

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2014

Public Authority: Laneshawbridge Primary School

Address: Emmott Lane, Colne, Lancashire BB8 7JE

Decision (including any steps ordered)

1. The complainant has requested information about Laneshawbridge Primary School's external lighting strategy. Laneshawbridge Primary School ('the School') disclosed some information and said that other information was exempt from disclosure under section 42 of the FOIA (legal professional privilege). The complainant is also not satisfied that the School has disclosed all the related information that it holds.
2. The Commissioner's decision is that the School has correctly applied the exemption under section 42 to some of the information, and has disclosed all of the remainder of the information that it holds.

Request and response

3. On 16 October 2013, the complainant wrote to Laneshawbridge Primary School and requested information in the following terms:
"I would like to raise a Freedom of Information Request with you to see copies of all email correspondence between yourself, other school staff and Lancashire County Council staff with regards to the External Lighting Strategy for the school. My preferred medium for receipt of this information is email."
4. The School responded on 20 November and provided some information within the scope of the request: email correspondence between the head teacher and Lancashire County Council.

5. Following an internal review the School wrote to the complainant on 22 November 2013. The School had identified four further emails, which it disclosed and said that other related information in two additional emails was exempt from disclosure under section 42 of the FOIA. The School said that this was the extent of the information that it held.

Scope of the case

6. The complainant contacted the Commissioner on 6 January 2014 to complain about the way their request for information had been handled. They were particularly concerned that the School had deliberately deleted emails that fell within the scope of their request.
7. The Commissioner has focussed his investigation on whether the School disclosed all the information related to the request that it holds. He has also considered whether the School has correctly applied the section 42 exemption to some of the information.

Reasons for decision

8. Section 1 of the FOIA says that a public authority must tell an applicant whether or not it holds information that they have requested and, if it does, it must communicate that information to the applicant.
9. In its submission to the Commissioner, the School has detailed the searches it undertook in order to identify information that would fall within the scope of the complainant's request.
10. Using search terms including the names of relevant individuals, 'lighting' 'freedom of information' and 'Lancashire County Council', the School searched the email accounts of the head teacher and school bursar. The School considered that these were the accounts that would contain any correspondence between school staff and Lancashire County Council, and the complainant had specifically asked for email correspondence.
11. The School says that email correspondence would not have been held in any other email accounts, or printed, or saved elsewhere.
12. The complainant is concerned that the School has deliberately deleted relevant emails. This is because they have received related information from a separate request they made to Lancashire County Council, and because some of the email correspondence that the School has disclosed appears to end abruptly.

13. The School has submitted to the Commissioner three answers to this claim. First, the School moved into a new building in November 2012 and does not hold any emails that predate that move. This would explain why the complainant received some information in response their request to Lancashire County Council which had not been disclosed by the School. Second, during September to October 2013, the bursar deleted some of the oldest emails in the head teacher's mailbox. The mailbox had become full and it is the School's practice to delete emails as and when necessary, in order to create space. The School cannot confirm whether information that may have been relevant to this request was deleted. Finally, the School has suggested that, where email correspondence ends suddenly, this may be because the conversation was continued on the telephone.
14. Having considered the School's submission, the Commissioner is satisfied that, on the balance of probabilities, the School has disclosed to the complainant all the relevant information that it holds, and has met the requirements under section 1. He does however consider that there are some shortcomings in the School's record management practices and these are discussed briefly at paragraph 27.
15. Section 42(1) of the FOIA says that information is exempt from disclosure if it is subject to legal professional privilege.
16. The purpose of legal professional privilege is to protect an individual's ability to speak freely and frankly with their legal advisor in order to obtain appropriate legal advice. It recognises that individuals need to lay all the facts before their adviser so that the weaknesses and strengths of their position can be properly assessed. Therefore legal professional privilege evolved to make sure communications between a lawyer and their client remain confidential.
17. There are two forms of legal professional privilege: litigation privilege and advice privilege. Litigation privilege applies to confidential communications made for the purpose of providing or obtaining legal advice about pending or contemplated legal proceedings.
18. Advice privilege applies where there is no litigation contemplated or in progress. It also protects confidential communications between a lawyer and their client, and the communications have to be made for the dominant purpose of obtaining or providing legal advice.

19. Having had sight of the two emails in question, between Lancashire County Council Legal Services team and the School's head teacher and chair of governors, the Commissioner considers that the information contained in them does constitute legal advice.
20. The Commissioner considers that the legal advice will remain confidential if it has only been shared with a limited number of people on a restricted basis. The School has told the Commissioner that one of the emails was copied to a member of Lancashire County Council's Planning team. Because the email only circulated between Council and School staff, the Commissioner is satisfied that, in this case, the communications have remained confidential.
21. Consequently, he is satisfied that the information is capable of attracting legal professional privilege and therefore is exempt information under section 42(1).
22. This exemption is subject to the public interest test. The public interest test requires the public interest in favour of maintaining the exemption to be weighed against the public interest in disclosing the information. The information can only be withheld if the public interest in favour of maintaining the exemption outweighs the public interest in favour of disclosure.
23. It is accepted by the Commissioner, the Tribunal and the Courts that there is a strong inherent public interest in preserving the concept of legal professional privilege. This reflects the importance given to people being able to consult with their legal adviser in a full and frank manner. The need to safeguard the openness of these communications is fundamental to the British legal system.
24. The School has argued that fear of possible disclosure would impair the quality of future advice given. This would result in the School making decisions that were not fully informed, which would be contrary to the interests of the School, its pupils and the general public.
25. However, the School recognises that transparency and accountability are strong public interest arguments in favour of disclosing the information in question.
26. In this case, the Commissioner agrees that the relative merit in the public being made aware of the School's position regarding compliance with an external lighting strategy is outweighed by the effect that its disclosure could have on the requesting and provision of legal advice in the future. Therefore section 42(1) can be relied on to withhold the information, which the Commissioner is satisfied attracts legal professional privilege.

Other matters

27. The Commissioner notes that Laneshawbridge Primary School appears to manage some of its electronic records in a rather informal and 'ad hoc' way, and he suggests the School reviews its current practices. There are a number of benefits to good record and information management, one of which is to those requesting information, because it provides some assurance that the information provided will be complete and reliable.
28. Under section 46 of the FOIA, the Lord Chancellor issued a [Code of Practice on the Management of Records](#); the School may find this helpful.

Right of appeal

29. 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

30. 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.
31. 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
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