

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2024

Public Authority: The Governing Body of Our Lady's Catholic Primary School

Address: King Edward Avenue
Dartford
Kent DA1 2HX

Decision (including any steps ordered)

1. The Commissioner's decision is that Our Lady's Catholic Primary School ('the School') is entitled to rely on section 12(1) of FOIA to refuse the request for information about absences because complying with the request would exceed the appropriate cost limit. However, he finds that the School failed to provide reasonable advice and assistance and therefore did not meet its obligations under section 16(1).
2. The Commissioner requires that the School take the following step to ensure compliance with the legislation:
 - The School must provide the complainant with advice and assistance to help them submit a request falling within the appropriate limit or explain why such a request isn't possible.
3. The School must take this step within 30 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

4. The complainant made the following information request to the School on 26 January 2024:

“...Finally but not less important, in light of the recent developments, I also hereby further request, under Freedom of Information Act, any data you have on records about:

1. The total number of cases happened at your school during the last 5 years (or as far as the records are kept, whichever is longer) in which absences are investigated not based on medical evidence but based on other personal sensitive data such as travel history outside of term time? [1.2] How many of those cases are reported by the parents as illness related?
2. The total number of cases happened at your school during the last 5 years (or as far as the records are kept, whichever is longer) in which absences are reported by parents as illness-related? [2.2] How many of those cases in which the parents were asked to submit medical evidence and [2.3] how many did end up go directly to the request of fines stage without any warning or request of medical evidence? [2.4] Of those cases where evidence followed after the child comes back, how many of those cases are accompanied by doctors’ prescriptions and/or medicines with the child’s name on it by parents after the child comes back? [2.5] How many of prescriptions/evidence in form of medication are then rejected as insufficient, and [2.6] reasons if the records have and you can anonymize them? If there are any cases where a prescription was rejected as insufficient, [2.7] how many cases that the school insisted that they need evidence in form of personal sensitive details of the related family? [2.8] In those cases, how long did the school give the parents to collect and submit the additional evidence, and [2.9] how was the collected data processed and stored, including any sharing with other parties?”
5. In correspondence to the complainant dated 14 March 2204, the School advised it had consulted with its Data Protection Officer (DPO), which the Commissioner understands is an external organisation, and was refusing the request “in accordance with section 12 of the Data Protection Act.”
6. Following an internal review, in correspondence dated 27 March 2024, the School advised that it had gone back to its DPO and was maintaining its position ie its reliance on section 12 of the Data Protection Act (DPA).

Reasons for decision

7. As the School and its DPO should be aware, section 12 is a feature of FOIA, not the DPA. This reasoning therefore covers the School's reliance on section 12(1) of FOIA to refuse the request, and whether the School had a duty to offer the complainant advice and assistance.
8. Under section 12(1) of FOIA a public authority such as the School can refuse to comply with a request if the cost of complying with it would exceed the appropriate limit of £450 (18 hours work at £25 per hour).
9. In circumstances outlined under section 12(4) of FOIA¹, if it would exceed the cost limit to comply with one request, or part of request, a public authority isn't obliged to comply with any request, or part of a request.
10. Section 16(1) obliges a public authority relying on section 12 to offer an applicant advice and assistance on refining their request to bring complying with it within the cost limit, if it's possible to do so.
11. In a submission to the Commissioner, with regard to part 1 of the request, the School explained that there's no specific or centralised recording of investigated absences. The School contacts parents on an ad hoc basis whenever a child is absent without informing the office. All explanations from parents, whether given or requested, are then recorded manually on an absence sheet.
12. The School says that with an average of five absences per day, there would be approximately 4,750 absences in the past five years. The above sheets that the School holds wouldn't provide the requested information. The School says it would therefore have to individually check every absence against any old emails that hadn't been deleted, or files of parental letters, with no guarantee of finding the information as most dealings with parents are by phone.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#aggregate>

13. The School has gone on to explain that all the previous academic years' absence sheets are in storage. Retrieving these would be time consuming. Going through the five years of absences would take over 13 hours, assuming it takes 10 seconds to read each entry. Cross checking with emails and correspondence would take at least as long.
14. In conclusion, the School says that it has estimated that it would take between 25 and 30 hours to comply with part 1 of the request. This exceeds the 18 hours provided under section 12, which is why it refused the request under this exemption. And because complying with part 1 would exceed the cost limit, the School hasn't considered the cost associated with complying with part 2 of the request.
15. The Commissioner has taken account of the type of information the School records and how it records it. He's also taken account of the volume of absences caught by the request. He considers that the School's 10 second estimate for identifying and extracting each relevant absence is reasonable, and possibly an under-estimate. He accepts too that it would take a similar amount of time to cross check that absence with any other related information the School may hold about that absence, to see if that absence had been investigated. Altogether, the Commissioner is satisfied that it would take the School more than 18 hours to comply with part 1 of the request. In line with section 12(4), the School was therefore entitled to refuse both parts of the request under section 12(1) of FOIA.
16. The Commissioner has next considered the obligation under section 16(1) to offer advice and assistance. In its correspondence to the complainant, the School didn't refer to its section 16 duty. It didn't suggest how the request could be refined so that the School could comply with it within the cost limit or explain why it considered the request couldn't be meaningfully refined. The Commissioner therefore finds that the School didn't comply with its obligation under section 16(1) of FOIA.

Right of appeal

17. 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

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF