

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 05 December 2016

Public Authority: The Governing Body of Hendre Infants School

Address: Hendre Infants School

St. Cenydd Road

Trecenydd

Caerphilly

CF83 2RP

Decision (including any steps ordered)

1. The complainant has requested various items of information in support of an on-going issue between herself and the Governing Body of Hendre Infants School ('The Governing Body'). The Governing Body, provided some information, confirmed that it did not hold other information and also withheld some by virtue of section 40(2) of the FOIA.
2. The Commissioner's decision is that the Governing Body does not hold the information in respect of items 1,3,5,6,7,8,9,15 and 18 of the request, nor items 6 and 7 under the heading of Further and in regard to. However, as the Governing Body has subsequently provided the information in respect of item 22 to the Commissioner, it has breached section 1(1) of the FOIA with its response to this item of the request. The Governing Body has also correctly relied on section 40(2) in relation to items 4,11,12, 20 and 23 of the request. However, its failure to provide a response within the stipulated timescales, represents a breach of section 10 of the FOIA. In failing to provide particulars of its procedure for dealing with complaints about the handling of requests for information, and the complainant's rights conferred by section 50, the Governing Body also breached sections 17(7)(a) and 17(7)(b) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 3 November 2014, the complainant wrote to the Governing Body and requested multiple items of information regarding her on-going dispute with the Governing Body.
5. The Governing Body provided its response in an undated letter to the complainant which she received on 30 January 2015 marked private and confidential. The responses included the information in respect of items , 13, 14, 16, 21, and also in respect of her request for a copy of the records which [named individual C] checked to confirm that supply teacher [named individual F] was at school on [specified date] . It also provided some information relevant to items 2, 10, 19 and 20 of the request. However, it withheld information wholly or in part relevant to items 4, 11,12, 20 and 23 of the request by virtue of section 40(2) of the FOIA on the basis that it constituted personal information. In respect of items 1, 3, 5, 6, 7, 8, 9, 15, 17, 18, and 22 the Governing Body confirmed that it did not hold relevant information. The request also contained under a heading "*Further and in Regard* to items 6, 7, and 8 which differed from those in main body of the request. In respect of items 6 and 7 the Governing Body confirmed that it does not hold relevant information, and it provided a copy of an agency invoice in respect of the supply teacher and date stated.
6. The Commissioner notes that there does not appear to have been a request for an internal review in this case. However, as the Governing Body did not contain particulars of its procedure for dealing with complaints about its handling of the request, and due to her already having investigated the Governing Body's procedural handling of the request, the complaint was accepted as valid under section 50 of the FOIA in this particular case.

Scope of the case

7. The complainant contacted the Commissioner 2 September 2015 to complain about the way her request for information had been handled. She is not satisfied with the Governing Body's reliance on section 40(2) of the FOIA, or with its 'information not held' response to many of the items she has requested. She also considers that the Governing Body is likely to hold additional relevant information in respect of some items where information was provided. The complainant has also expressed dissatisfaction with the Governing Body's procedural handling of the request. The Commissioner notes that the complainant has raised concerns beyond her remit which will not be discussed in this notice.

8. The scope of the Commissioner's investigation is therefore to consider whether the Governing Body procedural handling of the request complied with the requirements of the FOIA, whether it has fulfilled its obligations under section 1(1) of the FOIA, and whether its reliance on section 40(2) of the FOIA was correct.

Reasons for decision

Section 10 – time for compliance

9. Sections 10(1) and 17(1) FOIA require that a response to an information request is sent within 20 working days of receipt of the request. In this case the Governing Body did not respond within 20 working days of receipt of the request and in so doing breached the requirements of sections 10(1) of the FOIA.

Section 17 – refusal of the request

10. Section 17 of the FOIA concerns the refusal of the request and section 17(7)(a) requires a public authority to provide particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information, or state that the authority does not provide such a procedure.
11. Section 17(7)(b) requires a public authority to provide particulars of the right to appeal to the Commissioner conferred under section 50 of the FOIA.
12. The Commissioner notes that the Governing Body's response did not contain either the requirements specified under section 17(7)(a) and 17(7)(b). The Governing Body's response therefore breached sections 17(7)(a) and 17(7)(b) of the FOI.

Section 1(1) – General right of access to information held

13. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
14. Where there is a dispute regarding whether relevant information is held, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any relevant information therefore,

the normal standard of proof to apply is the civil standard of the balance of probabilities.

15. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
16. In this particular case, the Governing Body has confirmed that it does not hold any, or additional information in respect of the following items:

Item 1

17. Item one requested a copy of the alleged email sent from the complainant's professional email account to the School Office email account, containing the '*mini management proforma*'.
18. The Governing Body has informed the Commissioner that this information has not been located at the school and considers that the information is not held. It has further stated that the School Business Manger would hold copies of an Asbestos Information Request – Mini Management Survey. It added that these forms are usually shared between the school and the Council's Asbestos Enquiries section. No forms could be located as having been sent from the Head Teachers account to the School Office account. The PA further confirmed that it also asked the School Business Manager to search her email account using the words 'mini' , 'management' and 'survey' which did not yield any further information.

Item 3

19. This item concerned a request for a copy of the Health and Safety training audit for [named individual A], which the complainant states she carried out with this individual in April 2012.
20. The Governing Body has stated that this information is not held by the school. It has confirmed that office computers have been searched using key words such 'training audit' [named individual A] Training Audit'. It has also confirmed that the information cannot be found on the Headteacher's computer.

Item 5

21. Item 5 was in relation to a request for a text message from [named individual A] sent on 7 December 2012 to the complainant in respect of [named individual B] and [named individual C].

22. Whilst the Governing Body has acknowledged that information concerning school business held on personal devices of staff members would be considered captured by the FOIA, it has informed the Commissioner that [named individual A] has a new telephone and does not hold any text messages relating to 7 December 2012.

Item 6

23. This request asked for [named individual A's] text messages and a record of the alleged telephone calls from the complainant, referred to in [named individual A's] statement.
24. The Governing Body has stated that it does not hold this information and referred the Commissioner to its explanation in respect of item 5 discussed in paragraph 22 of this notice.

Item 8

25. Item 8 of the request was in respect of the Silver Monitor Log File (from 2009 onwards). The complainant also stated that [named individual C] has full knowledge of the file which is kept in the school office.
26. The Governing Body has acknowledged that this file is a very important document and that it has actively searched for it. It has confirmed to the Commissioner that the search involved looking through boxed records that were stored in the Head teacher's office, and also the School Administrative Office as the School Business Manager recalled that this was one of the places the file had been stored. However, its search was not successful and it stands by its original response that the information is not held.

Item 9

27. Item 9 concerned a request for the written feedback for the Session Observation Lesson in 2009, allegedly provided to the complainant, and which [named individual C] references in her signed statement of 13 December 2013.
28. The Commissioner notes that the Governing Body has confirmed that the member of staff recalls the lesson observation, however its search has not yielded the requested document. The search involved the head teacher's computer, office computer and unstructured files that were stored in her office. The Governing Body has further acknowledged that this document would usually be held on file at the school, however, it has not been able to locate a copy and has concluded that it does not hold this information.

Item 15

29. This item of the request was for the school diaries of named individual C for the academic years, 2009 to 2010 through to 2011 to 2012. The diary for the Autumn term of 2012 was also included along with a complete list of termly Local Authority Finance Meeting dates which [named individual C] attended with the complainant at the school.
30. [Named individual C] confirmed that she no longer holds copies of these diaries. The Governing Body has confirmed to the Commissioner that the diaries are the property of the school and should be kept and disposed of in accordance with the school's retention schedule. The Governing Body has further confirmed that there was no retention schedule held at the school but that it has now received a copy of the Records Management Society Toolkit for records retention and are following its guidance as good practice whilst it reviews its current practice on records retention.
31. The Governing Body has subsequently contacted the Local Authority for details of the in respect of the Finance meeting dates. It has confirmed that the response suggests that financial information was shared with the school on the following dates:

17 November 2009, 29 April 2010, 14 July 2010, 18 February 2011, 8 April 2011, 6 October 2011, 29 November 2011, 26 April 2012, 21 September 2012 and 19 December 2012.
32. However, it has informed the Commissioner that the Local Authority were unable to confirm the exact dates of any meetings that may have taken place, not the attendees, as there were occasions when meetings were cancelled at short notice.
33. The Commissioner notes that obtaining this information necessitated the Governing Body contacting the Local Authority. This therefore supports its position that it did not hold this information at the time of the request.

Item 17

34. This item was regarding a copy of [named individual C's] Session Observation Lesson with a group of approximately six children on 24 September 2012 regarding 'special use' of the Children's Kitchen.
35. The Governing Body has confirmed to the Commissioner that it could not locate it during its initial search, and following the complainant's information as to where she believes the document was held, it was still unable to locate it. The Governing Body therefore stands by its original response that the information is not held by the Governing Body.

Item 18

36. Item 18 of the complainant's request, asked for the printed weekly timetables and supply cover schedule for the Autumn Term 2012 which [named individual C] was responsible for organising.
37. The Governing Body has informed the Commissioner that the weekly printed timetables are overwritten weekly. The Deputy Head of the school has confirmed that this was custom and practice at the time. The information is therefore no longer held.

Item 22

38. The information requested under this item was for the exact date and year of the staff Christmas Party to which [named individual C] alleged she was not invited.
39. The Commissioner was initially informed that the information was not held by the school. The Governing Body also confirmed that although school staff meetings are recorded, they do not include details of staff social events. The Governing Body added that it is unable to check the school diaries for the reasons discussed in paragraph 30 of this notice.
40. The Commissioner however asked the Governing Body whether it had checked directly with the individual concerned or the individual's statement containing the allegation. The Governing Body subsequently informed the Commissioner that the relevant individual had confirmed the date as the end of the summer term in 2011, not the Christmas party.
41. The Commissioner would therefore highlight that this information was held at the time of the request.

Further and in regard to – items 6 and 7

42. The Commissioner notes that the information requested under items 6 and 7 is related. Item 6 requested a copy of [named individual G's] report/account of an incident on a specified date regarding a child. Whilst item 7 concerned a copy of the record of [named individual D's] Accident Report which took place in the Autumn Term of 2012 showing the exact date of the occurrence.
43. The Governing Body has stated that it does not hold relevant information in respect of either of these items and that no accident form was completed in relation to this matter.

44. The Commissioner has considered the explanations provided by the Governing Body and where relevant, details of the searches undertaken in respect of each of the items discussed in paragraphs 13 to 43 of this notice, and considers that with the exception of item 22 of the request, the Governing Body has conducted a reasonable and proportionate search for all items. Whilst the Commissioner is disappointed with the standard of records management at the school, the Commissioner has concluded that on the balance of probabilities, that the information is not held, and that the Governing Body has therefore complied with its obligations under section 1(1) of the FOIA.
45. However, the Governing Body's failure to identify the information in respect of item 22 at the time of the request, resulted in a breach of section 1(1) of the FOIA. As the information has been cited in this notice, she does not however require the Governing Body to take any steps.

Section 40 – personal information

46. Section 40 of the FOIA states that information is exempt from disclosure if it constitutes the personal data of either the applicant or a third party and its disclosure under the FOIA would breach any of the data protection principles.
47. In order to reach a view regarding the application of this exemption, the Commissioner has firstly considered whether or not the requested information does in fact constitute personal data as defined by section 1(1) of the Data Protection Act 1998 ('the DPA').

Is the requested information personal data?

48. Personal data is defined at section 1(1) of the DPA as:

“personal data means data which relate to a living individual who can be identified-

- (a) from those data,*
- (b) from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”*

49. When considering whether the information is personal data, the Commissioner has taken into consideration his published guidance: "*Determining what is personal data*".¹
50. On the basis of this guidance, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:
- (i) "*Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?*"
- (ii) "*Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?*"
51. The Commissioner notes that the information withheld under this exemption consists of the names and behavioural details of some of the pupils and information regarding members of staff. She is therefore satisfied that it does constitute personal data.

Section 40(2) – personal data which is not that of the applicant

52. Section 40(2) provides an exemption from the disclosure of personal information which is not that of the applicant's and where such disclosure would breach one of the principles of the DPA.
53. The Governing Body is relying on this exemption in respect of items 4, 11, 12, 20 and 23 of the request.

Would disclosure contravene the first data protection principle?

54. The first data protection principle requires that the processing of personal data be fair and lawful and,
- 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 met.

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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf

55. In the case of personal data, both requirements (fair and lawful processing, and a schedule 2 condition) must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

Would disclosure be fair?

56. In his consideration of whether disclosure of the withheld information would be fair, the Commissioner has taken the following factors into account:
- a. The reasonable expectations of the data subjects.
 - b. Consequences of disclosure.
 - c. The legitimate interests of the public

The reasonable expectations of the data subject

57. The Commissioner's guidance regarding section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life.² Although the guidance acknowledges that there are no hard and fast rules it states that:

"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."

58. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). However, not all information relating to an individuals' professional or public role is automatically suitable for disclosure.

²http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_speci alist_guides/PERSONAL_INFORMATION.ashx

59. The Commissioner considers the seniority of the data subject is an important factor when considering their reasonable expectations, and in her view, the more senior a person is, the less likely it will be unfair to disclose information about him or her acting in an official capacity.
60. The Commissioner also recognises that there is a widespread and general expectation that details of a person's employment, such as is contained within their HR (Human Resources) file should be considered confidential.
61. In this particular case, the Governing Body is relying on section 40(2) in respect of items 4, 11, 12, 20 and 23 of the request.

Item 4

62. Item 4 requested the date and destination of an educational visit and the name of the 'one to one' child who [named individual A] alleges she was instructed to support.

Items 11 and 12

63. Item 11 concerned a request for a copy of an email from [named individual C] to [named individual E] the Local Authority Health and Safety Officer, regarding safeguarding issues. Item 12 was a request for a copy of the reply.

Item 20

64. Item 20 of the request states that [named individual C] allegedly received a telephone call regarding support for a pupil. The complainant requested details of the name of the child it relates to.

Item 23

65. The requested information relevant to item 23 relates to a statement by [named individual C] which alleges she had to ask a supply teacher to complete regarding an alleged incident involving [named individual D].
66. In respect of all items withheld under section 40(2), the Governing Body informed the Commissioner that it would usually consult with the third parties whose personal data has been requested. However, on this occasion, it was not considered appropriate to carry out a third party consultation with the affected parties.

Reasonable expectations of the data subjects

67. The Governing Body has argued that the staff and parents of the relevant pupils would not reasonably expect that the information

described in paragraphs 62 to 65 of this notice to be put into the public domain.

68. The Commissioner has considered the information and the arguments from the Governing Body and is satisfied that the parents and/or guardians of the pupils subject to this information would not reasonably expect information regarding support for, or the behaviour of their child to be released into the public domain.
69. In respect of the members of staff the information relates to, the Commissioner is also satisfied that they would not reasonably expect that this type of information would be placed into the public domain.

Consequences of disclosure

70. In its consideration of the consequences of disclosure, the Governing Body has argued that disclosure of the information could potentially result in harm or distress to the pupils concerned.
71. The Commissioner considers that disclosure of the identity of a young child in need of support and information regarding the behaviour of other children is highly likely to cause the children and their parents and/or guardians harm and distress either at the time of disclosure or in the future.
72. The Commissioner has also considered the consequences of disclosure of the information relating to members of staff and considers that they are likely to view the disclosure of this personal information regarding them as unnecessarily intrusive and distressing.

The legitimate public interest in disclosure

73. Notwithstanding the data subjects' reasonable expectations, or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
74. The Commissioner notes that the complainant has a personal interest in obtaining this information as she considers it relevant to an investigation of which she was the focus. However, whilst the Commissioner acknowledges the complainant's personal interest in obtaining this information, she is mindful that any disclosure under the FOIA is to the world at large. Additionally, the Commissioner can see no compelling legitimate public interest in the disclosure of this information.

75. In weighing the balance between the reasonable expectations of the data subjects' and the consequences of disclosure of the disputed information, against a lack of perceived legitimate public interest in disclosure, the Commissioner considers that the case for protecting the confidentiality of this information is significant. Indeed, she has no hesitation in concluding that disclosure of this information would not be fair as the balance in her view, is weighted heavily in favour of non-disclosure. Consequently, she is satisfied that the Governing Body appropriately withheld the disputed information on the basis of section 40(2) of the FOIA.

Right of appeal

76. 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

77. 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.

78. 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
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