

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2019

Public Authority: The Governing Body of Christ's College Finchley
Address: Christ's College Finchley
East End Road
Finchley
London
N2 0SE

Decision (including any steps ordered)

1. The complainant has requested all information relating to all of the teaching staff at Christ's College Finchley (the School) between the years 1984 and 1990. The School withheld this information on the basis of section 40(2) (third party personal data) of the FOIA as it considered the information to be personal data.
2. The Commissioner's decision is that the School has correctly withheld this information under section 40(2). However, she has recorded a breach of section 16 of the FOIA, as the School failed to provide the complainant with advice and assistance to understand what information the complainant was seeking.
3. The Commissioner does not require any further steps to be taken as a result of this decision notice.

Request and response

4. On 23 January 2018, the complainant wrote to the School and requested information in the following terms:

"I hereby request all information held within your archives in relation to all of the teaching staff at Christ's College Finchley between the years 1984 and 1990.

I have been in contact with Barnet LEA who inform me that you are responsible for your own archives and that you act as your own data

controller. I therefore make this request directly to you.

I imagine that this request will present little problem as I understand from your website that you maintain your historic archives with a pride in the school's history.

I myself possess a considerable number of names already, but the list is by no means complete and I hope that you will be able to provide me with a complete list."

5. The School responded on 25 January 2018 and denied holding the requested information. It stated that the School only holds staff and former staff records for a period of six years after their employment ceases.
6. The complainant requested an internal review on 25 January 2018 in which he pointed out that the School's response to his FOIA request did not account for all the teachers who had worked for the School between the years of 1984 and 1990. He stated that the School's response only accounted for teachers who left employment before 22 January 2012. The complainant went onto explain that the School did not account for teachers who worked for the School during this period who had ceased their employment since 22 January 2012. The complainant also explained that the School also did not account for the teachers that worked for the School between 1984 and 1990 and still worked for the School.
7. The School provided the complainant with the outcome of the internal review on 13 February 2018, in which it revised its position. The School explained that any data relating to staff employed between the years of 1984 and 1990 and who left employment over six years ago had been destroyed in line with the School's data retention policy. The School went on to explain that it did hold information relating to staff employed between the years of 1984 and 1990 who still remained employed, or who had left employment within the last six years. However it stated that the information is not disclosable under the FOIA as it is personal data that is specific to the individuals, and to disclose the information would breach the first principle of the Data Protection Act.

Scope of the case

8. The complainant contacted the Commissioner on 21 February 2018 to complain about the way his request for information had been handled.

9. The Commissioner considers the scope of this case is to determine whether the School is entitled to rely on section 40(2) of the FOIA as a basis for refusing to provide the withheld information.

Reasons for decision

Section 40(2) – third party personal data

10. The section 40(2) exemption provides that any third party personal data (i.e. the personal data of anyone other than the individual making the request) is exempt from disclosure, if that disclosure would contravene any of the principles set out in Schedule 1 of Data Protection Act 1998 (the DPA 1998). Although the DPA 1998 has been superseded by the General Data Protection Regulation and Data Protection Act 2018, the request was made on the 23 January 2018 and the School responded on the 25 January 2018 when the DPA 1998 was still in force. It is therefore the Commissioner's view that the DPA 1998 is the appropriate legislation to take into account, when considering whether the School was entitled to rely on section 40(2) of the FOIA to refuse to provide the withheld information in this case.

Is the withheld information the personal data of third party individuals?

11. In order to rely on the exemption provided by section 40(2) of the FOIA, the requested information must constitute personal data as defined by data protection legislation. As explained in paragraph 10 above the Commissioner considers the DPA 1998 was the relevant data protection legislation at the time the request was received and responded to by the School. The Commissioner has therefore considered the definition of personal data under the DPA 1998.

12. Section 1 of the DPA 1998 defines personal data as follows:

"personal data" means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is 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'.

13. The information requested in this case is all information held relating to teaching staff at the School between the years 1984 and 1990. In the Commissioner's view, it is clear that the withheld information 'relates' to living individuals, who are the focus of the request and it is therefore their 'personal data'.
14. The Commissioner notes that in his initial submission, the complainant questioned whether the requested information is the personal data of the individual teachers when those individuals were professionals employed in a public capacity by a state school open to the public.
15. When determining whether data is personal data for the purposes of the DPA 1998, the data has to 'relate to' a living individual, whether in their personal or family life, business or profession. In this case the withheld information relates to the teaching staff in their personal life and their profession, and is therefore their 'personal data'.

Does the information contain any sensitive personal data?

16. Sensitive personal data is defined as personal data which falls into one or more of the eight categories set out in section 2 of the DPA 1998, which are:

(a) the racial or ethnic origin of the data subject,

(b) his political opinions,

(c) his religious beliefs or other beliefs of a similar nature,

(d) whether he is a member of a trade union,

(e) his physical or mental health or condition,

(f) his sexual life,

(g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

17. In the School's initial submission to the Commissioner, it stated that it is their understanding that much of the withheld information is sensitive personal data.
18. In the School's further submission to the Commissioner, it explained that the withheld information included documents such as passport information, P45 information including the teaching staff's National

Insurance Number, tax code, pay information, personal address, and data of birth.

19. The School understands that the majority of the withheld information is not considered to be sensitive personal data as defined by the DPA 1998 but the information is seen as sensitive and confidential by the School and the individuals to whom the data relates.
20. Having reviewed the sample file of one member of teaching staff, the Commissioner is satisfied that some of the withheld information is sensitive personal data as defined in section 2 of the DPA 1998. This is because some of the withheld information includes information about the individual's racial or ethnic origin, their religious beliefs or other beliefs of a similar nature, whether they are a member of a trade union, and their physical or mental health or condition.
21. The Commissioner considers that the disclosure of withheld sensitive personal data is unlikely to be fair as it relates to the most personal aspect of a third party individual's private life rather than their working life. The third party individuals would have a reasonable expectation that their sensitive personal data would not be made public.
22. In light of these findings, the Commissioner will go on to consider whether disclosure of the information would breach one of the data protection principles.

Would disclosure breach the data protection principles?

23. The data protection principles are set out in Schedule 1 of the DPA 1998. The first principle, which is the most relevant in this case, requires that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
24. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the third party individuals, the potential consequences of the disclosure, and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

25. In the School's initial submission to the Commissioner, it stated that the teaching staff to whom the personal data relates had not given the School permission to share their personal data with third parties, and they would not reasonably expect that the School would share their information with third parties unless required to so by law.

26. In the School's initial submission to the Commissioner, it confirmed that the teaching staff have not been asked if they are willing to give consent to the disclosure of their personal data. The School has stated that sharing the teaching staff's information in response to the request *"would have been a careless and gross infringement to their rights as individuals whose data should be protected by the School."*
27. The School clarified to the Commissioner that it obtain the teaching staff's personal data for the performance of their employment contract and for the School's legal obligation to provide educational services. The School stated that it did not obtain the teaching staffs' personal data for the purpose of sharing their personal data with any individual that requests information on private individuals that works at the School.
28. The School confirmed to the Commissioner that it only holds personal data that is relevant and necessary, and that any information held for pension purposes, or Her Majesty's Revenue and Customs, or any other relevant lawful purposes is not disclosable to unrelated third parties.
29. Whilst a public authority may seek the view of the individuals concerned about whether their personal data should be disclosed it is not obliged to do so.
30. The Commissioner has considered the sample file of one member of teaching staff withheld under section 40(2) of the FOIA, and the fact that the teaching staff provided information to the School for employment purposes and would have no reasonable expectation that the information would be made publically available.
31. The Commissioner's view is that when considering what information individuals should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the individual's public or private life. In this case the information relates to the individuals as teaching staff and contains details about them personally such as their address, date of birth, and other personal details. It also contains details of their profession as a teacher, such as their performance at work, development at work, and other employment information.
32. Although this information relates to the teaching staff's private life and their profession as a teacher, it is not strictly about their public life. As such, the expectation of privacy is increased and the Commissioner fails to see how the teaching staff would have had a reasonable expectation that information of this type would be placed in the public domain. This is supported by the fact that the teaching staff have not consented to the disclosure of their personal data. The Commissioner considers this

strengthens the view that the teaching staff had no reasonable expectation of disclosure.

Consequences of disclosure

33. Disclosure of the information is unlikely to be fair if it would have unjustified adverse effects on the individuals concerned. Although individuals may generally regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life.
34. In the School's initial submission to the Commissioner, it believed that the withheld information related mainly to the teaching staff's private life but that it could relate to either.
35. With regards to the personal data the School referred to as being sensitive in paragraph 18 of this decision notice, the School has stated that if all this information is disclosed to a member of the public, the information could potentially lead to the teaching staff being exposed to risk. The School has explained that the risk includes being a potential victim of identity theft/fraud, harassment, discrimination, and would lead to a breach of their confidentiality.
36. The School did not provide the Commissioner with any specific evidence in support of its claim that the teaching staff could be exposed to risk after releasing the withheld information in response to the FOIA request. Nonetheless the Commissioner accepts that, considering the nature of withheld information, the teaching staff would consider the disclosure of their personal data to the requester, and to the world at large, to be an intrusion of their privacy and may lead to risks such as identity fraud.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

37. The Commissioner accepts the legitimate public interest in disclosure includes the general public interest in transparency, public interest in the issue the information relates to and any public interest in disclosing the specific information. An informed and involved public helps to promote good decision making by public bodies and ensures trust and confidence in the governance and processes within those bodies.
38. However, given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.

39. The complainant has not provided any substantial arguments relating to the wider interest to the public that would occur from disclosure of this information. However, the complainant explained in his submission to the Commissioner that he believes that the unfairness of the section 40 exemption is amplified by the fact that he attended the School and says that he was taught by the individual teachers in the School during the period of time specified in his request. The complainant also explained that if he was still in possession of his school reports then the information he had requested would be available to him through other means. The complainant also pointed out that the information he had requested is currently available to individuals who attended the School at the same time as him and who still retain their school reports.
40. In this case, the complainant had asked for "all" information relating to all teaching staff at the School during the specified period. However, in his request, the complainant stated that he already has a number of names of teaching staff and was hoping that the School could provide him with a complete list of names of teaching staff at the School during the period of time specified in the request.
41. During the Commissioner's investigation the School wrote to the complainant asking him to confirm the scope and parameters of his request in view of the fact that the complainant had requested "*all information held within your archives,*" as well as alluding to the School providing him with a list of names of the teaching staff.
42. The complainant responded to the School confirming that he is "*requesting "all information held within your archives in relation to all of the teaching staff at Christ's College Finchley between the years 1984 and 1990" which I am legally entitled to under the FOIA 2000, including, but not limited to "a list of names, titles and documents"*".
43. With regards to the School releasing the names of the teaching staff in response to the complainant's request, the School has stated that it accepts that in certain circumstances the names of employees that work at a public authority can be disclosed in response to an FOIA request. However, the School has stated that in light of a previous tribunal decision, consideration needs to be given to the level of seniority of the employee.
44. The School has referred to the First-Tier Tribunal decision of *David Armitt v the Information Commissioner v The Home Office*

(EA/2012/0041, 6 July 2012)¹. The School has stated that it seems suggest in this decision, *"that in certain cases, if the employee is not a senior post holder, the requestor would need to identify a legitimate interest in the disclosure of junior employees."* In particular, the School referred to paragraph 34 of the decision which states that:

"In any event, to process personal data, it needs to be necessary to pursue the purposes of legitimate interests pursued by others."

45. The School stated that the complainant has not made a case of legitimate interest. It also stated that the complainant has not mentioned that non-disclosure would prejudice him in anyway, and that when considering whether the teaching staff's data can be disclosed without their consent, the School is satisfied that the teaching staff's rights to privacy and confidence takes precedent in this situation in relation to all of their personal data.
46. Whilst the Commissioner accepts that the specific information requested may be of interest to the complainant, she must consider whether disclosure of this information into the public domain would be in the wider public interest. The Commissioner has not been convinced there is any legitimate public interest in disclosure of the withheld information beyond simply increasing transparency within the public authority. Balanced against this, the Commissioner does not consider the disclosure of this information warrants overriding the rights and expectations of privacy of the individuals to whom that information relates.
47. The Commissioner therefore considers that disclosure of this information would be unfair and in breach of the first data protection principle. As such, section 40(2) is engaged and the information is therefore exempt from disclosure.

1

<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i845/20121005%20Decision%20EA20120041.pdf>

Procedural matters

Section 16 – advice and assistance

48. Section 16(1) of the FOIA says that a public authority has a duty to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so.
49. The duty to provide advice and assistance arises in certain situations. These are broadly:
 - a) before an applicant has submitted a request for information and is, for example, clarifying with the public authority what information it holds;
 - b) if a request for information is not clear to the public authority;
 - c) if complying with a request would exceed the appropriate cost limit under section 12 of the FOIA, a public authority should, if it is reasonable to do so, offer the applicant advice and assistance to refine the request so that it can be complied with within the cost limit; and
 - d) transferring the request to another public authority.
50. In respect of section 16 of the FOIA, in circumstances where a request is ambiguous, a public authority is required to provide appropriate advice and assistance to the requestor so as to enable them to clarify their request.
51. The Commissioner notes that during her investigation, the School wrote to the complainant on 28 June 2018 requesting clarification of the request.
52. The Commissioner also notes that in the School's initial submission to her, the School stated that the complainant's request is ambiguous and that the part of the request which states "between 1984 and 1990" could reasonably be seen to exclude any teaching staff who was still employed by the school beyond 1990. The School has stated that at this point it could have asked the complainant to clarify his request but it decided to answer the request as it was understood at the time of handling it.
53. As the School did not contact the complainant at the time of receiving his request to clarify what information he was seeking and, where possible, help the complainant to obtain it, the Commissioner finds that the School has breached the requirements of section 16(1) of the FOIA.

Right of appeal

54. 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

55. 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.
56. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF