

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 February 2012

Public Authority: Upshire Primary Foundation School

Address: Upshire Road
Waltham Abbey
Essex
EN9 3PX

Decision (including any steps ordered)

1. The complainant requested information from Upshire Primary Foundation School (the school) about building work carried out in Upshire pre-school (the pre-school). The school disclosed some information and withheld some under section 40(2) of the Freedom of Information Act 2000 (the FOIA). The Information Commissioner (the Commissioner) explained that he considered that the request should have been considered under EIR. The school confirmed it was withholding the information under regulation 13(2)(a)(i).
2. The Commissioner's decision is that the school has applied regulation 13(2)(a)(i) appropriately. However it is not clear whether the complainant has received a copy of the quote referred to in paragraph 34. If he has not done so, the school should send him a copy.
3. The Commissioner requires the school to take the following steps to ensure compliance with the legislation.
 - To disclose the quote referred in paragraph 34. The Commissioner understands that the company concerned is not a sole trader so therefore if this is the case, the contact details can be disclosed.
4. The school 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 (or the Court of Session in Scotland) pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Background

5. There was work carried out in the pre-school play ground. This included putting some breeze blocks down, some landscaping and putting up some trellises. There was also a 'snagging list' of jobs (which is a list of jobs that needed doing after the main building work has been finished) to be done. The school kept some money back from the original contractor's fee to cover these costs.
6. The complainant had worked at the school in the past and was still employed by the school as a site manager when the school received quotes for the work. He left the school and made several requests for information about the work carried out.

Request and response

7. On 16 February 2011 the complainant wrote to the school and requested information in the following terms – for ease and convenience the requests have been numbered:

'Please send me any paperwork which concerns the building work carried out in the pre-school play area last year. This should include:

- 1. The minutes of any meetings at which the school discussed the landscaping of the pre-school play area.*
- 2. All estimates submitted for this work.*
- 3. The contract the school had with the winning contractor.*
- 4. Any correspondence relating to this building work.*

Also can you send me:

- 5. The details of all the school governors from March 2010 to March 2011.*
- 6. Any personal information you hold on me.*
- 7. And the school's complaints procedure.'*

8. On 18 February 2011 the complainant emailed the school to remind it of what qualified as a request for information under the FOIA.
9. On 21 February the complainant emailed the school informing it that it must reply to him within 20 working days of his request. He also asked whether the school had informed the Chair of Governors of his request or whether it was dealing with the request.

10. The school responded on 22 February 2011. It explained that it would be responding to him within the statutory time limit and that it would be charging him for the following: photocopying, printing and faxing at 10p per sheet and postage at the appropriate rate. It also enclosed documentation for the complainant to complete in order to gain access to his personal records under the Data Protection Act 1998 (the DPA).
11. On 11 March 2011 the school responded to the complainant's request. It disclosed the following:
 - Minutes of meetings which discussed the landscaping of the pre-school play area in response to point 1.
 - Copies of the estimates submitted to the school but redacted the name and contact details of the contractors in response to point 2.
 - Correspondence relating to the building work in response to point 4.
 - The names of the governors from March 2010 to March 2011 but not their personal addresses in response to point 5.
 - A copy of its complaints procedure in relation to point 7 (and it also provided a copy of its Freedom of Information Policy and Charging and Remissions Policy in response to a further request from the complainant on 4 March 2011).
12. The school also explained that it did not have a copy of the winning contract as there was no written contract in response to point 3. With regard to the complainant's own personal data (point 6) the school explained that it had disclosed this to him separately under the DPA.
13. Following an internal review the school wrote to the complainant on 19 May 2011. It explained that with regard to the choice of contractor it had followed the school's Financial Regulations and FMSIS (Financial Management Standards in Schools) Regulations. The school explained that this meant that in effect it had been audited and no issues were found. It also explained that it considered that the pre-school was a separate entity from it and as such was a private concern headed by a committee of the Governing Body autonomous from the school. The school also explained that it considered that the FOIA did not apply to the pre-school.

Scope of the case

14. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner notes that the school has disclosed some information as explained in

paragraph 9. The complainant also complained that the school had not sent him a correct fees notice.

15. The Commissioner contacted the complainant to establish what had been disclosed and what the remaining outstanding issues were. He explained that he would be considering the following:
- Whether regulation 13(2)(a)(i) has been applied appropriately to the name and contact details of the contractors who submitted the estimates.
 - Whether all of the correspondence relating to the building work has been disclosed.
 - The way in which the school handled the complainant's request for information.
 - The fees notice issued by the school.

Reasons for decision

16. The school initially dealt with the request under the FOIA. Subsequently the Commissioner informed the school that he considered that the request should have been dealt with under the EIR. The school reconsidered the information and explained that it was withholding the outstanding requested information under regulation 13(2)(a)(i).

Regulation 2

17. Regulation 2(1)(a) provides that any information on "*the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements*" is environmental information. The complainant has requested information about the work carried out in the pre-school which includes the laying of grass, some breeze blocks and the erection of trellises. The Commissioner considers that the requested information relates to the landscape and is therefore environmental as defined by regulation 2(1)(a).
18. As the Commissioner has established that the requested information is environmental information he will now go on to consider whether the school has applied regulation 13(2)(a)(i) appropriately.

Exception

19. Regulation 13 states that a public authority is not obliged to disclose information if to do so would:
- constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the DPA.

Would disclosure of the requested information constitute a disclosure of personal data?

20. The DPA defines personal information as:

"...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the of the data controller or any person in respect of the individual."

21. The Commissioner notes that the school has sent the complainant copies of three estimates with the name and contact details of the businesses redacted.
22. The Commissioner is satisfied that the withheld information does constitute personal data as it is the name and contact details of sole traders.

Exception 13

Would disclosure of the requested information breach any of the data protection principles?

23. The school argued that disclosure of the requested information would breach the first data protection principle because it would be unfair to the sole traders.
24. The school explained to the Commissioner that as no approval had been given by the sole traders to disclose their contact details it considered that it was not under an obligation to disclose this information.
25. The Commissioner accepts the school's argument in relation to the

sole traders' details. This is because each sole trader is an individual and the name and contact details of each business would be considered to be their personal data. Therefore this data relates to living individuals who could be identified.

26. The Commissioner also accepts that authorities are not obliged to seek consent if they are already of the view that the information in question should not be disclosed and it is likely that such consent would not be given.
27. The Commissioner notes that the complainant does have the name of the winning contractor as he explained who they were. However the Commissioner also notes that the complainant worked for the school at approximately the same time as the school was deciding which contractor would carry out the work at the pre-school.
28. The Commissioner went on to consider whether there would be a legitimate interest in the sole traders' contact details being disclosed.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

29. The Commissioner considers that on this occasion, the rights and freedoms of the data subjects outweigh the legitimate interests in disclosure. While there is always public interest in public authorities being transparent, it is clear that the school followed the correct process for considering the three estimates and provided the complainant with the estimates. Therefore the Commissioner's view is that the school has already been sufficiently transparent.
30. The Commissioner considers that disclosure of the sole traders' contact details would be disproportionate. He is therefore satisfied that the disclosure would not be fair in the circumstances and that regulation 13(2)(a)(i) was therefore engaged.
31. The Commissioner went on to consider whether the school disclosed all of the information regarding the building work to the complainant. The complainant informed the Commissioner that he had not received all of the information in question as disclosed minutes of a finance meeting dated 3 September 2010 mentioned a number of items:
 - A letter (or any correspondence) stating that money would be withheld until the snagging list was completed.
 - An invitation to the company representative to a meeting with a named member of staff to complete the snagging list re: health and safety implications.

- A memo attached to an invoice stating that the cheque is payable to someone (redacted) in settlement for work carried out.
 - Any notes of the meeting between a named member of staff from the school and the company.
 - Minutes of meetings where the complainant's original enquiry and 21 questions were discussed.
32. The Commissioner contacted the school about the complainant's points above and the school explained that:
- It had sent letters to the contractor who had carried out the original work but the letters were returned marked 'not at this address'.
 - A member of staff would have met with this company to discuss the snagging list but as the company never responded to the school, a meeting never took place therefore there were no notes. This also answers the fourth bullet point above.
 - It had withheld monies (at the request of the Finance and Premises Committee) to cover any snagging issues but had not informed the contractor of this.
 - There was no memo attached to the invoice paid for the work. The invoice was disclosed to the complainant with the name of the contractor redacted, as the contractor was a sole trader.
 - The meeting held to discuss the complainant's original request and 21 questions took place on 4 February 2011. The school explained that this was an emergency meeting of a panel of the governing body. The school explained to the Commissioner that it had sent a copy of these minutes to the complainant; subsequently the complainant explained to the Commissioner that he did not have a copy of these minutes. A further copy was sent to the complainant.
 - The estimates received by the school were all from sole traders therefore the school had redacted the contact details.
33. The complainant also explained that he had been present when a larger named company had come to the school to assess the work that needed doing. The school explained to the Commissioner that the company in question was asked to give a quote for the works for the pre-school. However, the company never went to the school to assess the works and therefore never submitted a quote.
34. This company subsequently attended the school to assess the snagging works and the quote it provided was not taken up by the school. The school confirmed that the complainant was the site manager at the school when this occurred; he had shown the company around the

school and the quote had been sent to him in his role as site manager. When the complainant left the school's employ he left the quote behind.

35. The school further explained that the complainant was working at the school as a site manager when all the quotes were obtained.

Procedural Requirements

36. The Commissioner notes that the school initially did not deal with the request for information under the EIR.

Regulation 5 and 14

37. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request.
38. Regulation 5(2) provides that information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
39. Regulation 14 provides that if a request for environmental information is refused, this refusal should be made in writing no later than 20 working days after the date of the request. The refusal must specify any exception being relied upon. The refusal should also inform the applicant of how to make representations against the public authority's handling of the request and of enforcement and appeal provisions.
40. The Commissioner also notes that the school explained that it did not consider that the pre-school was a public authority for the purposes of the FOIA. However under the EIR, regulation 3(2) provides that information in the possession of a public authority is considered to be held by it for the purposes of the EIR and he notes that the school held the requested information about the pre-school.

Regulation 11

41. Regulation 11 provides that an applicant can appeal a public authority's decision not to disclose information. However although the complainant request an internal review, the school had not informed him of his rights. The school also did not provide him with information about his rights to appeal to the Commissioner. Therefore the Commissioner considers that the school has breached regulation 11.

Other matters

42. The complainant also explained that he considered that the school had overcharged him for the information. Regulation 8 provides that a public authority can charge for disclosing environmental information and that the charge must be reasonable. In this case, the school charged 10p per sheet for photocopying, printing and faxing and appropriate costs for packaging. The complainant responded and informed the school that he wanted it to issue a fees notice. The school responded and confirmed it would be charging 10p per sheet for photocopying, printing and faxing and £2.98 for postage.
43. In its internal review of 19 May 2011 (which was also a response to a letter from the complainant complaining that the school had sent the information in hardcopy and was charging him for this), the school explained that it had consulted the Royal Mail about the cost of postage. The school stated that although it did not have to provide a refund, it was prepared to do so in this case. However, the school confirmed to the Commissioner that the complainant refused to reply to it or to speak to a named member of staff on the telephone, therefore the reimbursement had not been made.
44. The Commissioner notes that regulation 8 provides that a charge shall not exceed an amount a public authority considers as reasonable. The Commissioner considers that a charge of 10p per sheet for photocopying, printing and faxing is reasonable. He also notes that the school consulted Royal Mail about the cost of postage.
45. The Commissioner notes that the school issued its fees notice with regard to the requirement of the FOIA. However under the EIR in order to charge applicants for environmental information under regulation 8(1), a public authority must first have published and made available to applicants a schedule of its charges, together with information as to when a charge will be made or waived.

Right of appeal

46. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

47. 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.
48. 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

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