

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 February 2014

Public Authority: Oswald Road Primary School
Address: Oswald Road
Chorlton cum Hardy
Manchester
M21 9PL

Decision (including any steps ordered)

1. The complainant has requested to know the reasons behind the former Head Teacher's sudden departure from the school in September 2012. Oswald Road Primary School ('the school') responded refusing to disclose the requested information under section 41 of the FOIA.
2. The Commissioner has reviewed this complaint and he considers section 40 of the FOIA should have been applied by the school in this case. He has considered section 40 of the FOIA and decided that the requested information is exempt from disclosure by virtue of this exemption.
3. As he is satisfied that the requested information should not be disclosed, he does not require any further action to be taken in this case.

Request and response

4. On 7 June 2013, the complainant wrote to the school and requested information in the following terms:

"1. Why did the former Head Teacher [named redacted] unexpectedly disappear from school a couple of days after the start of the current year?

2. You wrote a short letter to parents soon after this stating: "The staff and myself are feeling both very excited and positive." Why did you file my complaint about your letter in a confidential appendix when it contained no confidential information, nor did the governors' response to my complaint?"

3. The former Head Teacher has since resigned, presumably following an Employment Tribunal, although you have never shared this information with parents. What was the outcome of the Employment Tribunal?
 4. What reasons, if any, did the former Head Teacher give for her resignation?
 5. Has she received compensation?
 6. [In relation to 3, 4 and 5] This happened months ago. Why have you not shared some or all of this information with parents?
 7. Regarding the appointment of the Acting Head to the post of Head Teacher, how many applicants applied for the post?
 8. How many applicants were formally interviewed for the post?
 9. The Information Commissioner has informed me that, according to Manchester City Council, One Education oversaw the issues relating to the departure of the former Head Teacher, and held all the recorded information relating to that situation up until January 15th 2013. Is this true?"
5. The school responded on 5 July 2013 addressing each question in turn. In response to some the school stated that it did not hold any recorded information. In respect of some questions the school stated that the information was exempt from disclosure under section 41 of the FOIA. In reply to others the school provide the necessary answer or information required.
 6. The complainant requested an internal review on 8 July 2013.
 7. The school carried out an internal review on 23 October 2013 and informed the complainant that it considered any requested information which relates to the former Head Teacher's departure from the school to be exempt from disclosure under section 41 of the FOIA.

Scope of the case

8. The complainant first contacted the Commissioner on 7 October 2013 to complain about the way her request for information had been handled. At this time the complainant had not received the school's internal review despite this being requested in July. This was soon rectified and the complainant received the school's internal review on 23 October 2013. The complainant also complained that she had been refused information under section 41 of the FOIA. She believes that she and

others involved with the school have a right to know what happened to the former Head Teacher and why she left so suddenly.

9. During the Commissioner's investigation the complainant agreed to narrow her complaint to one piece of information – her request to know why the Head Teacher left the school in September 2012. The Commissioner has therefore focused his investigation on this element of the complainant's request only.
10. Although the school applied section 41 of the FOIA, the Commissioner is of the view that the most appropriate exemption in this case is section 40. He has therefore focussed on this exemption and whether it applies to the information the complainant requires.
11. The Commissioner has not requested a copy of the withheld information in this case. He does not consider it is necessary to obtain the reasons why the former Head Teacher left the school from the school in order to reach a decision on the application of section 40 of the FOIA.

Reasons for decision

12. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and disclosure of that data would be in breach of any of the data protection principles outlined in the Data Protection Act (DPA).
13. Personal data is defined 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 that individual and any indication of the intentions of the data controller or any other person in respect of the individual..."
14. The Commissioner considers the first data protection principle is most relevant in this case. 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.”

15. The Commissioner must first consider whether the requested information is personal data. If he is satisfied that it is, he then needs to consider whether disclosure of this information would be unfair and/or unlawful. If he finds that disclosure would be unfair and/or unlawful the information should not be disclosed and the consideration of section 40 of the FOIA ends here. However, if he decides that disclosure would be fair and lawful on the data subject (former Head Teacher) concerned, the Commissioner then needs to go on to consider whether any of the conditions listed in schedule 2 and 3 (sensitive personal data) if appropriate are also met.

Is the requested information personal data?

16. As stated above, the complainant wishes to know the reasons why the former Head Teacher left the school in September 2012. The relevant consideration here is whether the former Head Teacher could be identified from this information if it were disclosed or from a combination of this information and other information otherwise available to the public.
17. The Commissioner considers the former Head Teacher could quite easily be identified by the parents whose children attend or have attended the school, other staff members in the school, the local community and possibly other members of profession if the requested information was disclosed in response to this request. He is therefore satisfied that the requested information falls within the definition of personal data.

Would disclosure be in breach of the first data protection principle?

18. The main consideration here is whether disclosure of the requested information would be fair on the former Head Teacher concerned. The Commissioner must consider the reasonable expectations of the former Head Teacher, the consequences of disclosure (i.e. any distress or unjustified damage to the former Head Teacher) and the legitimate interests of the public.
19. It is important to highlight what disclosure under the FOIA effectively means. If information is disclosed under the FOIA it is essentially being released into the public domain for anyone to see. The consideration here is not whether the requested information should be disclosed to the applicant but whether the information should be released to the world at large.
20. With regards to the expectations of the former Head Teacher it is generally accepted and understood that any information relating to a

staff's employment (i.e. benefits, salary, performance, disciplinary issues and so on) will be treated as confidential and will remain private between employee and employer. It is therefore the Commissioner's view that the former Head Teacher would not expect details relating to her departure from the school, regardless of the reasons, to be disclosed and would expect such information to remain private.

21. As the former Head Teacher, like any other employee, would have a reasonable expectation that this information would remain private, the Commissioner is satisfied that disclosure in this case would be unfair and an unwarranted intrusion into her private life.
22. The Commissioner considers the former Head Teacher would suffer considerable distress and possibly unjustified damage (depending upon the reasons for her departure) if disclosure was ordered of this information. As stated above, he considers the former Head Teacher would have a reasonable expectation that this information would remain confidential. So any disclosure without the former Head Teacher's consent would cause her considerable distress and upset and would be unwarranted intrusion to her right to privacy.
23. The Commissioner accepts that there is a general public interest in accountability and transparency and that the local community, parents and other members of the staff may be interested to know what happened. However, it is the Commissioner's view that such interests do not carry sufficient weight to warrant the intrusion disclosure would cause to the rights and freedoms of the former Head Teacher.
24. The complainant has stated that she is concerned the former Head Teacher may be a victim of unfair dismissal and considers the school management should be transparent about what happened. As stated above, the Commissioner does not know the reasons why the former Head Teacher left, as he did not need to see this information in order to reach his decision. However, if it was indeed the case that the former Head Teacher was a victim of unfair dismissal, it is the Commissioner's view that such information is very much private and it would be for the former Head Teacher herself to pursue should she wish to do so not a concerned parent or member of the public.
25. For the above reasons, the Commissioner is satisfied that the requested information is exempt from disclosure under section 40 of the FOIA. He is satisfied in this case that the requested information constitutes the personal data of the former Head Teacher and that disclosure of the requested information would be in breach of the first data protection principle outlined in the DPA.
26. As a result, he requires no further action to be taken in this case.

Other matters

27. The Commissioner notes that the school took over three months to complete its internal review. Although there is no statutory time set out in the FOIA within which public authorities must complete a review, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. Where it is apparent that determination of the complaint will take longer than the target time, the authority should inform the applicant and explain the reason for the delay. The Section 45 Code of Practice contains comprehensive information on how an internal review should be conducted.

Right of appeal

28. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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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