

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 15 June 2011

**Public Authority:** The Governing Body of Our Lady Mother of the Saviour Catholic Primary School  
**Address:** Lapwing Grove  
Palacefields  
Runcorn  
WA7 2TP

### Summary

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The complainant requested from Our Lady Mother of the Saviour Catholic Primary School (the "public authority") a variety of information covering staff appointments, the restructure of the public authority and copies of policies adopted by the public authority. The public authority has not provided a clear response to the requests, despite the intervention of the Commissioner. The Commissioner therefore reminds the public authority of its obligations under the Freedom of Information Act 2000 (the "Act") and requires it to either respond to the request in accordance with section 1(1) of the Act and/or issue a valid refusal notice under section 17 of the 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. The Commissioner notes that the governing body of Our Lady Mother of the Saviour Catholic Primary School (the "public authority") is the public authority for the purposes of the Act.

3. On 9 July 2010 the complainant submitted an information request to the public authority, which was broken down into seven parts.
4. The public authority responded to the request on 23 September 2010, apologising for the associated delay. By way of an introduction, the public authority informed the complainant that it would not normally disclose the personal data of an individual unless it had received the express consent of that individual. With reference to the specific items of the request, the public authority considered that it did not hold any relevant information with the exception of a number of policies that it agreed to release if the complainant provided an address.
5. Later the same day, the complainant emailed the public authority to ask that it review its response. The complainant also made additional information requests to the public authority, none of which concern this Notice. The Commissioner has since been informed, however, that the public authority does not have an internal complaints mechanism for handling information requests made under the Act.

## **The Investigation**

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### **Scope of the case**

6. On 23 September 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the lack of information identified by the public authority as falling within the scope of the request.
7. While this Decision Notice relates to separate requests, the Commissioner has investigated the complaint in tandem with case FS50362046. This is because the requests associated with FS50362046 are on the same general theme as those presented here and also share the same complainant and public authority. The Decision Notice on FS50362046 broadly echoes the findings of the Commissioner in this case.

### **Chronology**

8. On 24 November and 2 December 2010 the public authority wrote to the Commissioner to outline its position with respect to the complaint. Enclosed with these letters were copies of documents that the public authority considered relevant to the request, only some of which had been provided to the complainant. The public authority, however, did

not cite a specific exemption that it considered applied, nor did it provide substantive arguments to support the non-disclosure.

9. On 23 March 2011 the Commissioner wrote to the public authority to ask it to clarify:
  - what steps had been taken to ensure that all information covered by the request had been located;
  - which information had been withheld from the complainant and, equally, which information had been disclosed;
  - the exemption under the Act that the public authority was seeking to rely on where any information was being withheld.
10. The public authority responded to the Commissioner on 3 May 2011. The Commissioner, however, does not consider that he is in a position to make a decision on the basis of the information provided.

## **Analysis**

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### **Procedural Requirements**

11. The public authority has not handled the information request in accordance with the Act in that it did not either issue a clear response to the complainant in compliance with section 1(1) of the Act or, alternatively, provide an adequate refusal notice for the purposes of section 17.

### **The Decision**

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12. The Commissioner's decision is that the public authority did not deal with the request for information in keeping with the requirements of the Act.

### **Steps Required**

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13. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
  - For each part of the request, ensure that appropriate measures are taken to locate any relevant recorded information. If necessary, the public authority should return to the complainant for clarification as to what information is required, in accordance with section 1(3) of the Act.

- Confirm whether, in relation to each part of the request, it holds information of the description specified unless the process of confirmation or denial would itself be exempt information.
  - Where the public authority has not already done so, disclose the requested information to the complaint or issue a valid refusal notice under section 17 of the Act.
14. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

### **Failure to comply**

15. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Other matters**

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16. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
17. Under the Act, a public authority is not legally required to have an internal review procedure. However, part VI of the section 45 Code of Practice (the "Code") makes it desirable practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information and that the procedure should encourage a prompt determination of the complaint. The Commissioner would therefore encourage the public authority to adopt an internal review procedure in order to conform with the Code.
18. In any event, the Commissioner considers that a public authority should expressly confirm whether it does or does not have a complaints procedure in place as part of its refusal notice; information that was not provided to the complainant in this case. The public authority should also, as a matter of course, inform an applicant of the right of appeal to the Commissioner.
19. In addition, the Commissioner is assessing the public authority's ongoing compliance with section 10 of the Act.

## Right of Appeal

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20. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

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 sent.

**Dated the 15<sup>th</sup> day of June 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution**

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

## Legal Annex

### General Right of Access

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 1(2) provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

Section 1(3) provides that –

"Where a public authority –

- (c) reasonably requires further information in order to identify and locate the information requested, and
- (d) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

Section 1(4) provides that –

"The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

### **Time for Compliance**

Section 10(1) provides that –

“Subject to subsections (2) and (3), 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.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

## **Refusal of Request**

Section 17(1) provides that -

“A public authority which, in relation to any request for information, 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 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-



- (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 17(4) provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that -

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(6) provides that –

“Subsection (5) does not apply where –

- (c) the public authority is relying on a claim that section 14 applies,
- (d) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (e) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (f) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (g) contain particulars of the right conferred by section 50.”