

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 July 2012

Public Authority: The Governing Body of Whitby Community College

Address: Prospect Hill
Whitby
North Yorkshire
YO21 1LA

Decision (including any steps ordered)

1. The complainant has requested information relating to staffing and mentoring at Whitby Community College (the College) and complaints made to the College. The College provided the complainant with some of the requested information but refused to provide some of the information under section 40(2) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the College has correctly applied section 40(2) in this case to the information requested at part 'a' apart from the job role and date of leaving, the information as to whether the mentor was a previous student at the College requested at part 'b', and the information withheld relating to five specific complaints. The Commissioner considers that section 40(2) was incorrectly applied to the remaining withheld information, either because it does not constitute third party personal data or because it would not be unfair to disclose the third party personal data.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information which the Commissioner has not identified as being exempt under section 40(2). This includes the information requested at part 'b' of the request which the Commissioner does not consider constitutes third party personal data. That is information as to where a mentor vacancy was advertised, how many applied or how many were interviewed. It

also includes information which the Commissioner considers would not be unfair to disclose. This includes the job role and date of leaving requested at part 'a' of the request, and the current status and rate of pay (within a £5,000 band) requested under part 'b' of the request.

4. The public authority 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 13 January 2012 the complainant wrote to the College and requested information in the following terms:

- "a. A list of all staff (obviously names are not necessary) who have left the College's employment since May 2007. This information should be displayed in a column format with the following headings: Month and year of departure; Job role (e.g. teacher, mentor, caretaker etc.); The rating their teaching received at their last OFSTED inspection (if applicable); Number of years they had been at the college; Reason given for leaving (e.g. retired, left to take another job, sacked etc.); Nature of employment (e.g. part time, full time etc.).
- b. A list of all mentors (again names not required) employed by the College since May 2007. This information to be presented in a column format with the following headings: Current status (currently or formally employed); Where their specific job was advertised; How many applicants applied for the position; How many of these were consequently interviewed; Whether the applicant was a former student of the college; Their current rate of pay/Rate of pay at the date left."

6. In a separate letter on the same date the complainant also requested:

"A list of complaints made to the College and/or Governing Body since May 2007 (both verbal and written). This information to be presented in a column format with the following headings:

Description of the complaint; Who the complainant was (e.g. current member of staff, former staff, student, parent, member of the public etc.); The action the college/governing body took in response to the complaint; Who the complaint was made against – senior management

(senior management being defined here as [named individuals], teaching staff, support staff, other."

7. The College responded on 30 January 2012. It provided some information within the scope of the request but refused to provide the remainder citing section 40(2) FOIA. It provided the complainant with a table containing a description of the complaint, the date it was made, an indication as to who the complainant was made by e.g. student or parent etc, the action taken in response to the complaint and who the complaint was made against e.g. the College, a teacher, a pupil etc. The College refused to provide any information relating to five complaints as it said this may enable particular individuals to be identified. Furthermore it refused to provide the information relevant to point a and b of the first request as it said again particular individuals could be identified if this information were disclosed.
8. Following an internal review the College wrote to the complainant on 9 March 2012. It upheld its original decision.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way the requests for information had been handled. In particular the Commissioner has considered whether or not the College had been correct to apply section 40(2) FOIA in order to withhold some of the requested information.

Reasons for decision

10. Section 40(2) of the Act provides an exemption for information that constitutes the personal data of third parties:

"Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied."

Section 40(3)(a)(i) of the Act states that:

"The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress),"

11. The College has explained that the withheld information is the information relating to staff leavers, the taking on of mentors and information relating to five complaints. It has explained to the Commissioner why it considers disclosure of this information, even in an anonymous format, would identify particular individuals. This is because members of staff at the College and other individuals connected to the College, e.g. parents and students, may have prior knowledge or other information, which used alongside the withheld information could enable them to identify relevant individuals.
12. The Commissioner considers that individuals connected to the College may be able to use some of the withheld information alongside other information of which they have prior knowledge to identify certain particular individuals. The Commissioner therefore considers that some of the withheld information is third party personal data, disclosure of which would enable individuals to be identified.
13. The Commissioner does not consider that some of the information requested under part 'b' of the request would amount to third party personal data. For example the Commissioner does not consider that where a mentor vacancy was advertised, how many applied or how many were interviewed would enable the identity of an individual to be identified. The Commissioner therefore considers that section 40(2) FOIA would not apply to this information.
14. In relation to the information which is third party personal data, such information is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) of FOIA, where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully".

15. In reaching a decision as to whether disclosure of the requested information would contravene the first data protection principle the Commissioner has considered the following: -

Reasonable expectation of the data subject

16. In relation to part 'a' of the request, the Commissioner considers that disclosure of the role of an individual who left the College along with the date they left would be something that individuals with internal knowledge would already be aware of. The Commissioner therefore considers that the data subjects would reasonably expect this information to be disclosed more widely as the fact that someone occupying a particular role has left employment at the College on a specific date is likely to be fairly widely known within the College community. Even if individuals within the College know the identity of the College leavers, this is something they would already be aware of despite disclosure of this information under FOIA. In terms of the more detailed information such as why they left the College, the Commissioner accepts that this may not be widely known within the College and the data subjects would not have a reasonable expectation that this more detailed information would be disclosed into the public domain.
17. In relation to the information requested at part 'b' of the request which would amount to third party personal data, the Commissioner considers that the data subject would not reasonably expect information to be disclosed as to whether or not the mentor was/is a former student of the College. This is because this relates solely to the data subjects private life and the Commissioner considers that they would not reasonably expect this to be disclosed. In terms of whether the data subject is a current mentor or whether they no longer occupy the role of mentor again the Commissioner considers that the data subjects would reasonably expect this information to be disclosed more widely as the fact that someone occupying a mentoring role has left employment at the College or still occupies that role is likely to be fairly widely known within the College community. Even if individuals within the College know the identity of the leaver/mentor, this is something they would already be aware of despite disclosure of this information under FOIA. In terms of the rate of pay, the Commissioner considers that even if the data subjects could be identified by individuals within the College community, they would have a reasonable expectation that pay scales within a £5,000 band could be disclosed. This is consistent with ICO Guidance on when salaries should be disclosed.
18. In relation to the information about the five complaints which were withheld entirely, the College has provided arguments which are

contained in the Confidential Annex attached to this Notice. Based upon these arguments the Commissioner considers that the data subjects would not reasonably expect this information to be disclosed.

The legitimate public interest

19. The Commissioner considers that there is a legitimate public interest in disclosure of information which promotes openness and transparency in relation to the running of the College generally, including information relating to complaints, leavers and recruitment. The Commissioner considers that the legitimate public interest can be met some way by disclosure of the role and date of leaving requested at part 'a' and the current status and salary scales requested at part 'b'. The Commissioner is also satisfied that the College has released much of the information requested relating to complaints which again goes some way to meeting the legitimate public interest in this case.
20. In terms of the remainder of the requested information which does amount to third party personal data, the Commissioner considers that there is a legitimate public interest in disclosing information which demonstrates that the College is dealing with staffing and complaints in a proper manner. However, he considers that the interests of the data subjects are not overridden by the legitimate public interest in this case. This is because the data subjects would not expect that this information would be disclosed based upon the arguments set out above and contained within the Confidential Annex attached to this Notice.
21. The Commissioner therefore considers that the College incorrectly applied section 40(2) to some of the information requested as it does not amount to third party personal data. In relation to the remaining information requested at part 'b' the Commissioner does not consider it would be unfair to disclose this information apart from whether or not the mentor was a previous student at the College. In relation to part 'a' of the request the Commissioner does not consider that it would be unfair to disclose the job role and date of leaving.
22. The Commissioner does however consider that the College was correct to apply section 40(2) to the remaining information requested at part 'a', specifically the information as to whether the mentor was a previous student at the College requested at part 'b', and the complaint information withheld relating to the five complaints contained in the table referred to in paragraph 7 of this notice.

Right of appeal

23. 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

24. 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.
25. 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

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF