

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 November 2013

Public Authority: Chirbury CE VC Primary School

Address: Chirbury
Montgomery
SY15 6BN

Decision (including any steps ordered)

1. The complainant has requested a report containing complaints made against a Head Teacher at Chirbury Primary School ("the School").
2. The School refused to provide the requested information and relied upon section 40(2) of the FOIA. It stated that the information was personal data and its release would breach principle 1 of the Data Protection Act 1998 ("the DPA")
3. The Commissioner's decision is that the School is entitled to rely on section 40(2) of the FOIA as a basis for refusing to provide the complainant with most of the requested information.
4. However, the Commissioner considers that some of the requested information is not exempt under section 40(2) and this information should be disclosed. This is detailed in a Confidential Annex.
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 Act and may be dealt with as a contempt of court.

Request and response

6. On 8 March 2013, the complainant (in this case the request was made by a group of complainants called the Chirbury Guardians, for simplicity the Commissioner will refer to them as the "complainant") wrote to the School and requested information in the following terms:

"Disclosure of independent inquiry into complaints made against [name withheld]."

7. The School responded on 26 March 2013. It stated that it had decided to withhold the information requested under section 40(2) of the FOIA.
8. On 25 April 2013 the complainant requested a meeting with the Complaints Committee to discuss allegations concerning the complaints made against the Head Teacher.
9. On 10 May 2013 the School confirmed that an investigation into the complaints was carried out. It informed the complainant that it was *"not prepared to go into any more detail on these matters."* It advised the complainant that if they remained unhappy they could make a complaint to the Commissioner. It also refused the suggested meeting.
10. On 17 May 2013 the complainant requested a Governing Board review into the findings of the independent inquiry.
11. On 1 July 2013 the complainant made a complaint to the Information Commissioner's Office about the School's decision not to disclose the requested information.

Scope of the case

12. The complainant contacted the Commissioner to complain about the way its request for information had been handled.
13. The scope of this case is to consider whether the School handled the complainant's request in accordance with the FOIA. The Commissioner will therefore consider whether the School is correct to withhold the requested information under section 40(2) of the FOIA.

Reasons for decision

Section 40(2) – Requests for third party personal data

14. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.

15. '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.

Personal data

16. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, had them as its main focus or impacts on them in any way.
17. The Commissioner has viewed the withheld information and notes that it clearly relates to the Head Teacher and third parties (parents, staff and pupils). Having considered the withheld information the Commissioner is satisfied that the information relates directly to a living and identifiable individual.
18. As the Commissioner finds that the withheld information in its entirety constitutes personal data he has concluded that the information falls within the scope of the exemption. He has gone on to consider whether disclosure would breach the principles of the DPA.
19. In the School's response to the complainant, it stated that in providing the requested information, this would breach the first principle of the DPA. The first principle requires, amongst other things, that personal data is processed fairly and lawfully, and that one of the conditions of schedule 2 is met.

The Commissioner's approach to fairness

20. The Commissioner has first gone onto consider whether the disclosure of this information would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
- the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure, (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectation of the data subject

21. The School stated that the Head Teacher has a strong expectation that the requested information would be kept confidential. It explained that within the documentation is personal information relating to the Head Teacher and to third parties. It added that even if the third parties agreed to their details being made public, the information would still relate to the Head Teacher and he would be entitled to seek advice to prevent its disclosure in any event.
22. This information relates to complaints against the Head Teacher and a subsequent internal investigation. The Commissioner accepts that in relation to disciplinary matters of this type it is usual that the subject of such an investigation would generally expect this to be an internal matter. Therefore he considers that it would be within the reasonable expectations of the individual for this information to not be put into the public domain.

Would disclosure cause damage and distress to the data subject?

23. The Commissioner notes that the information in this case is an investigation into complaints made against a Head Teacher. The School had chosen to deal with the allegations by following a disciplinary process. Therefore as the School stated, the documents relate to an individual's personal employment details concerning a disciplinary process. The Commissioner would generally expect this information to be confidential.
24. Therefore the Commissioner is satisfied that the disclosure of this information would cause damage and distress to the Head Teacher.

The legitimate public interest

25. The complainant had made clear to the ICO that they were dissatisfied with the investigation which was carried out by the Council and the findings of this investigation that were presented to the Governing board.
26. The complainant believes that the allegations made were of a serious nature. However to their knowledge no action had been taken. Therefore, the complainant's had requested to have sight of the report and its recommendations to the Governors and are unhappy that the request had been rejected.
27. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the

private interests of the complainants) accessing the withheld information.

28. The legitimate interests are that in this case it is obvious that there have been a number of complaints made against the Head Teacher of a primary school. This had resulted in a disciplinary investigation by the local authority. In a letter to the complainant dated 6 February 2013, the Council had confirmed this and had provided some general comments about the outcome of its investigations. It explained that this investigation had led to appropriate action being taken by the School. This is in relation to the Head Teacher to ensure that he is aware of the expectations of the School and the local authority "*in his leadership of the school and interactions with all those involved within the life of the School.*"
29. The complainant remains concerned that the Council's actions have not gone far enough. Given this, and the role and responsibilities of the Head Teacher, the Commissioner is satisfied that there is a strong legitimate interest in the disclosure of the requested information.
30. Therefore the Commissioner considers that there is a legitimate public interest in the information being disclosed.

Conclusion

31. It is the Commissioner's view that the Investigation Report contains all the personal information of the Head Teacher. He also considers that the individual would have had a reasonable expectation for the information not to be disclosed, and that the disclosure of this information would be likely to cause damage and distress.
32. In light of this, and the nature of the information in question, the Commissioner is satisfied that to release the whole content of the Investigation Report would be an intrusion of privacy. He considers that this would potentially cause unnecessary and unjustified distress to the Head Teacher in this case.
33. Based on the above, the Commissioner is satisfied that disclosure of most of the information would breach the first data protection principle as it would be unfair to the Head Teacher concerned.
34. However, the Commissioner does consider that it would be unfair to disclose some of the information in question. The Investigation Report contains some bullet pointed recommendations. (Given what the School and the Council had already publically confirmed) the Commissioner considers that it would not be unfair to disclose most of these recommendations.

35. Having decided that disclosure of the withheld information would be fair, the Commissioner has gone on to consider whether the disclosure would be lawful. In this case, the Commissioner is not aware of any duty of confidence or statutory bar protecting this information. Therefore he is satisfied that the disclosure would be lawful.
36. The Commissioner has gone on to consider whether any of the conditions in schedule 2 of the DPA can be met for the disclosure of this information.
37. The Commissioner considers that the most applicable condition in this case is likely to be condition 6 which gives a condition for processing personal data where the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
38. In order for this condition to be met:
 - there must be a legitimate interest in disclosing the information;
 - the disclosure must be necessary for that legitimate interest; and
 - even where the disclosure is necessary, it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms and legitimate interests of the data subject.
39. The Commissioner has detailed the legitimate interests in the disclosure of this information above. The Commissioner considers that the disclosure of this information is necessary for these legitimate interests.
40. Having already established that the processing is fair, the Commissioner is also satisfied that the release of this information would not cause any unnecessary interference with the rights, freedoms and legitimate interests of the Head Teacher. Therefore he is satisfied that this schedule 2 condition is met.
41. Therefore the Commissioner considers that the disclosure of most of the recommendations contained in the Investigation Report would not be in breach of the first principle of the DPA. As such he does not consider that this information is exempt under this exemption. Therefore this information should be disclosed.

42. The information that the Commissioner considers should be disclosed is set out in the Confidential Annex.

Right of appeal

43. 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

44. 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.
45. 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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