

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2013

Public Authority: Bedgrove Junior School ("the School")
Address: Ingram Avenue
Aylesbury
Buckinghamshire
HP21 9DN

Decision (including any steps ordered)

1. The complainants have requested information from Bedgrove Junior School about the prolonged absence of the Headteacher from the school. The requests for information included details about the reasons for the absence, dates of departure and likely return, details of any disciplinary proceedings or complaints made against the Headteacher, copies of correspondence dealing with the absence, and whether a salary was being paid in absence.
2. The School provided some of the requested information and relied upon Section 40(2) of the FOIA in relation to the majority of the remaining requested information. It stated that the information was personal data and its release would infringe the Data Protection Principles as the release of it would be unfair. The Commissioner's decision is that the School have met their obligations under the FOIA. He is satisfied that the release of the requested information would be unfair. He therefore does not require the School to take any steps to comply with the legislation.

Request and response

3. On 11 July 2012 the complainants requested information from the school as follows:

"Request 1. The date of [name redacted] departure.

Request 2. The reason for [redacted] departure.

Request 3. The details and outcome of any disciplinary proceedings which were on going or completed against [name redacted] in the period leading up to [redacted] departure.

Request 4. Copies of all communications concerning this departure to pupils/parents/members of staff/Governing body and external organisations e.g. the LEA, both before departure took place and since.

Request 5. Whether [name redacted] is expected to return and when?"

4. On 13 July 2012 the School responded and advised that the Headteacher was absent for personal reasons. On the same date the complainants requested that the School treat the request as a request for information under the FOIA.

5. On 16 July 2012 the School provided the complainants with a response to the matters they had raised. Answers were given to requests 1 and 2, copy correspondence in the public domain was provided in respect of request 4 and the School advised that it considered any further information requested was the personal data of the Headteacher. It advised that this information was exempt from disclosure under section 40(2) of the FOIA.

6. On 17 July 2012 the complainants indicated that they were not satisfied with the response received and raised 3 further matters as follows:

"Request 6. The school complaints log for the last two academic years – 2010 to 2011 and 2011 to 2012.

Request 7. The details and outcome of any complaints procedures which were ongoing or completed against [name redacted] in the lead up to his departure/absence.

Request 8. Whether [name redacted] is still being paid?"

7. On 22 July 2012 the School provided the complainants with the date from which the Headteacher was absent from the School (request 1). It also gave a response to the other requests indicating that it was relying on section 40(2) FOIA and would not provide data which is considered to

be personal and which it believed would contravene its obligations under the Data Protection Act 1998 (the "DPA").

8. On 24 July 2012 the complainants asked the School to conduct an internal review and made additional comments in respect of requests 6-8 inclusive. In particular they limited the scope of request 6 to "*recorded comments related to [name redacted]*". On 4 September 2012 the School provided its response to the additional comments the complainants had made in respect of requests 6-8.
9. On 10 September 2012 the School provided its internal review dealing with each of the information requests. It stated it would not be providing any additional information and was relying upon section 40(2) of the FOIA.

Scope of the case

10. The complainants contacted the Commissioner on 19 September 2012 to complain about the way the requests for information had been handled. At an early stage they accepted that request 1 had been dealt with and narrowed the scope of their complaint to requests 2-8. In respect of all other matters the School submitted that the information requested was personal data. Therefore the scope of this case has been to consider whether the School was correct in relying upon section 40(2) in refusing to provide the information in requests 2-8.

Reasons for decision

11. Section 1(1) of the FOIA states 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."

12. In this matter the School advised the complainants that it relied upon section 40(2) of the FOIA, as it believes that the information requested is personal data the disclosure of which would breach the principles of the DPA.
13. Sections 40(2) and 40(3)(a)(i) set out an exemption for information which is the personal data of a third party, the disclosure of which would

be in breach of the principles of the DPA. In this case the School sought to rely on the first principle of the DPA which states that personal data must be processed fairly and lawfully.

14. Personal data is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller. In this matter the requested information is clearly personal data as it relates to an identifiable living individual – in this case the Headteacher of the School.
15. Having identified that the requested information is personal data consideration has to be given to whether its release would be fair. In considering whether disclosure of the requested information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
 - the consequences of disclosure to the data subject;
 - the data subject's reasonable expectations of what would happen to their personal data; and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
16. In response to the request the School explained that the Headteacher is absent for 'personal reasons'. The School has provided further details to the Commissioner. Having considered this information, the Commissioner is satisfied that this information is of a personal nature. Although the Commissioner notes that the requests (2) to (8) are for various pieces of information, he considers that given the nature of these requests, the requested information would all relate to the reasons behind the absence of this individual. Whilst, because of the nature of the information provided to him by the School the Commissioner is unable to provide any further detail in this Notice, he considers that it is reasonable to say that the circumstances which lead to an employee being absent from their post for some time is likely to relate to that individual's private life as much as their professional or public life. Therefore, the Commissioner is satisfied that the disclosure of this information would be likely to result in an invasion of the Headteacher's privacy.
17. Bearing these points in mind, and after considering the arguments made by the School, the Commissioner considers that the disclosure of the

information in question would have a detrimental and distressing effect upon the individual concerned.

18. The School has also provided evidence that none of the withheld information is in the public domain to its knowledge. It has informed the Commissioner that it believes that the release of information would cause distress and be an unwarranted intrusion. From the information submitted the Commissioner concludes that, in these circumstances, the reasonable expectations of the Headteacher would be for this information to remain confidential.
19. The issue of the balance between the rights and freedoms of the individual concerned and the legitimate interests of the public has also been considered. The person concerned is a Headteacher of a primary school. This position attracts greater responsibility and accountability than the position of other members of staff. A prolonged absence would be of concern to parents of the School and explanations could be reasonably expected.
20. After consideration of both the complainants' arguments that an explanation is owed for a prolonged absence of a key member of staff and the rights, and reasonable expectations, of the Headteacher as to the use of their personal data, the Commissioner is of the view that the balance lies in favour of protecting the rights and freedoms of the individual. Accordingly it would not be fair for the requested information to be released.
21. The Commissioner therefore considers that the School has acted appropriately in withholding the requested information and is entitled to rely upon sections 40(2) and 40(3)(a)(i) of the FOIA.

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

Rachael Cragg
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