

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19th October 2017

Public Authority: The Department for Education
Address: Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Decision (including any steps ordered)

1. The complainant has requested information relating to the Spires Langton Girls' Grammar School (SLGGS). The DfE provided some information but redacted some information under sections 36(2)(b)(ii) and (c) and 40(2) FOIA.
2. The Commissioner's decision is that the DfE correctly applied section 40(2) to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 28 March 2017 the complainant requested information of the following description:

Can you please supply copies of all correspondence (including all emails) between any member of the Governing Body of Simon Langton Girl's Grammar School in Canterbury (including all individual members of the Governing Body and the Head Teacher) and the DfE regarding the conversion process to become an Academy and any other Academy related discussions including KCC's Inquiry into the Academisation/Issues at the school conducted by [named individual] including any comments between 4th August 2016 and 28th March 2017.
5. On 27 April 2017 the DfE responded. It confirmed that it held information relevant to the scope of the request but that it was likely

that the exemptions contained at section 36(2)(b)(i) and section 36(2)(c) were applicable and it required further time to consider the public interest test. On 17 May 2017 the DfE confirmed the application of section 36(2)(b)(i) and section 36(2)(c) to make redactions and that it considers that the public interest in disclosure of the information is outweighed by the public interest in maintaining the exemptions. It also applied section 40(2) FOIA to make redactions.

6. The complainant requested an internal review on 17 May 2017. The DfE sent the outcome of its internal review on 25 May 2017. It upheld its original position.

Background

7. This request relates to the previous intention of SLGGS to convert to academy status.
8. A Head Teacher Board meeting took place on 3 March 2016, where the Regional Schools Commissioner (RSC) for the South East and South London gave approval for SLGGS to convert to academy status and form a Multi Academy Trust (MAT) with Spires Academy.
9. SLGGS and Spires Academy have maintained a close relationship over a number of years, with the head teacher of SLGGS acting as Executive Head Teacher of Spires for one day a week. They sought to formalise this arrangement through the formation of a MAT, which would govern both schools.
10. However, when the school announced its intention to form a MAT with Spires Academy, there was an active campaign undertaken by parents of children at the grammar school and others, resulting in an influx of correspondence and FOIA requests to the DfE.
11. As a result of this campaign, the Governing Body at SLGGS voted to withdraw their application to:
 - convert to become an academy; and
 - become the approved sponsor for Spires Academy.
12. The head teacher resigned from her post at SLGGS in March 2017 as a result of the issues surrounding the failed conversion.

Scope of the case

13. The complainant contacted the Commissioner on 5 June 2017 to complain about the way his request for information had been handled.
14. During the course of the Commissioner's investigation the DfE withdrew its application of section 36(2)(b)(i) but applied section 36(2)(b)(ii) instead. It also removed one of the redactions made and provided this information to the complainant.
15. The Commissioner has considered whether the DfE has applied sections 40(2), 36(2)(b)(ii) and (c) FOIA correctly to the withheld information in this case.

Reasons for decision

Section 40(2)

16. Section 40(2) FOIA provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3)(a)(ii) is satisfied.
17. One of the conditions, listed in section 40(3)(a)(ii), is where the disclosure of the information to any member of the public would contravene any of the principles of the DPA.
18. The Commissioner has first considered whether the withheld information would constitute the personal data of third parties.
19. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
20. In this instance the withheld information is the personal details (e.g. name, email, address, phone number) of an individual from the Association of School and College Leader (ASCL), an individual from the Regional Schools Commissioner (RSC) and individuals from the National Schools Commissioner (NSC). It also relates to information about an investigation into the former Head Teacher of SLGGS and personal information about the private life of one of the other individuals.
21. The Commissioner does consider that this is information from which the data subjects would be identifiable and therefore does constitute personal data.

22. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the Data Protection Act (DPA). The first principle requires, amongst other things, that the processing of personal data is fair and lawful. The Commissioner has initially considered whether the disclosure would be fair.

Names and contact details

23. The DfE considers that this case bears similarities to a Decision Notice sent to the Department of Health (DoH) on 1 June 2016 (FS50604583) in relation to the rationale used by the DoH to withhold the personal information of more junior members of staff and such staff's expectations around release of their personal information. The full DN can be seen via the following link:

<https://search.ico.org.uk/ico/search/decisionnotice?keywords=FS50604583>

24. In that case, the Commissioner concluded that the DoH had applied section 40(2) appropriately for the following reasons:

"The Commissioner considers that more junior officials and less senior members of other bodies, such as the AoMRC, would not have had any reasonable expectation their names and presence at these meetings would be disclosed into the public domain. The Commissioner cannot be certain but it is likely that more junior individuals are less likely to be in public roles so would have a lesser expectation of their names being disclosed."

25. The DfE said that the case is the same for those involved in the email exchanges relevant to this request in that they have a reasonable expectation that, due to their less public facing roles, their personal information would not be disclosed into the public domain.
26. The Commissioner is satisfied that these individuals would have a reasonable expectation of privacy with regard to their personal information and that their names and contact details would not be released into the public domain.

Information relating to the Head Teacher

27. The DfE argued that the data subject would not expect this information to be disclosed into the public domain because it outlines her complaint relating to her personal treatment and the pressure she was put under when proposing the conversion to academy status and the formal sponsorship of a local school.

28. The Commissioner considers that disclosure at the time of the request would have been likely to cause significant damage and distress to the data subject as she had very recently resigned from her post as Head Teacher following an investigation that had been conducted after the failed academy conversion.

Information relating to the private life of another data subject

29. The information relates solely to matters within this individual's private life and has no relevance to the wider subject matter of the emails. The data subject would have no expectation that this information would be disclosed into the public domain.

Legitimate public interest

30. The Commissioner has gone on to consider whether any of the Schedule 2 conditions can be met, in particular whether there is a legitimate public interest in disclosure which would outweigh the rights of the data subjects.
31. The Commissioner considers that there is a wider public interest in transparency and accountability however the majority of the requested information has been disclosed with limited redactions under section 40(2) FOIA. The information disclosed is extremely meaningful and gives the public an understanding of the issues.
32. The redactions to the names and contact details and the information relating to the private life of one individual would provide very little more, given the non-public facing roles of those individuals. In relation to the redactions to the information about the Head Teacher, whilst this would provide further understanding and context to the issues, given the nature of the redacted information and the fact that the request was made just after the Head Teacher resigned her post, the rights of the data subject would outweigh any legitimate public interest.
33. After considering the nature of the withheld information, the fact that the majority of the requested information has been provided, the reasonable expectations of the data subjects and the damage and distress that may have been caused by disclosure of some of it, the Commissioner considers that disclosure under FOIA would be unfair and in breach of the first principle of the DPA. She considers that any legitimate public interest would not outweigh the rights of the data subjects in this case.
34. The Commissioner's decision is that section 40(2) FOIA is engaged and provides an exemption from disclosure of the redacted information. She has not therefore considered the application of section 36(2)(b)(ii) or 36(2)(c) FOIA any further as these exemptions were applied to the same information.

Right of appeal

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
Website: 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

Gemma Garvey
Senior Case Officer
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