

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 October 2017

**Public Authority:** Simon Langton Girls' Grammar School  
**Address:** Old Dover Road  
Canterbury  
Kent  
CT1 3EW

#### **Decision (including any steps ordered)**

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1. The complainant made a series of requests to the school. By the conclusion of the investigation the only outstanding matter was the school's alleged failure to provide the personnel advice it had received from the council relating to its head teacher at the time. Ultimately the school argued that the requested information was not held.
2. The Commissioner finds that on the balance of probabilities the school does not hold the requested information.
3. The Commissioner does not require the public authority to take any further action in respect this request.

#### **Request and response**

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4. The complainant had been involved in long and protracted correspondence with the school arising from the school's abandoned application for multi-academy trust status. He made numerous requests to the school and at the time he complained to the Commissioner a number of these were yet to be fully responded to, or reviewed by the school. Although many of these requests were ultimately resolved, one of the requests from those originally brought to the Commissioner's attention remains outstanding.
5. The complainant has provided the Commissioner with a copy of correspondence from the school dated 15 September 2016. This in turn is a response to an email from the complainant dated 18 July 2016 and the format adopted by the school is to quote the queries and requests

made by the complainant in his email of 18 July 2016, under which the school has provided its response. One of the requests quoted from the complainant's email was made in the following terms:

"What specific advice and recommendations have you received from KCC [Kent County Council] Personnel Services to date in respect of [named head teacher, now former head teacher]?"

6. In its correspondence of 15 September 2016 the school responded to that request as follows:

"I will decline to answer this, since you are asking for confidential third party personal information which the school does not have consent to disclose (section 40(2) exemption of the Freedom of Information Act 2000)"

7. On 27 September 2016 the complainant replied to the school. His email adopted the same format used by the school, quoting the original points he had raised, the school's response and then adding his own queries and further challenges. In respect to the school's response to his request for the personnel advice the complainant directed a question at an officer from the council, who had been copied into the correspondence. He asks the council officer to confirm whether the school's response as quoted above was a lawful one. Although the question was addressed to someone within the council rather than the school, the Commissioner considers that in the particular circumstances of this case, as it was contained in an email to the schools' board of governors, it is reasonable to expect that the school should have recognised this as an expression of dissatisfaction with the response to his request and so this should have prompted the school to carry out an internal review of how it handled the request.
8. No such review had been carried out by the time the complainant contacted the Commissioner on 7 December 2016. Therefore, after clarifying the outstanding issues of concern to the complainant, the Commissioner wrote to the school on 20 February 2016 and advised it to carry out an internal review of its handling of a number of requests including the request for the personnel advice.
9. On 6 March 2017 the school did provide the complainant with the outcome of its internal review. It maintained its position and explained that to disclose the personnel advice would breach the Data Protection Act 1998 (DPA).
10. On 30 May 2017 after clarifying with the complainant what the outstanding issues were at that time, the Commissioner wrote to the school and asked it to provide her with a copy of the personnel advice it was withholding and to explain why it believed the information was exempt under section 40(2) – personal information.

11. The Commissioner's letter prompted the school to contact the complainant on 20 July 2017 in order to provide him with additional information in respect of some of his other requests which were outstanding at that time. When doing so the school reiterated that it was relying on section 40(2) to withhold the personnel advice.
12. However later on during the Commissioner's investigation the school revised its position and on 4 September 2017 informed the complainant and the Commissioner that it does not hold any personnel advice from the time the request was originally received, 18 July 2016.
13. Although both the process by which the requests were both made and handled have at times been confusing, the Commissioner is satisfied that on 18 July 2016 the complainant made a request for the personnel advice in the terms set out in paragraph 5. That request was originally refused under section 40(2) on the basis that the requested information was personal data the disclosure of which would breach the DPA. This position was maintained at the internal review stage, but the school subsequently changed its position. Its final position is that the information is not held.

### **Scope of the case**

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14. The complainant contacted the Commissioner on 7 December 2016 to complain about the way a number of his requests for information had been handled. However by September 2017 the majority of the outstanding issues from the original concerns raised by the complainant had been resolved. On 5 September 2017 the complainant confirmed by an email to the school, copied to the Commissioner, that the only outstanding issue from these requests was that relating to the personnel advice.
15. The complainant is adamant that the school does hold personnel advice provided by the council.
16. The Commissioner considers that the matter to be decided is whether the school holds the requested advice.

### **Reasons for decision**

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17. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, subject to the application of any exemptions, to have that information communicated to them.

18. In scenarios where there is some dispute about whether a public authority holds the requested information the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
19. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or held such information at the time of the request).
20. The Commissioner understands that at the time the request was made on 18 July 2016 the individual named in the request was the school's head teacher.
21. The request only captures information held at the time the request was made, i.e. any advice held at 18 July 2016. Any advice that was received after that date will not fall within the scope of the request.
22. The school's application for multi-academy trust status and the aftermath marked a very turbulent time for the school. The head teacher at the time who was named in the request is no longer in post and there have been a number of changes to the board of governors and clerks to the governors. The present chair of governors did not take up that position until after the events in question and the information request was originally received by one of his predecessors. The Commissioner understands that as well as the present chair's immediate predecessor there was another chair in post during the academy application process. Similarly, there were two clerks to the governors in post during the time of the application and the period when complaints were subsequently received about how that application had been dealt with. It has also become apparent that although the school had set up official email addresses to which correspondence concerning school business could be sent to the chairs, these were rarely used and it had become the practice for the chairs to use their own personal email accounts. In any event the official email accounts of the previous chairs were deleted following their departure. All of this has added to the difficulty in establishing what, if any, information was held at the time of the request.
23. The school has acknowledged that the original response to the request by the chair of governor's at the time, would suggest some information was held. However the Commissioner considers it is also conceivable that given the nature of the information requested, the school's default position could have been that requests for information of this type should be refused under section 40(2), given that any information held would be personal data of the individual in question and that personnel issues relating to staff are usually considered confidential. Having said that one would expect that given the importance of the issues in

question and that they were current at the time of the request, the chair would have had an appreciation of what information was held.

24. The school has advised the Commissioner that at the time of the request, personnel issues were dealt with in-house with advice being provided by the private company, Capita. However any advice provided by Capita would not fall into the scope of the request as the request specifically seeks information which the complainant believes was provided by the council. Even so the schools administrative staff did carry out searches of the log kept of all enquiries made to Capita and found none relating to the head teacher.
25. The school has explained that considering the circumstances it is not surprising that the school's own staff would not have access to any personnel advice relating to the head teacher, now former head teacher. Nor is it surprising that they would be excluded from the process of seeking such advice. This is because the head teacher managed both these members of staff and therefore it would have been inappropriate and "professionally indiscrete" for them to have access to such information. The Commissioner is therefore satisfied that it is highly unlikely that the business and admin support staff actually employed by the school would hold any information falling within the scope of the request.
26. It therefore seems reasonable to conclude that the chair of governors at the time would have taken the lead in deciding what course of action to take in the aftermath of the abandoned application for academy status. However as their records are no longer available the Commissioner has pursued her investigation by making enquiries of the council.
27. The Commissioner understands that the relevant business area of the council is the School's Personnel Services (SPS) and enquiries were made of the officer within that department named by the school as its HR adviser. It is important to note that the service is not free, the services have to be commissioned.
28. The SPS officer advised the Commissioner that the school did not formerly engage its services until 1 March 2017. However some informal advice was provided before that date after the officer was asked to attend a meeting with governors towards the end of June 2016. This agrees with the school's understanding; the school has advised the Commissioner that advice was received no earlier than 27 June 2016. It should be noted that this is only three weeks before the request was received.
29. The advice was only provided on an informal basis. The SPS officer has described the process as the SPS "being used as a sounding board" as the governors navigated a complex situation. Any advice was only

provided verbally at meetings or during phone calls. Had there been a formal client relationship more formal advice would have been provided by email with letters attached. However as the SPS was not formerly engaged as the school's adviser at this time the council did not make records of the advice offered.

30. As explained earlier, the SPS was formerly engaged by the school from March 2017. Therefore it does now maintain electronic records of any advice it now provides the school. The SPS has checked those files for the date range starting from when it first offered informal advice in June 2016, to the date of the request on 18 July 2016 and the only records found are copies of minutes of the board of governors.
31. The SPS officer has also searched her email account by date and by the names of the two chairs of governors in post during the academy application process. The officer has also searched by the subject of emails using the school's name, its initials and the name of the head teacher. These searches have not returned any documents relevant to the request. For completeness it is understood that one email was discovered but this was dated 20 February 2017, well outside the date range encompassed by the request. The Commissioner is therefore satisfied that the SPS holds no record of any written advice being sent to the school or board of governors during the period covered by the request.
32. Based on what the Commissioner has learnt through her enquiries she is now required to make a decision whether, on the balance of probabilities, the school held any recorded information containing personnel advice about the head teacher at the time the request was made. The fact that one would expect the school to require advice on the difficult issues faced by the school lends support to the complainant's argument that the school does or did hold the requested information. The fact that the request was made at the very time these issues were being dealt with also supports the complainant's position. However the period captured by the request is a short one and covers a time when the council was not formerly engaged by the school to provide personnel advice. The Commissioner is certainly satisfied that no actual written advice was provided to the school during that period. The Commissioner cannot be absolutely certain that the advice offered by the council was not noted down by the chair of the governors, but equally no copy of any such note appears to exist and those who may have made such a note are no longer in post. In the absence of any real evidence to the contrary therefore the Commissioner concludes that on the balance of probabilities the school did not and does not hold a copy of the advice that has been requested by the complainant. The school is not obliged to take any further action in this matter.

## **Other matters**

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33. Although not forming part of the formal decision notice, the Commissioner uses this 'Other matters' section to identify issues that have arisen during her investigation and which merit bringing to the attention of the public authority.
34. One of the problems encountered during this investigation was a lack of access to records of the business conducted by the board of governors. This was due to the practice of governors using personal email accounts for conducting school business. The school should consider reviewing its procedures, so as to ensure it can both maintain a full set of the records it needs for its business purposes and maintain control over potentially sensitive information relating to the school, including personnel matters.

## Right of appeal

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35. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.

37. 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 .....**

**Rob Mechan**  
**Senior Case Officer[Job title of signatory]**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**