

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 September 2015

Public Authority: The Governing Body of Portadown College

Address: Killicomaine Road
Portadown
County Armagh
BT63 5BU

Decision (including any steps ordered)

1. The complainant has requested copies of speeches made by the Chair of Governors and Principal at Portadown College (the College) on a particular speech day. The College stated it did not physically hold the requested information and considered that any relevant information held by the Chair and Principal would not be subject to FOIA. The Commissioner disagrees and considers that any material in the possession of the Chair and Principal that fell within the request description would in principle be covered by the legislation. He therefore requires the College to take the following steps:
 - Issue a fresh response which doesn't state that the information is not held by the College for the purposes of FOIA.
2. 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 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

3. On 14 January 2015, the complainant wrote to the College and requested information in the following terms:

"[We] are very concerned about the content of the speeches made by the Chair of the Board of Governors and the Principal at [the College's Speech Day on 24 October 2014].

[We wish] to consider the text of the speeches and I am therefore writing to you through the auspices of [...] Freedom of Information (2000) to request a copy of the speeches. I would point out that as both documents were read at a public meeting and were subsequently sent to and reported in, the local newspaper, the Portadown Times, they would be considered public documents by the Information Commissioner.

4. The College responded on 10 February 2015 and advised that it was unable to comply with the request as it did not hold copies of the speeches, in either electronic or hard-copy form.

Scope of the case

5. The complainant contacted the Commissioner on 24 February 2015 to complain about the way their request for information had been handled. In particular, they disputed the College's claim that it did not hold information captured by the terms of their request.
6. The Commissioner's decision notice considers whether there may be recorded information that should be dealt with under FOIA.

Reasons for decision

Section 1 – general right of access to recorded information

7. Section 1(1) of FOIA provides a qualified right of access to recorded information held by a public authority. It states that a person making a request for information is entitled (a) to be informed by the public authority whether it holds information of the description specified, (b) if that is the case, to have that information communicated to him.
8. As the Commissioner's guidance 'Determining whether information is held'¹ explains, when a complaint is received that suggests a public authority has failed to identify and provide some or all of the information that has been requested, it is for the Commissioner to decide whether

¹ https://ico.org.uk/media/1169/determining_whether_information_is_held_foi_eir.pdf

the public authority has taken all appropriate steps to locate that information. To do this, the Commissioner will consider the strength of the explanations provided and assess on the balance of probabilities whether the information is likely to be held. In applying this test, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out and, or any other explanations offered that demonstrate why a public authority can be confident the information is not held.

9. In making the complaint to the Commissioner, the complainant stated that witnesses saw the Principal and Chair of Governors reading from notes. As mentioned in the request itself, it was also asserted that copies of the speeches were passed to a local newspaper. Assuming that these statements were correct, the critical question was not whether the requested information ever existed but rather what happened to the records. The Commissioner therefore made enquiries of the College on this basis. A summary of the College's initial response follows:
 - It was accepted that the Principal and Chair had used notes when making their speeches and they had forwarded a draft of these speeches to the Portadown Times prior to the Speech Day itself. The Principal has confirmed that this version of the speech had not been stored and differed to a significant extent from the copy of the delivered speech.
 - The speeches were not drafted using the College's resources and were never physically in the possession of the College. The College also found that it did not hold copies of any speeches given by the Principal on previous Speech Days. For completeness, the College has carried out searches for the information but these had been unsuccessful.
 - It is now customary for the Principal to word-process his or her Speech day talk. The College also confirmed that it had never been responsible for word-processing the Chairman's speech. In this regard, the College confirmed that copies of the Chairman's speech had not been shared with the members of the Board of Governors in advance of the Speech Day.
10. The Commissioner responded to the College's initial statements by indicating that based on the clarification provided, and the nature and direction of the searches carried out, he was inclined to accept that the College did not physically hold copies of the requested information. However, he also explained that this did not necessarily mean the end of the matter from a freedom of information perspective.

11. The Commissioner noted that the Principal and Chair did not use College resources for drafting their speeches. Yet, he also advised that this in itself did not preclude the possibility that information held by the Principal and Chair fell within the scope of FOIA. Rather, where information does exist, a key question for a public authority in circumstances such as this is whether the information relates to the official business of the public authority.
12. The Commissioner directed the College to section 3(2)(b) of FOIA as a relevant statutory provision, which states that information is held by a public authority if *it is held by another person on behalf of the authority*. He explained that the provision should be applied purposively and, to provide some context, cited his guidance² which says that the approach will be that if "the information held in a private account amounts to a public authority business it is very likely to be held on behalf of the public authority in accordance with section 3(2)(b)." This makes no judgement on whether the information should be disclosed but simply requires that, on receipt of a request, the information should be considered under FOIA by the public authority.
13. Extending the principle to the present case, the Commissioner suggested there was a strong argument that the speeches related to College business and therefore copies of the transcripts would be subject to FOIA, even if they were held on a personal computer or in another recorded form by the parties. Furthermore, the Commissioner considered that the wording of the request potentially captured any version of the speech that was retained. He therefore asked for the College's comments in light of this explanation.
14. In its response, the College reiterated that it was able to confirm the Principal held a personal hard-copy of his speech at home. With regard to the points raised by the Commissioner, the College went on to argue that the Principal's and Chairman's speeches did not constitute College business and therefore any connected information was not subject to FOIA.
15. With regard to the Principal, the College has asserted that his speech was his own personal reflection on the previous school year and an analysis of student results and achievements. The Chairman, on the other hand, has explained that traditionally the Chairman acts as Master of Ceremony on Speech Day and that he had formulated notes to use on

² https://ico.org.uk/media/for-organisations/documents/1147/official_information_held_in_private_email_accounts.pdf

the occasion. He has said that there was no specific item on the Speech Day Programme to note the Chairman's speech. Rather, he has indicated that his function was to welcome guests and make introductions to items on the programme and effectively act as Master of Ceremony.

16. As stated, the College considers that any relevant information held by the Principal and, or Chairman would not be covered by FOIA. The Commissioner's powers ultimately derive from FOIA. Therefore, before anything else, the Commissioner is required to make a determination on this point of principle. To reach a decision, the Commissioner has sought to adopt a common sense approach to whether the information is held for the purposes of FOIA. To do this, he has found it helpful to consider what is meant by 'official' business, which he considers is equivalent to the use of 'College' business.
17. The online Macmillan Dictionary defines 'official' as *being done by people in authority or relating to your job in which you have authority or represent other people*³. The Commissioner considers that it is the second part of the definition which is particularly relevant in the circumstances of the present case. Flowing from this, he has considered whether the Principal and Chairman's involvement with the Speech Day *related to their job in which they have authority or represent other people*.
18. The Commissioner observes that the Speech Day for 2015 is marked in the calendar on the College's website, which indicates its status as a formally sanctioned and important event in the education year. It would therefore seem to run contrary to this status if it was accepted that the Principal and Chairman were not acting as representatives of the College when attending the event. The Commissioner considers that two further considerations would strengthen this view. Firstly, it is understood that both the Principal and the Chairman spoke about issues directly connected to the College and its performance rather than issues that could be considered personal to them. Secondly, the Commissioner considers it highly likely that audience members would have considered that both parties were speaking to them on behalf of the College.
19. In light of these factors, the Commissioner considers in this case that the College's case has not been made out. In particular, he asserts that the College has not successfully demonstrated that the Principal's and Chairman's involvement with the Speech Day did not in any way relate

³ http://www.macmillandictionary.com/dictionary/british/official_1

to, or encroach on, their official roles at the College. To find otherwise would, in the Commissioner's view, be entirely inconsistent with the other facts of the case.

20. The Commissioner therefore considers that any information held by either party that fell within the description of the request would potentially be disclosable under FOIA. He therefore requires the College to issue a fresh response to the complainant that incorporates the Commissioner's determination.

Right of appeal

21. 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

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

22. 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.
23. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF