

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 September 2012

**Public Authority:** Wath Comprehensive School  
**Address:** Sandygate  
Wath-upon-Dearne  
Rotherham  
South Yorkshire  
S63 7NW

#### Decision (including any steps ordered)

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1. The complainant requested information from Wath Comprehensive School (the "School") in relation to minutes of various meetings and briefings. The School has said that it does not hold information in respect of point 2 of the request and has applied section 40(2) to part of the information requested in point 3 of the request.
2. The Commissioner's decision is that the School does not hold the information requested in point 3 and has correctly applied section 40(2) to the majority of the withheld information.
3. However, he finds that in the circumstances of the case some of the information should be disclosed.
4. The Commissioner requires the School to take the following steps to ensure compliance with the legislation:
  - disclose some of the withheld information relevant to point 3 of the request – namely the information contained within the 'Special Considerations' and 'Mentor Payments' sections of the Staffing Committee Minutes of 12 October 2010 with names redacted.
5. 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 pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

## Request and response

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6. On 12 September 2011, the complainant wrote to the School and requested information in the following terms:
  1. *The end of year financial statements of income and expenditure and final balance for years:*
    - 2005/06*
    - 2006/07*
    - 2007/08*
    - 2008/09*
    - 2009/10*
    - 2010/11*
  2. *Minutes of the staff briefings held during the summer term 2009 and autumn 2010*
  3. *Minutes of the Governors Finance and Staffing Committee(s) held during*
    - a. Spring and Summer 2009*
    - b. Spring and Summer 2010*
    - c. Autumn 2010*
    - d. Spring 2011*
  4. *Minutes of the Senior Leadership Team meetings held during:*
    - a. May to July 2009*
    - b. September and October 2010*
7. On 18 November 2011 Rotherham Metropolitan Borough Council (the "Council") responded to the complainant. The Commissioner understands that the Council has acted on behalf of the School as it has in response to the Commissioner. He will therefore consider responses from the Council to be responses from the School.
8. In its response the School disclosed some information to the complainant within the scope of the request (the Staffing Committee Minutes requested in point 3 and the information asked for in point 4).
9. However, it explained the information requested in point 1 and the Finance Committee Minutes asked for in point 3 of the request were withheld under section 43 of the FOIA (prejudice to commercial interests) as to do so would prejudice the commercial interests of the school.

10. The School also explained to the complainant that minutes of staff briefings, as requested in point 2 of the request, were not taken.
11. On 30 November 2011 the complaint expressed dissatisfaction with the response he had received. He asked for the School to explain why information withheld under section 43 of the FOIA would or would be likely to prejudice its commercial interests. He also explained that he had personal knowledge of minutes being taken at staff briefings.
12. The School disclosed further information to the complainant and on 10 January 2012 provided an internal review response. It explained that there are no minutes of weekly staff briefings. It further stated that a brief record is made of notices given out at the briefings and circulated to staff unable to attend. However, it informed the complainant that these are only retained for a short time and then deleted. The school stated that there is no 'mandate or reason to keep them and they have no long term purpose.'
13. It also explained that some information had been withheld as it referred to third parties (staff members) and the information was confidential. The School explained that the information was exempt from disclosure due to section 40 of the FOIA (third party personal data).

### **Scope of the case**

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14. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, he complained that the School held information where it said it did not and that it had not disclosed all of the information to him which fell within the scope of his request.
15. During the course of his investigation the School disclosed further information to the complainant. Subsequently the complainant informed the Commissioner that he was content for the investigation to focus on:
  - whether the School held information that fell under point 2 of the request; and
  - whether the School was correct to rely upon section 40 of the FOIA to withhold information from that disclosed to him.
16. The Commissioner therefore investigated whether the school held the information requested in point 2 of the request and whether it had correctly applied section 40 of the FOIA.

## Reasons for decision

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17. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by that authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
18. Where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the actions the public authority took to check that the information was not held and if it can explain why it was not held. The Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities."<sup>1</sup>

### Point 2 of the request – minutes of staff briefings

19. The complainant requested information contained within the minutes of staff briefings held during the summer 2009 and autumn 2010 school terms. In the School's responses to the complainant it referred to minutes of weekly briefings not being held. The complainant informed the Commissioner that briefings were also held on a termly basis and that it was these minutes that were of specific interest to him.
20. The School informed the Commissioner that when it had considered the request it had read the request to be for minutes of staff briefings held during the term, ie while the term was on going. It further clarified that the termly briefings referred to by the complainant were in fact held on a half termly basis.
21. The Commissioner therefore considers that, whilst it may not have been altogether clear in its responses to the complainant, the School's consideration of this part of the request included both weekly and half termly briefings.

### Scope, quality, thoroughness and results of search

22. The Commissioner investigated what searches the School had conducted for the information asked for in point 2 of the request. The School explained that it had not carried out any searches as it knew that it did not hold the information. This conclusion was based on the knowledge of the Headteacher. The Commissioner finds it puzzling that the School

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in Linda Bromley and Others/ Environment Agency (31 August 2007) EA/2006/0072

states it carried out no searches as it had informed the complainant that it had checked and rechecked its records and determined that the information was not held. However, the Commissioner considers that the Headteacher would be the relevant individual with knowledge of what information was held considering that she led the staff briefings.

### **Reasons for holding/not holding the information**

23. The complainant has argued that the School holds the minutes of staff briefings he requested in point 2 of the request. He has informed the Commissioner that he has personal knowledge of the half termly meetings and that they had prepared agendas. He has stated that it was the practice of the School to send teachers an email detailing those agendas. The complainant has further informed the Commissioner that during the meetings a member of the administrative staff took notes and that these were subsequently passed to the Headteacher for her records and placed on the School computer network (doclib) for reference by staff.
24. The complainant has additionally explained that the types of issues discussed at the meetings included national strategies for education and how these related to the School, issues of student performance and tracking of this. He has also explained that the meetings detailed expectations of staff in helping children's performance and to provide child protection updates.

#### Weekly briefings

25. The School informed the Commissioner that it keeps a brief record of weekly briefings which is then circulated to staff who were unable to attend. It has stated that the records are only retained until that process has been completed. Further it has explained that they are then overwritten when the next meeting takes place. The School has said that this is in accordance with the fifth data protection principle (this requires that personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes). The School has stated that there is no requirement to keep these records for a longer period.

#### Half-termly briefings

26. In relation to the half-termly briefings, the School has stated that no minutes are ever taken. It explained that details of the briefing such as the date and time are forwarded to staff prior to the briefings but these are not retained as they are not required after circulation. The School has said that there is no requirement to record decisions or allocate actions as the briefings are to provide updates to staff. The School has

therefore said that it is not necessary for minutes to be taken of these briefings. Further the School has stated that the meetings did not have prepared agendas and that notes were not taken or subsequently placed on its computer network.

27. The School has informed the Commissioner that there was no requirement to retain the information once updates had been provided to staff. It has said it is not possible to detail specific purposes of the briefings in the time period requested as the information has not been retained.
28. The School has explained that it does not have a policy in regard to what level of information is recorded for different meetings or what level of information should be recorded at half termly meetings. It has however explained that it has an established practice in relation to various meetings and that for the half termly meetings its practice is not to take minutes.
29. The Commissioner has carefully considered the information provided to him by the complainant and the School. In particular he notes the complainant's obvious belief that further information is held in relation to this part of his request. However, he also notes that despite this he had not been provided with any material evidence that further relevant information is held. Furthermore, he considers that the School has provided reasonable explanations as to why the information is not held.
30. The Commissioner is therefore of the view that, on the balance of probabilities and on the basis of the evidence in front of him, the School does not hold the information asked for in part 2 of the request.

### **Section 40(2)**

31. Section 40(2) of the FOIA provides that information is exempt from disclosure if it constitutes personal data and either the first or the second condition in section 40(3) is satisfied. The first condition in section 40(3) states that the disclosure of personal data would (i) contravene any of the data protection principles, or (ii) section 10 of the DPA. In this case the School has explained that it considers disclosing the remaining withheld information contained within the staffing committee minutes would breach the first data protection principle.

### **Personal data**

32. The Commissioner has first considered whether the withheld information is personal data. Personal data is defined in section 1(1) of the Data Protection Act 1998 (the "DPA") as:

*“data which relate to a living individual who can be identified from those data, or 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 intentions of the data controller or any other person in respect of the individual.”*

33. The Commissioner's guidance on the exemption for personal data<sup>2</sup> contained within the FOIA expands on what constitutes personal data:

*“The two main elements of personal data are that information must ‘relate to’ a living person, and that person must be identifiable. Information will ‘relate to’ a person if it is:*

- *about them;*
- *is linked to them;*
- *has some biographical significance for them;*
- *is used to inform decisions affecting them;*
- *has them as its main focus; or*
- *impacts on them in any way.”*

### **Does the information relate to living persons?**

34. The School has argued that the withheld information is the personal data of more than one data subject in that it relates to disciplinary, pay or other staffing matters as well as investigations and staff hearings.
35. Having examined the withheld information the Commissioner considers that it relates to living individuals.

### **Does the information identify living individuals?**

36. The Commissioner considers that the withheld information clearly identifies living individuals who are referred to by name. Therefore he considers that the withheld information is personal data.

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<sup>2</sup>[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/PERSONAL\\_INFORMATION.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/PERSONAL_INFORMATION.ashx)

### **Sensitive personal data**

37. The Commissioner has gone on to consider whether any of the information is sensitive personal data. Section 2 of the DPA defines sensitive personal data as personal data as to:
- (a) the racial or ethnic origin of the data subject,
  - (b) his political opinions,
  - (c) his religious beliefs or other beliefs of a similar nature,
  - (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
  - (e) his physical or mental health or condition,
  - (f) his sexual life,
  - (g) the commission or alleged commission by him of any offence; or
  - (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.
38. Having viewed the withheld information the Commissioner considers that some of it does contain sensitive personal data.

### **Would disclosure of the withheld information contravene any of the data protection principles?**

39. The first data protection principle states:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-*

- a) at least one of the conditions in Schedule 2 is met; and*
- b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

40. In considering whether disclosure of the information would be fair to the individuals concerned, the Commissioner has, in this instance, taken the following factors into account:

- the individuals' reasonable expectations as to what would happen to their information; and

- balancing the rights and freedoms of the data subjects with legitimate interests.

### **Reasonable expectations**

41. The School has argued to the Commissioner that disclosure of the information would not be in the reasonable expectations of the data subjects. Specifically, it has explained that the data subjects would reasonably expect information related to disciplinary, pay, investigations, staff hearings and other staffing matters to remain undisclosed to the world at large.
42. The Commissioner has noted above that some of the information requested is sensitive personal data. Sensitive personal data is that which by its very nature, has been deemed to be information that individuals regard as the most private information about themselves. Individuals would not usually expect such information to be disclosed to the world at large, as is a disclosure under the FOIA. Due to the sensitivity of this type of information the Commissioner considers that it is generally unlikely that disclosure of such information would be fair. Having viewed the withheld information the Commissioner is of the view that the individuals would not reasonably expect their sensitive personal data to be disclosed in this case.
43. Where the information is not sensitive personal data the School has argued that it still would not be in the individuals' reasonable expectations for their personal data to be disclosed. It has argued that the withheld information relates to private matters which may impact on someone's employment but are not details of their work as a public official or employee. The School has argued that those individuals would expect their employer to keep such details confidential.
44. The Commissioner considers that disclosure of information relating to investigations of employees and staff disputes has the potential for causing distress and harm to data subjects (for example in detriment to future career prospects or within an individual's private life), no matter what the conclusion of that investigation or dispute.
45. Where pay is concerned the Commissioner takes into account, among other things, the seniority of staff and their commensurate reasonable expectations in regard to their pay and its disclosure. Taking into account the circumstances of the case, the Commissioner does not consider it within the reasonable expectations of the data subjects for their pay information to be disclosed where that relates to identifiable individuals.

### **Legitimate interests of the public and rights and freedoms of the data subjects**

46. The Commissioner has considered the legitimate interests of the public in regard to transparency and accountability. However, he does not consider that the legitimate interests of the public outweigh the expectation of privacy of the data subjects in this case.

### **Redaction**

47. The Commissioner has considered whether the withheld information could be provided by carrying out redactions. For the majority of the information the Commissioner has considered that it would either not be possible to do this or the information could not be provided in any meaningful way using such a method.
48. However, the Commissioner does consider that some of the information withheld from the minutes of 12 October 2010 may be disclosed without disclosing personal data. Specifically, the Commissioner considers that the information under the headings 'Special Considerations' and 'Mentor Payments' may be disclosed subject to redaction to remove the names of individuals.

## Right of appeal

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49. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

50. 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.
51. 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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