

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 September 2014

**Public Authority:** Norfolk County Council  
**Address:** County Hall  
Martineau Lane  
Norwich  
NR1 2DH

#### Decision (including any steps ordered)

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1. The complainant has requested information about Cavell Primary and Nursery School's performance and its current and future status as a school.
2. The Commissioner has determined that, on the balance of probabilities, Norfolk County Council has provided the complainant with all of the information it holds falling within the scope of the his request. The Commissioner's decision is therefore that the Council has complied with section 1 of the FOIA.
3. The Commissioner does not require the Council to take any further action in this matter.

#### Request and response

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4. On 14 November 2013, the complainant wrote to Norfolk County Council ("the Council") and requested information in the following terms:  
*"I would like to see all correspondence, minutes and other records you hold about Cavell Primary and Nursery School's performance, and its current and future status as a school, from the last three years."*
5. The Council made its formal response to the complainant's request on 20 January 2014 by issuing a refusal notice. The notice informed the complainant that the Council was refusing to supply the requested information in reliance of the exemption provided by section 36 of the

FOIA, where disclosure would prejudice the effective conduct of public affairs.

6. The Council advised the complainant that it had sought its Qualified Person's opinion on 20 December 2013 and this had been given on 16 January 2014.
7. The Council appeared to have waived its opportunity to review its decision and advised the complainant to complain to the Information Commissioner.
8. The Commissioner wrote to the Council on 15 April 2014 to investigate the Council's application of section 36 to the information sought by the complainant.
9. Following its receipt of the Commissioner's enquiry the Council determined that the information sought by the complainant could now be disclosed to him. The council advised the Commissioner that it would disclose all of the information requested by the complainant other than information which constituted personal data of third parties and school's performance data which was available elsewhere.

## **Scope of the case**

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10. Having received the information disclosed to him by the Council, the complainant contacted the Commissioner again on 17 July 2014. The complainant expressed his concern about the amount of information which the Council had disclosed to him. He was particularly concerned about the Council's claim that it holds no information from the Department for Education ("the DfE") which concerns Cavell Primary School becoming an Academy and the claim that the Council holds no information about the appointment of the Interim Executive Board.
11. In the light of the complainants renewed complaint, the Commissioner has investigated whether the Council holds any further information which falls within the scope of the complainant's request.

## **Reasons for decision**

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### **Section 1 – Is the information held?**

12. Section 1 of 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.”
13. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds further information relevant to this request, other than the information it previously disclosed to the complainant.
  14. The Commissioner makes this determination by applying the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
  15. The Commissioner investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction. The Commissioner also asked the Council to comment on the complainant's assertions that it must hold information from the DfE about Cavell Primary School becoming an Academy and information about the appointment of the Interim Executive Board.

### **The Council's searches**

16. In order to find recorded information falling within the scope of the complainant's request, searches were made of the email accounts, electronic files and paper records of the Council's officers who were relevant to Cavell Primary School becoming an Academy.
17. As information is usually stored in structured files under the name of the school, the Council used the search term "Cavell".
18. Due to the limited storage capacity of the Council's email system, any emails needing to be retained are likely to have been stored in files on the Council's main server or on the hard drive of the officer's PCs. Officers regularly delete routine administrative emails from their email accounts without saving copies. This is its officers' normal working practice once an email has been read and actioned. By deleting this type of emails space is freed in the officer's email accounts.
19. The Council reported that one of its officers had retained emails relating to Cavell Primary School in a folder within his email account and a second officer had saved information onto the hard drive of his laptop. Both sources of potentially relevant information had been searched.

20. The Council has assured the Commissioner that searching these sources of recorded information all documents relating to Cavell primary School should have been found.

### **The Council's retention / deletion of recorded information**

21. The Council is unable to inform the Commissioner whether any information relevant to this request has been destroyed. Nevertheless it has assured the Commissioner that none of its current officers have any knowledge of whether information was destroyed or deleted.
22. The Council provided the Commissioner with a copy of its records retention schedule. In that schedule there is no specific mention of the type of records sought by the complainant, although the 'common practices' section does state that officer's files should be kept for three years.
23. The Council has informed the Commissioner that there are no statutory requirements for the type of information sought by the complainant to be retained.

### **The complainant's assertions**

24. The complainant asserts that the Council must hold information from the Department for Education ("DfE") concerning Cavell Primary School becoming an academy.
25. The Council has assured the Commissioner that it did not have any communication with the DfE about the school becoming an Academy, other than emails between relevant officers with the purpose of setting up a meeting with the school's governing body.
26. The Council advised the Commissioner that it is the Government's policy that schools in special measures should become academies and consequently the Council follows that policy.
27. The complainant also asserts that the Council must hold recorded information about the appointment of the Interim Executive Board ("IEB") for the school.
28. The Council provided the Commissioner with the following clarification:  
  
"There are no statutory requirements regarding the process for appointing an IEB. The Council was required to identify suitable candidates for these roles. In this case individuals with the required knowledge and skills were identified by officers of the Council and the officers approached them in person to ask them whether they would be willing to undertake the work. Their names were then put forward with

the IEB application. Of these board members, one is employed by the Council as Senior Adviser in the Education Intervention and Inspection Service and was already the linked officer for the school; and the Chair is not an employee of the Council but is paid as a consultant to undertake the role.”

### **The Commissioner’s decision**

29. The Commissioner has carefully considered the representations made by the Council and those made by the complainant. The information the Council has given the Commissioner appears to him to be appropriate to the circumstances of this request/complaint.
30. The Commissioner finds no reason to question the extent of the searches made by the Council or its failure to find other information relevant to the complainant’s request. He is therefore persuaded that, on the balance of probabilities, the Council does not hold any further information relevant to the complainant’s request. The Commissioner’s decision is therefore that the Council has complied with section 1 of the FOIA.

## Right of appeal

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31. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**