public otherwise than under this Act-

- (a) Would contravene any of the data protection principles.”

19. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA18'). If this is not the case then section 40 cannot be used as a basis for refusing to disclose the information.

20. Secondly, and only if the Commissioner is satisfied that the requested information constitutes personal data, she must establish whether disclosure of that information would breach any of the data protection principles.

Is the requested information personal data?

21. Part 1, Section 3(2) of the DPA18¹ defines personal data as:

“any information relating to an identified or identifiable living individual.”

22. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable from that information.
23. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
24. An identifiable living individual is one who can be identified, either directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
25. The Commissioner has considered the withheld information as part of her investigation into this matter. Having done so, she is satisfied that individual salary and expenses details both relate to and identifies those within the leadership group. The Commissioner is therefore satisfied that this information falls within the definition of ‘personal data’ as outlined in paragraph 21.
26. The fact that information constitutes personal data does not automatically exclude it from disclosure under the FOIA. The Commissioner must now consider whether disclosure of the requested information would contravene any of the data protection principles.
27. The most relevant data protection principle in this case is principle (a) which states that “Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”².

¹ [Data Protection Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

² [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on](#)

Would disclosure contravene principle (a)?

28. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an FOI request if to do so would be lawful, fair and transparent.
29. In order to be lawful, one of the lawful bases listed in Article 6(1)³ of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

Lawful processing: Article 6(1)(f) of the UK GDPR

30. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states: "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data."
31. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under the FOIA, it is necessary to consider the following three-part test:
32. **i) Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;
iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interest test

33. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves.

[the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

³ [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

The Commissioner recognises that a wide range of interests may represent legitimate interests in the disclosure of information under FOIA; they can be the requester's own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin the FOIA, or may represent the private concerns of the requestor.

34. It is important to remember that disclosure under the FOIA is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).
35. In this case it is clear that the complainant is seeking access to the withheld information for a specific reason: the complainant is a previous employee of the Trust who believes that there has been a misuse of public funds and wishes to prove this.
36. With the above in mind, the Commissioner is satisfied that there is a legitimate interest in disclosure of this information.

Necessity test

37. The Commissioner must also consider if disclosure is necessary for the purpose that this legitimate interest represents or if there is an alternative method of fulfilling this purpose.
38. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under the FOIA is necessary to meet the legitimate interest identified, or whether there is another way to do so that would be less intrusive to the privacy of the individuals concerned.
39. As discussed in paragraph 9, the Trust has disclosed general expenses and salary information to the complainant. However, the specific information that the complainant went on to request, individual salary information and details of expenses claimed for the leadership group, has not been made available.
40. The Commissioner is satisfied that the specific information requested in this case has not otherwise been made available to the public. Therefore, there are no less intrusive means of achieving the legitimate aims identified in stage (i).

Balancing test

41. Since the Commissioner is satisfied that disclosure is necessary for the purpose that this legitimate interest represents, she will now go onto consider whether the identified interests in disclosure outweigh the interests or fundamental rights and freedoms of the data subject.
42. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
43. In performing this balancing test, the Commissioner has considered the following:
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
44. In the Commissioner's view, the balancing test should take into account whether the data subjects' concerned have a reasonable expectation that their information would not be disclosed. This expectation may be influenced by a number of factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose which this personal information serves.
45. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
46. The Trust has explained to the Commissioner that it has an implied duty of confidentiality to its employees who would not reasonably expect individual salary and expenses details to be disclosed in such a granular detail from which they are identifiable.
47. The Trust has explained to the Commissioner that only five members of staff make up the leadership group and it is highly likely that the complainant would be able to identify the names of the staff members to whom the disclosed information relates through publicly accessible information on the Trust's websites.
48. Whilst the FOIA is purpose blind, the Trust has explained to the Commissioner that it believes the identity of the applicant is relevant in this instance. The Trust believes that the applicant, a former employee

of the Trust, would be able to identify the individuals concerned through an enhanced knowledge of the Trust and its staff.

49. The Trust has explained to the Commissioner that mileage and expenses forms, which are included within the scope of the complainant's request, are completed by the data subject by hand. The Trust has concerns that, having previously worked with the data subjects, the complainant would be able to identify the handwriting and signatures of both the data subject and any counter signatory present on these forms.
50. The Trust has provided the Commissioner with a copy of the forms in question, highlighting where it considers section 40 applies. The Trust has explained to the Commissioner that if it redacted the forms to remove all personal information, including names, registration numbers, handwriting, signatures and postcodes, the forms would be unintelligible. Effectively, it would leave the complainant with a total number of miles, and total monetary value claimed, for an unnamed member of staff which would not fulfil the complainant's legitimate interest.
51. The Trust has explained to the Commissioner that disclosure of the requested information could cause distress to the data subjects concerned as it would be possible to marry the individual with their salary and expenses details. In turn, this could lead to the publishing of their personal information on social media and the encouragement of any campaign against said individuals. The Trust also has concerns that the disclosure of this information may place the data subjects at greater risk of a phishing attack or fraud.
52. The Trust has explained to the Commissioner that the information disclosed on 20 August 2020, referred to within paragraph 9, provides the complainant with as much granular detail as possible without compromising the fundamental rights and freedoms of the data subjects concerned.

The Commissioner's view

53. The Trust has explained that any expenses claimed by the leadership group are subject to approval by the chair of the local governing body. Such expenses are also subject to a substantial system of checks and scrutiny within the Trust which reduces the likelihood of any abuse of the expenses system to a minimum.
54. The Commissioner acknowledges that the above steps do not eliminate the possibility that there has been a misuse of public funds. However, she does note that the Trust has made the complainant aware of the process through which they can raise any concerns about improper expenses claims, rather than attempt to conduct their own investigation through the FOIA.

55. As stated in the Commissioner's guidance for requests for personal data about employees⁴, "Exceptional circumstances are needed to justify the disclosure of exact salaries when you don't routinely published them." In this instance the public interest would have to clearly outweigh the detriment to any individual concerned.
56. Whilst the Commissioner acknowledges the complainant's concerns regarding abuse of processes, she notes the complainant had not offered the Trust the opportunity to conduct such an investigation at the time their requests were made and therefore any exceptional circumstances have not yet come to light.
57. The Commissioner considers that, whilst senior members of staff, the leadership group would not reasonably expect their individual salary details would be published without exceptional justification. Furthermore, the leadership group would not reasonably expect their individual expenses details to be disclosed or shared outside of the established governance framework referred to within paragraph 53.
58. Ultimately, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. Therefore, she considers that there is no Article 6 basis for processing and disclosure of the information would be unlawful. It is therefore the Commissioner's view that the Trust has correctly applied section 40(2) to withhold the leadership group's personal information.
59. Having decided that disclosure would be unlawful, the Commissioner does not need to go on to separately consider whether disclosure would be fair or transparent.

Section 1 – General right of access to information held by public bodies

60. Section 1(1) (general right of access to information held by public authorities) states that:

"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."

⁴ [Requests for personal data about public authority employees \(ico.org.uk\)](https://ico.org.uk)

61. Returning to paragraph 50 the Commissioner notes that the Trust does not appear to have considered disclosing a redacted copy of the mileage and expenses forms so that all personal information is removed.
62. If there is information that falls within the scope of the request to which an exemption does not apply, this information should be disclosed to the complainant and therefore the Commissioner considers the Trust has breached section 1(1).

Section 10 – time for compliance with request

63. Section 10(1) time (for compliance with request) of the FOIA states that:

"...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."

64. Since the complainant made their request for information on 20 August 2020, any disclosable information that falls within the scope of this request should have been disclosed no later than 18 September 2020.
65. At the date of this notice, no information had been disclosed in response to this request and therefore the Commissioner considers the Trust has also breached section 10(1).
66. The remedial action required in response to these breaches are outlined in paragraph 4.

Other matters

67. As discussed in paragraph 11, whilst the Trust provided its rationale behind withholding the information, it did not specifically cite section 40 of the FOIA in its refusal notice of 28 August 2020 or internal review outcome of 29 October 2020. The Trust has explained to the Commissioner that it has amended its processes to ensure that the exemption upon which it is relying is specified in future correspondence with complainants.
68. Furthermore, as discussed in paragraph 13, the Trust cited section 14 (vexatious and repeated requests) to the complainant in its internal review outcome. The Commissioner notes that the Trust did not cite this exemption at any earlier point during its consideration of the requests dated 31 July 2020 or 20 August 2020.
69. The Trust has explained to the Commissioner that it considers all correspondence received after its refusal notice of 28 August 2020

represent both vexatious and repeated requests for information, hence its introduction of section 14.

70. The Trust has conceded that it was inappropriate to introduce section 14 in this manner as it failed to distinguish between the handling of any initial request and any subsequent new request for information.
71. The Commissioner would advise the Trust to be mindful when interpreting correspondence from a complainant, which relates to an ongoing request, as a new request for information. The Commissioner does not consider that the complainant's correspondence as outlined in paragraph 12 represents a new request for information; it appears to represent an internal review request which the Trust itself has recognised.

Right of appeal

72. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

73. 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.
74. 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

Alice Gradwell
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