

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 August 2019

**Public Authority:** Warwickshire County Council

**Address:** Shire Hall  
Warwick  
Warwickshire  
CV34 4SA

#### Decision (including any steps ordered)

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1. The complainant has submitted a request for information to Warwickshire County Council. The complainant's request is comprised of 31 questions which require the Council to provide recorded information or confirmatory answers relating to his son's admission to a named school in 2013 for the purpose of intended litigation.
2. The Commissioner's decision is that Warwickshire County Council has complied with the provisions of section 1 of the FOIA where the complainant's questions are valid requests for recorded information.
3. The Commissioner has also decided that several of the complainant's questions do not seek the disclosure of recorded information. Rather they are questions requiring the Council to provide confirmatory responses or opinions and therefore the Council is not obliged to respond to these questions under the provisions of the FOIA.
4. The Council's late provision of recorded information in answer to two of the complainant's questions means that the Council has breached section 10 of the FOIA.
5. The Commissioner requires the public authority to take no further action in this matter.

#### Request and response

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6. On 24 March 2017, the complainant wrote to the Council to make the following request for information under the provisions of the Freedom of Information Act:

"I ask the following questions under the FOIA regarding my son, [the complainant's son's name] and [a named school] due to pending litigation. I do not expect the content of this request to be conveyed to the school or my identity revealed to them. This request is made to WCC [the Council] and not [the school] and is therefore confidential.

1. Is it correct that formal responsibility for determining [the School's] student admissions in 2013 rested with the [the School's] governors? However, in discharging these responsibilities in relation to year 7 the governors had adopted the County Council's procedure for selective admissions? (3rd paragraph of admissions code in 2013).
2. According to the County Council's procedure for selective admissions for 2013 if a future change in address is not accepted, then there was only option - to reject the future change in address and use the original address to process the application? There was no option to reject the application (especially once it had been accepted by WCC and a place offered). If not, what were the other options and provide documentary evidence)?
3. In essence in the case of [the complainant's son], if [the school] rejected the future Rugby address all it could have done under the County Council's procedure for selective admissions was to use the original Coventry address for admissions. If so, is it correct [the complainant's son] would have been offered a place?
4. Is it correct every school applied for accepted [the complainant's son's] future change of address, except [the school]?
5. Is it correct that WCC refused to withdraw [the complainant's son's] place on 4 occasions? If not then on how many occasions?
6. Did the Council's procedure for selective admissions allow [the complainant's son's] place to be withdrawn?
7. Did [the complainant's son's] application comply with the County Council's procedure for selective admissions?
8. Did WCC accept that the application for [the complainant's son] was not fraudulent (hence accepted the application)?
9. Did WCC accept that the application for [the complainant's son] was not misleading (hence accepted the application)?
10. I understand there was a meeting between [the school] and WCC regarding [the complainant's son's] place where WCC refused to

withdraw the place. I understand [the school's solicitor<sup>1</sup>] was at the meeting for the school.

11. I understand there was a meeting between [the school] and WCC regarding [the complainant's son's] place where WCC refused to withdraw the place. I understand [the School's Solicitor] was at the meeting for the school. Where was this meeting held and how many of [the school] Governors were at the school? Please name the Governors who attended.
12. Was it the legal view of WCC that withdrawal of [the complainant's son's] place by LSS was unlawful?
13. Did WCC inform [the school] that withdrawal of [the complainant's son's] place was unlawful? If yes, on how many occasions?
14. Was it the view of WCC that [the school] had to offer an appeal to [the complainant's son] and could not simply refuse to offer an appeal? Did they tell this to [the school] If so, who did they inform?
15. Was it the view of WCC that [the school] could not simply reject an application and had to process it? Did they inform [the school] If so, who did they inform?
16. Was it the view of WCC that the application for [the complainant's son] to [the school] was not fraudulent? Was [the school] told, if so who?
17. Was it the view of WCC that it was impossible to determine if the application for [the complainant's son] was fraudulent until the first day of term, because only on that day could one determine whether a move had taken place. If so, did the WCC inform [the school] and if so, who?
18. Was it the view of WCC that refusal to place [the complainant's son] on the LSS waiting list was unlawful. Did WCC tell [the school], and if so who?
19. Was WCC [Council Officer 1<sup>2</sup>] provided with documentary evidence of a move to Rugby by the first day of term?

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<sup>1</sup> The School's Solicitor worked for the Council's Legal Services but was also advising the School. The Council's Legal Services is a traded service that provides legal services to the Council as well as to third parties.

<sup>2</sup> The Council's lead officer for pupil and student services.

20. Please confirm the average time it had taken [the school] to process or consider an application for a place in 2013. E.g. 1 day, 1 week.
21. State how long it took [the school] to process the second application of [the complainant's son].
22. Who did WCC communicate with from [the school] regarding [the complainant's son's] place?
23. Who was the main point of contact at [the school] for [the complainant's son's] application?
24. Was the time period to consider [the complainant's son's] second application significantly longer than any other child?
25. Was the school capable of processing the application immediately – stating the school was full and placing him on the waiting list? Was this what was expected under the County Council's procedure for selective admissions?
26. Did [Council Officer 2<sup>3</sup>] feel that the admissions issue may cause stress and anxiety to [the complainant's son] and his family and felt the decisions should be quick to avoid this (you may wish to check her emails), i.e. did she believe the threat of withdrawing a place would cause a reasonable person stress and anxiety?
27. On how many occasions in the last 10 years has [the school] refused to process a school application (excluding [the complainant's son])?
28. On how many occasions in the last 10 years did [the school] reject a school application (excluding [the complainant's son])?
29. On how many occasions in the last 10 years did [the school] refuse to offer an appeal (excluding all incidents of [the complainant's son])?
30. Excluding [the complainant's son], on how many occasions in the last 10 years did [the school] take back admissions in-house for an individual applicant and on how many times was a place withdrawn?

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<sup>3</sup> The Council's school admission officer

31. How many families registered a change of address who were offered places at [the school] in 2013? How many of these children had their places removed? How many had their addresses questioned by [the school]?"
7. The Council, having refused to comply with the complainant's request in reliance on section 14(1) of the FOIA, was required by the First Tier Tribunal (General Regulatory Chamber)<sup>4</sup> to respond to the complainant's request by either supplying the information or by serving a refusal notice under s 17 of the Act. The Council was not permitted to rely on section 14(1).
  8. The Council made its response to the complainant's request on 2 January 2019.
  9. In answer to parts 1, 2, 3, 4, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 22 and 31, the Council directed the complainant to a letter from [Council Officer 1] to [the School's Headteacher] dated 14 June 2013 and an email from [Council Officer 1] to [the School's Headteacher] dated 5 July 2013.
  10. In addition to the above, the Council provided the complainant with a copy of the School's admissions policy for 2013 in answer to part 3 of the request.
  11. The Council's response to parts 4, 5, 6, 11, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29 and 30 of the complainant's request was to inform him that the Council does not hold the information he had asked for. The reasons given for this included: the Council not holding information for the admission arrangements of schools outside Warwickshire; the Council only having administrative responsibilities for academies; being unable to locate information, the Council believing that the complainant already holds the information he had asked for; or, the Council only keeping 'records in relation to school admissions' for 12 months.
  12. In respect of parts 11 and 12 of his request, the Council informed the complainant that information was being withheld in reliance on section 42 of the FOIA, on the grounds of legal professional privilege.
  13. The Council noted that many of the complainant's questions relate to the complainant's son, [the complainant's son], and therefore to a third party. The Council's response stated, "we consider that it is fair in the

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<sup>4</sup> Case reference EA/2018/0099

circumstances to disclose this information to you as you already have unredacted copies of both of these documents and the Tribunal indicated that these should be provided in response to this FOIA request.”

14. Having received the Council's response, the complainant wrote to the Council to ask for an internal review. The complainant argued that it is inappropriate for the Council to refer him to the enclosed letter and email on the grounds that it requires him to make deductions. Instead, the complainant asked the Council to provide a yes or no answer to his questions where this is appropriate.
15. The Council carried out an internal review and wrote to the complainant on 18 January 2019. The Council confirmed that the letter of 14 June 2013 and email of 5 July 2013 sets out the recorded information held about the Council's opinion and the communication of that opinion to the school and others. It said, "You have received all the information to which you are entitled in response to your FOIA request". The Council advised the complainant that the purpose of an FOIA request is to elicit the disclosure of recorded information and that the Council is not obliged to answer questions or to give its views or opinions about that recorded information.

### **Scope of the case**

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16. The complainant contacted the Commissioner on 1 March 2019 to complain about the way his request for information had been handled.
17. The Commissioner advised the complainant that the focus of her investigation would be to determine whether Warwickshire County Council has satisfied its duty under section 1 of the FOIA to either inform him whether it holds the information he has asked for and to provide him with that information, or to issue the complainant with a refusal notice under section 17 of the FOIA. The Commissioner also advised the complainant that she will also determine whether the Council is entitled to rely on the exemption provided by section 42 of the FOIA in respect of any information it is withholding which is subject to legal professional privilege.

### **Relevant background information**

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18. The Council has provided the Commissioner with information relating to the complainant's request which it considers is relevant to her consideration of this complaint. Some of this information is reproduced from the Commissioner's decision notice in case FS50700113.

19. The complainant's son was offered a place at a particular school in Warwickshire in 2013 on the understanding that he was to be living at an address specified by the family by the time of admission. The School subsequently determined that the statement regarding the intended residence was fraudulent or misleading and it withdrew its offer without providing an opportunity to appeal to an independent panel.
20. This led to a dispute about how both the Council and the School had handled matters and resulting in the complainant submitting separate complaints about each party to the Local Government Ombudsman ("the LGO").
21. In March 2014 the LGO upheld part of the complainant's complaint against the Council but only in relation to the provision of information on its website in relation to the admission process. In May 2014 the LGO upheld the complaint about the School in full. It recommended that the complainant be given the opportunity to appeal against the School's decision to withdraw the offer to an independent panel.
22. Following an appeal, the complainant's son was offered a place at the School which was then declined.
23. Since 2013 the complainant has made a number of requests to the Council relating to the admissions process for grammar schools in its area.
24. The request that is the subject of the complainant's complaint to the Commissioner was made on 24 March 2017. The Council responded on 25 April 2017 refusing to answer the complainant's questions on the basis that the request was vexatious within the meaning of s14(1) of the FOIA. The Council maintained its position in its internal review of 30 August 2017.
25. The Commissioner subsequently upheld the Council's application of section 14(1) in her decision notice of 4 May 2018.
26. The complainant appealed the Commissioner's decision to the First-tier Tribunal.
27. The complainant made a subject access request ("a SAR") in June 2017 for "every single record of correspondence the local authority has that concerns or refers to me, directly or indirectly". This resulted in the Council's disclosure of a bundle of documents comprising 200 pages and an additional 11 documents following an internal review.
28. At the time of making its response to the Commissioner's enquiry in this case, the Council has carried out an extensive search and review of all records held by the Council relating to the complainant, to the extent that it took approximately 72 hours to collate the information found.

## Reasons for decision

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### **Changes to the Council's response to the complainant – questions 1, 11, 25 and 29**

29. The Council has advised the Commissioner that it has carried out additional searches following the Commissioner's intervention. These searches resulted in the Council writing to the complainant on 31 July 2019 to provide clarification of its responses to the complainant's questions 1, 11, 25 and 29 contained in its letters of 2 and 18 January 2019.
30. Having reconsidered question 1 of the complainant's request, the Council informed the complainant that it should have referred him to the School's admission policy from 2013.
31. This was policy was provided to the complainant in response to this request and on numerous occasions previously.
32. Noting that the complainant had quoted the third paragraph of the policy in his question, the Council advised the Commissioner that it does not consider it is required to make deductions from recorded information in order to answer the complainant's question as to what was expected under the School's admission policy.
33. The Commissioner has considered the complainant's question 1: It is clear that the complainant is not asking for the disclosure of recorded information. Rather, he is asking the Council to make comment about information which is already in his possession. In the Commissioner's opinion the complainant's question 1 is not a valid request to be considered under section 1 of the FOIA. Section 1 provides a general right of access to recorded information held by public authorities; it does not require a public authority to create information to respond to a request, nor does it require an authority to interpret or make comment about recorded information.
34. Following its searches, the Council was able to advise the complainant that it does not hold information to answer the elements in his question 11. The Council's searches located some documents relevant to question 11 which were contained in an electronic legal file concerning the school appeal of November 2014. Those documents were sent to the parties to the school appeal hearing, including the complainant
35. Having reviewed the bundle of documents, the Council made the presumption that the complainant's question 11 refers to either the meeting on 16 July 2013 or the meeting on 19 July 2013. The Council believes the complainant had a copy of these minutes but the names of the Governors were redacted by the school at the time.



36. The Council's file only contains a copy of the redacted minutes within the bundle. The Council advised the Commissioner that the meeting minutes were produced by the school and it does not have a copy of the un-redacted minutes. Because the document was provided by the School, the Council is not able to confirm its accuracy. However, in relation to each of the elements in the complainant's question 11, the Council is able to state the following with reference to those minutes:
37. The meeting of 19 July 2013 took place at the Sheriff Centre Conference Room. The location of the 16 July 2013 meeting is not stated in the minutes and the Council says, "We do not reasonably expect that this information is held by the Council elsewhere.
38. In respect of how many School Governors attended, the Council understands that there were three governors present at the meeting of 16 July 2013. This is based on the minutes of that meeting referring to Governor A, B and C.
39. In respect of the 19 July 2013 meeting, the Council believes there were three governors in attendance. Again this is based on the minutes of that meeting, where reference is made to Governor D, E and F.
40. Given that the Council only holds an electronic copy of the redacted bundle, the Council does not have a record of the names of Governors who attended the relevant meetings. The Council says that the complainant would need to ask the school for this information, bearing in mind that, in his this original request, the complainant asked that the Council keep this request confidential from the School.
41. On the grounds that the minutes described above have already been provided to the complainant, the Council has advised the Commissioner that it no longer seeks to rely on section 42(1) of the FOIA in respect of question 11.
42. Having revisited this request, the Council has provided the complainant with a copy of the Council's 2013 entry admission arrangements which is relevant to the second element of the complainant's question 25. The document sets out key dates relating to the secondary transfer admissions process, including the dates relating to the 11+ testing process. For the purpose of clarity, the Council has advised the complainant that the actual process for testing and grammar school admissions would only have been outlined within each grammar school's individual arrangements. This is confirmed in the document sent to the complainant at paragraph 6.12.
43. The Council has advised the Commissioner that it has been able to obtain additional information which it considers may fall within the scope

of the complainant's question 29. The Council says, "Initially the school appeals team confirmed that we do not hold the information because the School does not refuse to offer appeals".

44. Having revisited question 29, and interpreting it as, "On how many occasions in the last 10 years has an appeal been refused on behalf of the School (excluding all incidents of [the complainant's son])?" the Council has now confirmed to the complainant that the school does not refuse to offer appeals. The Council has advised the complainant that it rejects applications on behalf of the School, and since 2011 – the date from which records are held, the Council has rejected a total of 31 appeals on behalf of the School.

### **Section 1 of the FOIA**

45. Section 1 of the FOIA states that –

"(1) any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

46. The Commissioner has investigated whether the Council holds the information which the complainant has asked for.
47. To make a determination of that question, the Commissioner applies the civil test which requires her to consider the question in terms of 'the balance of probabilities': This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.
48. The Commissioner has investigated whether the Council holds recorded information falling within the scope of the complainant's request. She has done this by asking the Council questions about the searches it has made to locate the information which the complainant seeks and questions about the possible deletion/destruction of information which might be relevant to the complainant's request.
49. The Commissioner asked the Council to confirm it holds no recorded information other than the letter from [Council Officer 1] to [the School's Headteacher] Kent of 14 June 2013 and the an email from [Council Officer1] to [the School's Headteacher] dated 5 July 2013, in respect of those parts of the complainant's request where the Council referred to these in its response.

50. The Council advised the Commissioner that it does hold other information that may be relevant to answer the complainant's questions, but no further information was disclosed to the complainant in response to his request. This is because the complainant did not ask for all records held, rather he asked specific questions which are answered in the letter from [Council Officer 1] to [the School's Headteacher] of 14 June 2013 and the email from [Council Officer 1] to the School Headteacher of 5 July 2013.
51. The Council said that it didn't, "...consider that it was necessary to disclose all records held that could potentially answer [the complainant's] questions, given that was not the objective of his questions". The Council points out that the complainant was provided with all information relating to him that could be lawfully disclosed in response to his subject access request under the Data Protection Act.
52. The complainant's subject access request required the Council to conduct extensive searches of all records relating to the complainant his application for his son's place at the school and all records relating the subsequent dispute. As such, the Council considers that the complainant has already been provided with all relevant information that can be provided to him.
53. The only questions in the complainant's request that do not relate directly to the complainant's application for his son's School place (and therefore not be covered by the complainant's SAR) are questions 1, 2, 3, 20, and 31.
54. The Tribunal decision relating to this request specifically stated, at paragraph 69: "In relation to the burden of this particular request, we find that many of the answers are contained either in the letter dated 14 June 2013 and the email dated 5 July 2013". The Tribunal's comment as made in the context of deciding whether responding to the complainant's request would be disproportionately burdensome and whether the letter and email would be sufficient to provide answers to the complainant's questions.
55. The Council estimates that reviewing all of the information that was found in the SAR search to check which documents (if any) could answer the complainant's questions would exceed the appropriate limit and therefore the Council could refuse to comply with the request in accordance with section 12(1) of the FOIA.
56. That said, the Council does not refuse the request in reliance on section 12(1).

57. The searches carried out by the Council to determine that it holds no further information within the scope of the complainant's request include the following:
58. Question 5: The Council says that it has answered this question in respect of any school that the complainant's son applied for within Warwickshire. The Council assures the Commissioner that it does not hold records relating to schools outside Warwickshire that the complainant's son may have applied for. This is confirmed by the Council's team leader for school admissions. The Council says, "...there is no business need (or logical reason) for the Council to hold records about admission to schools outside its area".
59. Question 11: When the Council carried out its search prior to its response in January 2019, the Council considered that any records of this meeting would be held either within the Council's legal team (where [the School's solicitor] previously worked) or within the school admissions team (if representatives attended the meeting). The Council made the assumption that the meeting the complainant referred to was the one that took place on Wednesday 3 July 2013 which was referenced in the email from [Council Officer 1] to [the School's Headteacher] of 5 July 2013.
60. Records held by the Council's legal team are emails retained within an electronic file from 1 and 2 July 2013. This suggested to the Council that a meeting would take place that week with representatives from the Council and the School to discuss the complainant's son's application. However, the file did not contain any further meeting minutes, nor details of location, nor the names of Governors who were in attendance. This is why the Council informed the complainant that it was unable to locate the information he had asked for.
61. On the grounds that the emails relating to the meeting were saved on this file, we Council said that it "reasonably anticipated that any further information would also be saved on this file.
62. The Council's solicitor has now left the Council and therefore it was not possible to ask him about this. Having now carried out searches of other legal files, the Council has located further relevant information about two other meetings that took place around the same time. Records relating to the meeting held by the School admissions team would have been found when the Council carried out searches in respect of the complainant's SAR because the complainant would have been mentioned at the meeting.
63. Question 20: The Council's School admission team has confirmed that this information is not held. There is no business need to keep a record of the average time a particular School takes to consider applications for

places. The Council has therefore not searched for this information because there is no logical reason for this information to be held.

64. Question 21: the complainant previously made a similar request for information. At the time of his previous request the Council asked the school admissions team for this information. The School responded by confirming that school place applications are an automated process and they have no record of how long it takes to process individual applications.
65. Question 23: The Council has no record of a specific "main point of contact" with the School, as the Council is likely to have many contacts at the School. In the context of the complainant's application for his son's school place, the majority of correspondence was with the School's Headteacher, as stated in the Council response to the complainant.
66. Question 24: School place applications is an automated process. The Council has assured the Commissioner that it has no record of how long it takes to process individual applications relating to individual children.
67. Question 25: The first half of question 25 asks the Council to deduce whether the School is capable of proceeding with his son's application immediately. The Council does not consider that it is required to answer questions such as this, where recorded information is not held. The Council has advised the Commissioner that it is are not aware of any existing written documentation that we could provide to the complainant to answer this question.
68. Also in respect of the second part of question 25, the Council has provided the complainant with the Council's admission procedure from 2013. The Council considers that the provision of this document is sufficient for the complainant to make the deduction necessary to answer his question. The school admission team has informed the Council that no other relevant documents exist.
69. Question 26: The points out that the complainant's question 26 requires the Council to offer its opinion on a number of matters, as such the Council considers that question 26 is not a request for recorded information and therefore not a valid request under the FOIA. The Council has advised the Commissioner that the requested opinions are "not otherwise recorded".
70. Question 27: The Council's team leader for school admissions has confirmed that records for school admissions are generally only held for 12 months. This is in accordance with the Council's retention schedule. To substantiate this position, the Council has provided the Commissioner with the appropriate extract from its schedule.

71. Question 29: The Council's team leader for school admissions has again confirmed that records for school admissions are generally only held for 12 months. However, the Council asked the team leader of the school appeals team (which sits within its legal services) whether the team held any information that could answer question 29. This is because the question specifically related to school appeals. Having initially confirmed that it does not hold the information, and interpreting the question as, "On how many occasions in the last 10 years has an appeal been refused on behalf of the School (excluding all incidents of [the complainant's son])", the Council provided the complainant with the number of refusals from 2011.
72. Question 30: The Council's team leader for school admissions has again confirmed that records for school admissions are generally only held for 12 months as provided for in the Council's retention schedule.
73. The Council has assured the Commissioner that it has carried out thorough searches of its paper-based and its electronic records for information specified in the complainant's request. These searches have included details of any consultations involving the Council's staff and the searches of the Council's records which related to the complainant's subject access request.
74. The complainant's subject access request was dealt with by the Council's legal team. The legal team asked the head of the school admission team to collate all information that concerned or referred to the complainant or his son and she was directed to include all emails to and from the complainant, including any emails from any staff member and any file information in respect of the complainant's son.
75. When the Council compiled its response to this request, following the Tribunal decision in December 2018, the Council asked its head of the school admissions team to locate any information to answer the complainant's questions 5, 6, 27, 28, 29, 30 and 31. The Council focussed on these questions because they could not be answered by referring the complainant to documents held within the legal team.
76. The team leader of the school appeals team was asked whether the team held any information that could answer question 29, as this specifically related to school appeals. Additionally, the Council searched for records held by the legal team in an attempt to find information that may be relevant to the complainant's questions 11 and 12.
77. The legal team searched its current electronic filing system since, which has been in use since 2006. The Council therefore considers it is reasonable to assume that any information relevant to the complainant's questions, which primarily relate to events in 2013, would be found within these electronic files.

78. In order to locate relevant recorded information, the Council used the following search terms: [the complainant's name], [the name of the School] and the initials of the School. These searches located nine electronic legal files with the subject matter of [the complainant's name] or the School's initials. A further 230 electronic files were located which contained reference to [the name of the School].
79. The majority of the records referred to above are case files for school appeals for individual children. The Council reviewed the file names to locate any general files for the School that do not relate to a specific child's school appeal.
80. The Council notes that the complainant's son's school appeal case was located in the search for files containing the word [the complainant's surname].
81. Files held by the Council's legal team normally concern specific and discrete matters. Given that the Council holds some miscellaneous files, the Council searched these to locate relevant information using the search terms; [the complainant's surname], [the name of the School] and the initials of the School. All potentially relevant electronic files were checked to determine whether they have a corresponding paper file in storage.
82. If a paper file is held in storage this would be noted on the home screen of the electronic file and consequently the Council has restricted its review of such files where relevant information has been found in the electronic file.
83. The Council has provided the Commissioner with a list of the legal files and the general contents of the files. The Council's list records the file name; the client's name; the date the file was opened; whether it is paper-based or electronic; a summary of the files contents; and, whether the file contains information relevant to the complainant's request.
84. The Council has informed the Commissioner that it did not search personal computers or those which are not part of its computer network. This is because the Council's legal team and school admission team have an organised filing system. The Council assures the Commissioner that there is no reason why relevant documents would be saved on personal computers.
85. Additionally, the Council has informed the Commissioner that it does not believe that any information specifically about the complainant would have been deleted. This is because there has been a number of

information requests from the complainant and litigation has been ongoing with the complainant since 2013.

86. In relation to the complainant's questions 27, 28 and 30, these questions seek information that would require the Council to examine the applications of other pupils over the last 10 years. The Council has informed the complainant that it does not hold the information because records of school admissions are generally only kept for 12 months. Records relating to school applications over the last 10 years would have been deleted 12 months after file closure.
87. The school admissions team has an electronic filing system that contains files in respect of thousands of school place applications for each school year. These are automatically deleted on a yearly basis. This is substantiated by the Council's information retention schedule for its Education Services.
88. The school admission team has no reason to retain records beyond the yearly school cycle and records would only be saved elsewhere within the Council if a complaint had been received and/or the application is referred to the legal team. The Council has confirmed that there is no business reason or statutory requirements for it to retain this information.
89. The Council has confirmed that it no longer relies on the exemption to disclosure provided by section 42(1) of the FOIA in respect of the information the complainant has asked for at his question 11.
90. The Council notes that the minutes of the meetings of 16 and 19 July 2013 were provided to the complainant in 2014. The Council believes that these are the meetings referred to in the complainant's question 11 and, given that the content of the minutes have already been disclosed the exemption provided by section 42(1) is not applicable.
91. In relation to the complainant's question 12, the Council has clarified that its legal team was advising both the Council and the School on this matter in separate capacities. [The School's solicitor] was advising the School and another member of the legal team was advising the admissions department of the Council.
92. In his question 12, the complainant asks for the Council to provide him with the Council's "legal view". Consequently the Council interpreted question 12 to be a request for the legal advice provided to the Council's admission team.
93. The Council has confirmed that it holds various records that contain legal advice provided to the School by the School's solicitor. This is contained in a file under the complainant's surname and the school's



initials. Having examined that advice, the Council considers that it does not fall within the scope of the complainant's question 12.

94. The Council has told the Commissioner that it is unable to locate records containing any legal advice provided to the Council on this matter. However, as stated in its original response to the complainant, the letter and email from [Council Officer 1] of 14 June 2013 and 5 July 2013 respectively set out the Council's view as to the legality of withdrawing his son's school place.
95. In the absence of any records, the Council has assumed that the officer advising the Council only gave general ad hoc advice to the school admissions team and that such advice was not recorded. That officer has now left the Council's employment and the Council is therefore unable to make any further enquiry about this matter.
96. Rather than to rely on section 42(1), the Council has informed the Commissioner that it considers the Council does not hold any relevant information that falls within the scope of the request.
97. The Council accepts that its original reliance on the section 42 exemption was speculative, as section 42(1) would likely apply to any documents that it holds which contained such legal advice.

#### The Commissioner's conclusion and decision

98. The Commissioner has carefully considered the Council's representations in this matter, together with the documents it sent her in support of its position.
99. The Commissioner accepts the Council's withdrawal of its reliance on section 42(1) in respect of information relevant to the complainant's questions 11 and 12. These questions, together with the rest of his questions rightly fall for consideration under section 1 of the FOIA.
100. The question for the Commissioner to consider is therefore, on the balance of probabilities, does the Council hold recorded information which meets the terms of the complainant's 31 questions.
101. The first point the Commissioner is obliged to make concerns the nature of the questions the complainant asked in his request. Many of those questions require the Council to provide confirmation in respect of a proposition, to comment on an assertion, i.e. whether something is true, or, to provide the complainant with the Council's opinion. The following questions require the Council to provide such responses: Questions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 19, and 26.
102. None of the questions listed above are requests for recorded information and therefore they do not engage the provisions of the FOIA. The

Council is not obliged to respond to these questions under section 1 of the FOIA, as they clearly do not relate to recorded information held by the authority at the time it received the complainant's request.

103. Where the Council holds recorded information which is relevant to one or more of the complainant's requests, the complainant may be entitled to have that recorded information disclosed to him but the FOIA does not require the Council to review that recorded information and to make deductions from it in order to satisfy the complainant information needs. Should the Council wish to provide such deductions, it would be doing so under its normal business practice and not under the provisions of the FOIA.
104. The Council has advised the Commissioner that it is generally happy to assist individuals that make information requests and provide answers to their questions where it is possible to do so. In this case, many of the officers that dealt with the complainant's son's school application and the subsequent litigation have now left the Council, or would be unable to recall the specifics of the case in order to provide a simple "yes or no" answer to his questions. Additionally, the Council understands that the complainant requires the Council to answer to his questions so that he can use it as evidence as the basis of a claim for misfeasance against the School. Unsurprisingly, the Council is wary about giving definitive answers to questions which the complainant might rely on in Court, where the answer is not necessarily straightforward.
105. The threat of litigation has led the Council to adopt an approach which involves the disclosure of recorded information from which the complainant can extract for himself the answers to his questions. This is illustrated by the Council's disclosure of the School's admission policy in response to the complainant's question 3.
106. The Commissioner supports the Council's approach to the complainant's request. She reiterates the fact that the FOIA obliges public authorities to disclose recorded information. She makes clear to the complainant that the FOIA does not require public authorities to create new information to satisfy a request or to answer specific questions. Reference to the Commissioner's guidance makes clear the following:
- "The Act does not cover information that is in someone's head. If a member of the public asks for information, you [the public authority] only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it." and "Under the Act, if you [the public authority] have information in your records that answers the question you should provide it in response to the request. You are not required to answer a question if you do not already have the relevant information in recorded form."

107. The Commissioner considers the Council is right to have focussed its response on the specific questions asked by the complainant. This is because the complainant had already taken receipt of the information the Council disclosed to him in response to his subject access request.
108. Under his subject access request the complainant is likely to have received all the information he is entitled to under the provisions of the Data Protection Act. So it is right for the Council to focus its attention on those questions which relate to information not covered by the disclosure of non-personal data information such as the Schools admission policy.
109. The Commissioner is satisfied that, on the balance of probabilities, the Council does not hold information relevant to the complainant's questions which not his or his son's personal data. The Commissioner accepts that the Council has carried out appropriate searches for recorded information that might be held and which might have assisted the complainant in answering his own questions. Accordingly, the Commissioner has decided that the Council has complied with the requirements of section 1 of the FOIA in respect of the complainant's request.
110. The Council's recent provision of recorded information in response to the complainant's questions 25 and 29, i.e. the Council's entry admission arrangements and the number of rejected applications since 2011, indicate that the Council held that information at the time the complainant made his request and therefore the Council has significantly breached the twenty day compliance period required by section 10 of the FOIA.

## **Other matters**

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111. The Commissioner notes that information which the complainant seeks concerns decisions made about his son's admission to a School in 2013. This raises the question as to whether the complainant's request was more properly considered under the Data Protection Act rather than under the provisions of the FOIA.
112. Two of the documents disclosed to the complainant in response to this request (the letter dated 14 June 2013 and the email dated 5 July 2013) contain the personal data of both the complainant and his son.
113. The Commissioner acknowledges that the Council considered whether to treat the complainant's request as a subject access request: Its original response of 24 March 2017 and internal review letter of 30 August 2017, make reference to section 40(1) of the FOIA.

114. Acknowledging that the complainant's son was able enough to make a subject access request for himself, but finding no evidence of him being interested in this information, the Council did not consider the request as a subject access request. Rather, the Council determined that it could potentially have applied the third party data exemption provided by section 40(2) of the FOIA and either redact or refuse to release the documents.
115. Given that the complainant already had these documents as a result of his subject access request (and part of the Tribunal evidence bundle), the Council considered that it would be reasonable to disclose them again.
116. In these circumstances the Council felt it was not necessary to redact the personal data relating to the complainant's son. The Council recognised the issues relating to the disclosure of personal data and has informed the Commissioner that such information would not ordinarily be disclosed under the FOIA - to the world at large. Instead, the Council has not posted this information and response on its disclosure log.

**Right of appeal**

117. 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@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

118. 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.

119. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**