

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

### **Decision notice**

**Date:** 12 May 2021

**Public Authority:** Education Authority Northern Ireland

**Address:** 182 Galgorm Road  
Ballymena  
BT42 1HN

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

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1. The complainant has requested minutes of meetings relating to the Board of Governors of Ballyclare Secondary School and their Finance Sub-Committee. The EANI provided the complainant with the requested Board of Governors meeting minutes, however it stated that it did not hold the Finance Sub-Committee meeting minutes.
2. The Commissioner's decision is that, on the balance of probabilities, the EANI has complied with section 1 of the FOIA and does not hold the aforementioned minutes.

#### **Request and response**

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3. On 4 June 2020, the complainant wrote to the EANI and requested information in the following terms:  
  
"Ballyclare Secondary School Board of Governors Minutes January 2016 to March 2020 and Ballyclare Secondary School Finance Sub Committee Minutes from January 2016 to March 2020."
4. The EANI disclosed the requested Board of Governors meeting minutes to the complainant and responded that it did not hold the Finance Sub-Committee meeting minutes. The complainant requested an internal

review of the EANI's response on 20 August 2020. The reviewer responded on 5 October 2020 upholding the original response.

## **Scope of the case**

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5. The complainant contacted the Commissioner on 6 October 2020 to complain about the way her request for information had been handled.
6. The Commissioner has considered the EANI's handling of the complainant's request, in particular whether it has complied with section 1 of the FOIA.

## **Reasons for decision**

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### **Section 1 – Determining whether further information is held**

7. Section 1 of the FOIA states that:

“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.”
8. In this case, the complainant disputes the EANI's position that it does not hold the information sought in her information request of 4 June 2020.
9. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request.
10. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the EANI to

check whether the information is held and any other reasons offered by the EANI to explain why the information was not held. In addition, she will consider any reason why it is inherently likely or unlikely that the requested information is not held.

11. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
12. As part of her investigation, the Commissioner wrote to the EANI requesting its submissions in respect of a number of questions relating to the complainant's view that it should hold the requested minutes. The Commissioner's questions were focused on the EANI's endeavours in searching for the requested information, and whether any information falling within the scope of the requests was deleted or destroyed.
13. The Commissioner asked the EANI whether there was a statutory requirement for it to hold the Finance Sub-Committee meeting minutes. The EANI stated that the Education and Libraries (NI) Order 1986 requires the EA to prepare a Scheme of Management ("SOM") for controlled schools. The SOM was prepared by EA to provide for the management of each controlled school. Controlled schools must adhere to the SOM. This is covered in Article 2 of the SOM which states:

*"Each school shall be conducted in accordance with: (a) the provisions of the Education Orders; (b) the terms of this Scheme; (c) any direction or guidance of the Authority in so far as it does not conflict with paragraph (a) of this Article."*
14. The EANI stated that Board of Governors and Committee Minutes are covered by Articles 58-61 of the SOM. Article 58(1) (b) covers the taking of minutes of Committee meetings:

*"58(1) A separate record shall be taken of –*

  - (a) the proceedings of each meeting of the Board of Governors;*
  - (b) the proceedings of each meeting of a committee of the Board of Governors; and*
  - (c) in committee proceedings at each such meeting;*

*by the secretary to those proceedings."*
15. Under the SOM the Committee is required to provide a copy of the minutes to the EANI. This is covered by Article 61 which is entitled "*Distribution of Minutes*":

*"61. (1) A copy of the minutes required under Article 58(1) (a) and (b) of this Scheme shall be sent to the Chief Executive as soon as practicable; and no later than 14 days after that meeting and to each member at least seven full days before the next meeting."*

16. The EANI stated that all relevant directorates were contacted to conduct a search for the requested information. Schools submit copies of minutes to the Education Directorate as a matter of procedure. The Information Governance Team requested that the Education Directorate conduct a search for the information on 10th June 2020. This was then allocated to the appropriate team which manages such information for schools falling within the locality North area on 19th June 2020.
17. The Education Directorate provided the Board of Governors meeting minutes it held to the Information Governance Team to make the relevant review/redactions on the 23rd June 2020. The Education Directorate confirmed that they did not hold sub-committee minutes in respect of this school. For the avoidance of doubt the Information Governance Team asked the Finance directorate to conduct a search for the information. The Finance directorate confirmed that it did not hold the information, nor is it routine for it to hold such information.
18. The EANI informed the Commissioner that, when the complainant requested an internal review of its original response, its Information Governance Team again asked both the Education Directorate and Finance Directorate to confirm for the avoidance of doubt that no information was held. Both confirmed that Ballyclare Secondary School had not provided the EANI with copies of those minutes.
19. In searching for the relevant information, the EANI carried out checks on manual copies of Board of Governor Minutes held, and for more recent additions, electronic records. Information such as that requested would be held centrally and those central records were checked both at the time of the original request and again as part of the Internal Review procedure. The EANI was able to locate the Board of Governors meeting minutes which were also requested by the complainant and provided them to her as part of that process. However, the EANI confirmed categorically that it did not hold any Finance Sub-Committee minutes for this School.
20. The EANI confirmed that, as the Finance Sub-Committee meeting minutes were never held by it, they had not been deleted or destroyed.
21. In relation to the Commissioner's questions about the EANI's retention policy regarding the information requested, it stated that its retention period for Board of Governors' meeting minutes is two years.

## **The Commissioner's Conclusion**

22. The Commissioner has examined the submissions of both parties. She has considered the searches performed by the EANI and its explanations as to how it had satisfied itself that it did not hold the information.
23. The Commissioner's role is to make a decision based on whether, on the balance of probabilities, relevant recorded information was held by the EANI.
24. The Commissioner appreciates that the complainant considers that the EANI should hold the Finance Sub-Committee meeting minutes. Indeed, the wording of the SOM supports that consideration and indicates that the School should have provided the EANI with those minutes. However, it is not for the Commissioner to judge whether information should be held, but to decide on the balance of probabilities whether it actually is held.
25. In the absence of evidence to the contrary, the Commissioner is satisfied that the EANI has provided plausible and convincing explanations that it has carried out the necessary steps to conclude whether it held the information requested by the complainant. Therefore, the Commissioner concludes that, on the balance of probabilities, the requested Finance Sub-Committee meeting minutes are not held by the EANI.

## Right of appeal

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26. 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)

27. 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.
28. 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 .....**

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**