

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2021

Public Authority: The Governing Body of Highfield Leadership Academy

Address: Highfield Road
Blackpool
FY4 3JZ

Decision (including any steps ordered)

1. The complainant has requested Highfield Leadership Academy (the public authority) to disclose the reason given by Scott Benton MP for the cancellation of his visit on 25 September 2020. The public authority refused to disclose the requested information in accordance with section 40 of the FOIA.
2. The Commissioner's decision is that the public authority is entitled to refuse to disclose the requested information in accordance with section 40 of the FOIA. She therefore does not require any further action to be taken.

Request and response

3. On 24 November 2020, the complainant wrote to the public authority and requested information in the following terms:

The complainant wanted to know the reason given for Scott Benton MP's cancellation of his visit to the academy on 25 September 2020. More specifically he wanted to know whether the reason was because Scott Benton MP had stated that he had been in contact with someone who had the Covid-19 virus.

4. The public authority responded on 26 November 2020. It refused to disclose the requested information, citing section 40 of the FOIA.

5. The complainant requested an internal review on 10 December 2020.
6. The public authority carried out an internal review and notified the complainant of its findings on 7 January 2021. It remained of the view that the requested information is exempt from disclosure under section 40 of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 7 January 2021 to complain about the way his request for information had been handled. He disputes the application of section 40 of the FOIA. He believes it is in the public interest to disclose the requested information and that it would also be possible to divulge the reason for the cancellation without disclosing personal data.
8. The Commissioner considers the scope of her investigation to be determine whether the public authority is entitled to refuse to disclose the requested information in accordance with section 40 of the FOIA.

Reasons for decision

Section 40 – personal data

9. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
10. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
11. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

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

Is the information personal data?

13. Section 3(2) of the DPA defines personal data as:

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

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. An identifiable living individual is one who can be identified, 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.
16. 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.
17. The requested information is regarding a named MP and the reason given for him not attending a visit at the public authority. It is information which both relates to and identifies the named MP. This information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.
18. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
19. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

20. Article 5(1)(a) of the GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

21. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

22. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
23. In addition, if the requested data is special category data, in order for disclosure to be lawful and compliant with principle (a), it also requires an Article 9 condition for processing.

Is the information special category data?

24. Information relating to special category data is given special status in the GDPR.
25. Article 9 of the GDPR defines 'special category' as being personal data which reveals racial, political, religious or philosophical beliefs, or trade union membership, and the genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
26. Having considered the wording of the request, and viewed the withheld information, the Commissioner finds that the requested information does include special category data. She has reached this conclusion on the basis that the reason given for the cancellation of the visit falls into one of the categories listed in paragraph 25 above.
27. Special category data is particularly sensitive and therefore warrants special protection. As stated above, it can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Article 9 can be met.
28. The Commissioner considers that the only conditions that could be relevant to a disclosure under the FOIA are conditions (a) (explicit consent from the data subject) or (e) (data made manifestly public by the data subject) in Article 9.
29. The Commissioner has seen no evidence or indication that the individual concerned has specifically consented to this data being disclosed to the world in response to the FOIA request or that they have deliberately made this data public.
30. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this special category data would therefore breach principle (a) and so this information is exempt under section 40(2) of the FOIA.

Right of appeal

31. 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

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

32. 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.
33. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF