

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 2014

Public Authority: The Governing Body of Wymondham High Academy Trust

Address: Folly Road
Wymondham
Norfolk
NR18 0QT

Decision (including any steps ordered)

1. The complainant has requested information from Wymondham High Academy Trust (the Trust) about the consultation responses on changes to the school day. The Trust withheld the information, citing the exemption under section 40(2) of the FOIA (third party personal data).
2. The Information Commissioner's decision is that the Trust incorrectly applied the exemption under section 40(2). He requires it to take the following steps to ensure compliance with the legislation: disclose all the consultation responses with names, addresses and any biographical details redacted; and disclose the Trust's responses to these consultation responses.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information 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.

Background

4. In December 2013, the Trust proposed changes to the School day to be effective from September 2014. The Governors had agreed to the change in principle, subject to consultation with staff, parents and students. The document was sent to 1850 households and the deadline for the response was 17 January 2014. The Chair of Governors wrote to parents providing the feedback from the consultation and how the proposal had been modified to address the feedback.

Request and response

5. On 21 January 2014 the complainant made the following request for information under the FOIA:

'Where any of the information requested contains any personal information please redact this information and provide the rest of the information.'

Where providing the information would breach the limit for the provision of the information free, please provide as much of the information as you can up to the free limit. Alternatively, please provide any suggestions you have on how the information could be provided free.

Please provide the information electronically wherever possible by return to the email address I have used for this request. Where there is information only available in hard copy please scan the information and email it to me.

The information I am requesting is a copy of all of the responses provided to the recent consultation on Changes to the school day. Please provide all responses received no matter how they were received or from who they were received. Further, please provide a copy of any responses by the academy to the responses received by the academy.'

6. The Trust refused to provide the requested information citing the exemption section 40(2) of the FOIA. The complainant requested a review of this decision as he had specifically stated that personal data could be redacted. The Trust maintained this position on 11 March 2014 as:

'the emails were provided to the school with names and email addresses but also personal opinions. While the names and addresses could be redacted, the opinions could not be (without making the whole exercise pointless).'

Scope of the case

7. On 21 April 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He argued that he had asked for copies of all the consultation responses not just the responses from the parents. He understood that the Trust had consulted the Town Council and others in the town.

8. He also argued that at the end of the Parent Consultation document is a statement that the Trust will *'write to all parents to share the outcome of the consultation.'*

'The Trust has made a decision based on a consultation that it carried out but has refused to provide the detailed results of that consultation. I am deeply concerned about the decision making process that has been conducted by the Trust. This concern could be simply cleared up by providing the responses to the consultation as requested.'

9. The scope of this case is to determine if the Trust has correctly applied section 40(2) of the FOIA.

Reasons for decision

Section 40(2) – Third party personal data

10. 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. The first principle of the Data Protection Act 1998 (the 'DPA') states that personal data must be processed fairly and lawfully.

Is the withheld information personal data

11. Before looking at the data protection principles in more detail it is necessary to consider whether the requested information constitutes personal data. '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.

12. 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, has them as its main focus or impacts on them in any way.
13. The Trust received 280 written responses from staff, students and parents. A meeting was held with the Mayor *'who was supportive of the idea, however, no record of the meeting was made...There was no formal meeting with the Town Council, although one of the School Governors is a Town Councillor and supported the proposal. There was no formal response from any other bodies.'*
14. Given that the complainant specifically asked in his original request that any names or addresses were removed, then it is only the comments that are left. Comments are not, in themselves, personal data unless they can be related to identifiable living individuals.
15. The complainant argued that the Trust stated that it would write to all parents to share the outcome of the consultation. This took place in the letter from the Chair of the Governors. The Trust argued that *'at no time had we stated that individual responses would be shared at the end of the consultation, nor did we feel that individual parents would assume their responses would be published.'*
16. The Commissioner refers to a previous decision notice [FS50499612](#) where the refusal to provide the survey information was upheld by the Commissioner as the numbers involved in the survey was so small. This would not apply to the Trust's survey as the numbers were much higher.
17. Another decision notice [FS50504859](#) related to the 11+ entrance test for a school and the Commissioner concluded that section 40(2) was applied incorrectly as the anonymised copies of the full test results were not personal data.
18. Having examined the withheld information, the Commissioner notes that it is possible to categorise the responses as staff or pupil or parent but not relate the responses to a particular person. In addition, the number of survey responses is important. With 280 responses forming the data it would be very difficult to explain how a particular comment related to an identifiable individual.

19. Therefore, the Commissioner does not consider the comments from the staff/parents/students in the consultation feedback to be personal data and does not uphold the exemption section 40(2). A copy of the withheld information should be provided to the complainant with all names, addresses and any biographical detail that could relate to a pupil or parent redacted.
20. The Commissioner then went on to consider the Trust's responses, if any, to the parent/staff/student survey feedback. If these were all sent by one person, then they may be considered to be personal data as they will be related to an identifiable individual.
21. The Trust has confirmed that the Vice Principal made all the responses to the survey feedback: he responded to specific questions from parents. These responses can be related to one identifiable individual and are therefore personal data.
22. Having concluded that this specific information is personal data the Commissioner has gone on to consider if disclosure of the Vice Principal's responses would be fair.

Would disclosure breach the Data Protection Principles?

23. When considering the first principle of the DPA the Commissioner will start by looking at whether the processing is fair. If the disclosure would be unfair the information is exempt.
24. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

25. The view of the Commissioner is that there is an expectation that an employee in a public authority will have a certain amount of information about them disclosed. The Commissioner has issued guidance about requests for personal data about public authority employees:
http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx
26. This guidance talks about whether the information requested relates to them as an individual or in their professional role, and is the information contained in their personnel file as opposed to actions

they have taken in carrying out their job. It also suggests consideration should be given to whether the employees are senior within the organisation or have a public facing role.

27. In this case, the Vice Principal is a senior member of the Trust and was sending the responses as part of his professional role. Therefore, there is a greater expectation that this information should be released and that it is fair to do so.
28. However, the Commissioner understands that the Vice Principal would not routinely make public answers to specific questions from parents.
29. Having examined the responses from the Vice Principal, the Commissioner considers that the subject matter of the responses does not reveal any personal data about the sender or the receiver of the correspondence. The responses are limited to the feedback on the changes to the school day and are not personal data as the comments cannot be related to an identifiable individual.

Consequences of disclosure

30. The Trust has not provided the Commissioner with any detailed explanation as to the possible consequences of disclosure.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

31. The Trust has already published feedback from the consultation in a letter from the Chair of the Governors. This outlined the main issues raised by the parents and the amendments to the proposal for the changes to the School day to address the concerns raised by the consultation process.
32. When balancing fairness to the individual with any legitimate interest in the public having access to the information the Commissioner notes that under the FOIA a disclosure is to the world at large.
33. In terms of the consequence to the Vice Principal having viewed this information it is not obvious how the disclosure of the detailed responses to the parent's specific questions would have any tangible detriment to him.
34. Therefore, the Commissioner is satisfied that the withheld information which stems from the Vice Principal is personal data but

disclosure would not breach the first data protection principle of fairness.

35. For clarity, when a disclosure would be fair, the Commissioner must also consider whether it would be necessary in accordance with Condition 6 in Schedule 2 of the DPA. The full wording of Condition 6 is as follows:

“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”. The Commissioner has gone on to consider whether any of the schedule 2 conditions of the DPA are met for disclosure of the information.

36. In order for the condition to be met, the Commissioner considers that disclosure must satisfy a three part test:

(i) there must be a legitimate interest in disclosing the information

(ii) the disclosure must be necessary for that legitimate interest

(iii) even where the disclosure is necessary it must not cause unwarranted interference or harm to the rights, freedoms and legitimate interests of the data subject.

37. There is a legitimate public interest in accountability and transparency and in the Trust complying with the FOIA unless there is a valid reason for not doing so. No such reason exists in this case and the Commissioner therefore considers that the disclosure should take place since it would not be unwarranted by reason of prejudice to the rights or legitimate interests of the data subjects. He is therefore satisfied that the schedule 2 condition is met.

38. Having decided that disclosure of the Vice Principal's responses would be fair and would meet a schedule 2 condition the Commissioner has gone on to consider whether disclosure would be lawful. The information is not protected by any duty of confidence or statutory bar and he therefore considers that its disclosure would be lawful.

Conclusions

39. The Commissioner does not uphold the Trust's application of the exemption provided at section 40(2) of the FOIA. Section 40(2) is an absolute exemption, ie there is no requirement to consider the public

interest test set out at section 2 of the FOIA. The exemption is not engaged and the Trust was incorrect to withhold the information.

Right of appeal

40. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

41. 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.
42. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF