

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 12 February 2008**

**Public Authority:** The Governing Body of Ashfield School  
**Address:** Ashfield School  
Sutton Road  
Kirkby-in-Ashfield  
Nottingham  
NG17 8HP

### Summary

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The complainant requested information from Ashfield School about the Chair of Governor's investigation of a number of his grievances. The Governors have given the complainant some information, principally the minutes of the meeting where the grievances were heard. The complainant stresses that it is Chair's notes of his investigation and any associated documents related to his complaints that he is seeking. The Commissioner has determined that the Governors were not obliged to confirm or deny whether it held the requested information by virtue of section 40(5) of the Act. This is on the basis that, if the information was held, it would constitute the complainant's personal data and would be exempt under section 40(1). The Commissioner considers that the School should have treated the request as a subject access request under section 7 of the Data Protection Act 1998. He will now go on to make a separate assessment under section 42 of that Act.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 16 November 2006 the complainant wrote to the Chair of Governors at Ashfield School. He made a request the following information:

*I would like to formally request, under the 'Freedom of Information Act 2000', the full disclosure of all documents from the Governing Body and the School in relation to my complaints going back to the 24<sup>th</sup> May 2006.*

*I want all formal records, minutes and notes of any interviews, meeting, Governor Meetings and any other records at which my complaint has been raised, discussed or brought as an agenda item as well as any documents relating to your or other governor representative's investigations.'*

3. On 4 December 2006 the Chair of Governors responded to the complainant's request. The complainant was provided with the minutes of the meeting convened on 10 July 2006 to hear the complainant's grievances. The complainant was informed that he had 'no extant notes' relating to the complaint and therefore he was in possession of all existing documentation.
4. The complainant noted the contents of the minutes sent to him and in particular the mention of 'the Chair of Governor's investigation'. On 5 December 2006 the complainant wrote to the Chair of Governors to ask for 'the investigatory notes, together with any further Governor or other meeting which have taken place to discuss [his] complaint.' The complainant asserted his belief that the Chair of Governors would be obliged to keep a written record of the investigation process and of the questions he asked the Headteacher. This would ensure an accurate account could be given to the Governing Body. He also drew the Chair's attention to the lack of reference in the minutes to specified aspects of his original complaint. The complainant asked for the disclosure of all documents relating to his complaint or that the Chair confirms that he held no relevant investigatory notes, records or other material.

## **The Investigation**

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### **Scope of the case**

5. On 14 December 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

### **Chronology**

6. On 12 September 2007 the Commissioner telephoned the Headteacher of Ashfield School to discuss the complainant's request for information. The Commissioner's enquiries were later transferred to an officer of Nottinghamshire County Council (NCC), appointed to act on the schools behalf.
7. The NCC officer responded to the Commissioner's enquiries on 15 October 2007. The officer informed the Commissioner that the complainant had been given all the relevant documents, including policies and procedures, held by the Governors. The officer confirmed that the Governors did not hold any records of the Chair of Governor's investigation into the complainant's matter. At the conclusion of the Chair's investigation, his findings were compiled into a formal

correspondence and sent to the complainant. The officer confirmed that the school did not hold any notes created by the Chair. He emphasised that the procedures followed by the Governors were its normal practice and that this was supported by the County Council.

8. In August 2007 the Commissioner re-issued his guidance about the definition of personal data. This had been revisited following the work of the Article 29 Working Group. The Article 29 Working Party is an advisory committee composed of representatives of the national supervisory authorities. It agreed an opinion on the "concept of personal data" in June 2007. Details of the working party can be found at the following internet link.

[http://ec.europa.eu/justice\\_home/fsj/privacy/workinggroup/index\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/workinggroup/index_en.htm)

9. The Commissioner's new guidance is designed to assist organisations and individuals to determine whether information may be classified as personal data. In order to do this the guidance asks a series of questions. The Commissioner has considered the information being sought by the complainant along side these questions.

The Commissioner's Guidance can be viewed in full at the following internet link:

[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)

10. The Commissioner spoke to the complainant about the nature of the information he was seeking. The Commissioner informed the complainant that the information, if held, would be his personal data. The Commissioner gave the complainant an account of his enquiries and stated his view that the complaint should have been dealt with as a subject access request under the Data Protection Act 1998.

## Analysis

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### Section 40 – Personal data

11. Section 40(1) states that :

“(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject”.

Subsection (5) states that:

“The duty to confirm or deny:

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)”.

12. The Commissioner has considered the nature of the information being sought by the complainant and is satisfied that if the school held any relevant information it would constitute the complainant's personal data. The Commissioner therefore considers that the information would be exempt by virtue of section 40(1) of the Act. The focus of the Chair of Governors investigation was the complaints made by the complainant. Any information which flowed from those complaints would be information from which the complainant could be identified. Further, it is also information that, if held, would have been used to influence decisions affecting the complainant.
13. The Commissioner has determined that, in view of the above, the public authority was in fact not obliged to confirm whether or not it held the information sought by the complainant, by virtue of section 40(5). However the request should have been treated under section 7 of the Data Protection Act 1998. This is referred to in the 'Other Matters' section below.

## The Decision

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14. The Commissioner has determined that, if the information was held, it would have engaged section 40(1) of the Act. The Commissioner has also concluded that the Governing Body of the school was not in fact obliged to comply with section 1(1)(a) in relation to this information by virtue of section 40(5).
15. The Commissioner has not ordered any remedial steps in relation to this complaint. However, he considers that it is appropriate for him to carry out an assessment of the Governing Body's compliance with the Data protection Act 1998 under section 42 of that Act.

## Other matters

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16. The Commissioner wishes to highlight the following matters of concern:
17. Section 7 of the Data Protection Act 1998 gives an individual the right to request copies of personal data held about them – this is referred to as a right of Subject Access. The Commissioner will go on to make an assessment under section 42 of the DPA of the School's compliance with that Act. This assessment does not form part of this Decision Notice. An assessment under section 42 of the DPA is a separate legal process from consideration under section 50 of the FOI Act.
18. The Commissioner notes that this request should have been dealt with as a subject access request under section 7 of the DPA. He would encourage public authorities to consider requests under the correct access regime at the first instance.

## Steps Required

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19. The Commissioner requires no steps to be taken.

## Right of Appeal

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20. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 12<sup>th</sup> day of February 2008**

**Signed .....**

**Steve Wood  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Freedom of Information Act 2000

**Section 1(1)** provides 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.”

**Section 17(1)** provides that -

“A public authority which ... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 40(1)** provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

**Section 40(5)** provides that –

“The duty to confirm or deny-

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either-

(i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

## Data Protection Act 1998

### Section 7 Right of access to personal data

(1) Subject to the following provisions of this section and to sections 8 and 9, an individual is entitled—

(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,

(b) if that is the case, to be given by the data controller a description of—

(i) the personal data of which that individual is the data subject,

(ii) the purposes for which they are being or are to be processed, and

(iii) the recipients or classes of recipients to whom they are or may be disclosed,

(c) to have communicated to him in an intelligible form—

(i) the information constituting any personal data of which that individual is the data subject, and

(ii) any information available to the data controller as to the source of those data, and

(d) where the processing by automatic means of personal data of which that individual is the data subject for the purpose of evaluating matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct, has constituted or is likely to constitute the sole basis for any decision significantly affecting him, to be informed by the data controller of the logic involved in that decision-taking.