

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2016

Public Authority: Derwentside College
Address: Front Street
Consett
County Durham
DH8 5EE

Decision (including any steps ordered)

1. The complainant has requested from Derwentside College (the 'College') information relating to its Data Protection / Compliance Policy.
2. The Commissioner's decision is that the College does not hold the requested information. Therefore, she does not require the College to take any steps.

Request and response

3. On 29 March 2016 the complainant wrote to the College and requested information in the following terms:

"Can you please provide me with:

** a copy of the colleges Data Protection/Compliance policy;*

** a copy of the colleges Equality and Diversity policy; and*

** a copy of the colleges Mental Health at Work Strategy/Policy.*

Can you please also confirm if all of the colleges Personnel/HR policies are compliant with current DWP guidance?"

4. On 6 April 2016 the College responded. It stated that it does not have a stand-alone Data Protection / Compliance Policy or a Mental Health at Work Policy. The College provided the complainant with a copy of the Equal Opportunities and Fair Treatment Policy.

5. On 17 April 2016 the complainant asked for an internal review.
6. On 3 May 2016 the College wrote to the complainant stating that it had responded to the points which she had made. In regards to the request for information concerning the Data Protection / Compliance Policy, the College reiterated that it does not have one in place.
7. On 11 May 2016 the complainant asked the College for clarification about its response relating to the Data Protection / Compliance Policy request.
8. On the same day the College wrote to the complainant and provided a response to each of the points of the request.

Scope of the case

9. The complainant contacted the Commissioner on 26 May 2016 to complain about the way her request for information had been handled.
10. During the investigation, the complainant was asked to clarify the points of her request which she considers to be outstanding. The complainant confirmed that she requires a copy of the College's Data Protection / Compliance policy.
11. The Commissioner therefore considers the scope of the case is to determine whether the College holds any information to only the first point of the request. She will not be considering the other points of the request as the complainant's concern is the refusal to be provided with the Data Protection Policy.

Reasons for decision

Section 1 – information not held

12. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
13. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

14. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any recorded information falling within the scope of a request (or was held at the time of such a request).
15. The College confirmed that it does not hold a 'Data Protection / Compliance Policy'. The College stated that in its response to the complainant's supplementary request to *"provide all of the documents that comprise the Data Protection / Compliance Policy used at the College"* it had conducted desk based and IT searches.
16. The College explained that these searches were to identify any potential information that may exist in areas that would cover Data Protection Policy. It added that this included:
 - *"A review of all existing policies and procedures;*
 - *A full search of the College's IT network to identify any references to Data Protection, and a review of each individual search result to identify whether the documentation could potentially fall within the identified request."*
17. Further to the College's internal review, it conducted a further review of 'policy' and reported that it had identified that there are aspects of the College's 'Document Retention Policy' that may address parts of the request. The College provided this information to the complainant and to the Commissioner.
18. The College argued that any further information does not exist beyond the information that had been provided. The College reiterated that it does not hold a Data Protection / Compliance Policy nor does it hold any further documentation that would constitute a Data Protection / Compliance Policy.
19. The complainant responded to the College and asked for clarification about its reply to the points which she had raised. She said that this was in the hope of *"prompting for documents"* which she believed the College must hold based on the information on its website regarding the Publication Scheme.
20. The complainant acknowledged that the College had stated that it does not hold the information which she requested. However, the complainant argued that *"as the College is one of the largest employers in the Consett area and processes data, including sensitive personal data (e.g. health)"* she asked the College to confirm how it ensures that all staff and student data is processed in accordance with the Data Protection Act 1998.

21. The College replied to the complainant and argued that the FOIA is not designed to allow individuals to question the management or operation of the College. It added that it is simply a mechanism for sharing 'recorded information' held by a public body. The College reported that on this basis, it is under no obligation to respond to the complainant's latest request regarding the process of staff/student data.
22. The complainant referred the Commissioner to the College's Publication Scheme page which she believes confirms that the College holds the information requested. However, the Commissioner has viewed this page and she does not believe that it provides evidence that the College holds the information in question.
23. During the investigation, the College confirmed that there was no information held at the time of the request which would fall within the scope of the request. It informed the Commissioner that it is working on the Data Protection Policy and the College said that although it does not have one at present the College is in the process of drafting a policy.
24. The Commissioner has decided that on the balance of probabilities, the information requested subject to this decision notice is not held by the College.

Other matters

25. The complainant asked the Commissioner to consider the matter that the College had not provided details to indicate that it had completed an internal review in accordance with the FOIA. The complainant added that neither had she been informed that if she was dissatisfied with the response, she could escalate her complaint to the Information Commissioner's Office.
26. The Commissioner notes that the initial response to the request (dated 6 April 2016) did not contain details of the complainant's right to request an internal review, or to make a complaint to the Information Commissioner's Office. In future, the Commissioner would expect the College to include these details when responding to requests made under the FOIA.¹

¹ https://ico.org.uk/media/for-organisations/documents/1211/refusing_a_request_writing_a_refusal_notice_foi.pdf

27. In addition, the Commissioner considers that the College could have made it clear to the complainant (letter of 3 May 2016) that its response was issued following the completion of an internal review. Again, he would expect that in future this was made clear at the end of the internal review process.

Right of appeal

28. 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

29. 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.
30. 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
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Wycliffe House
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Wilmslow
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SK9 5AF