

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2021

Public Authority: The Governing Body of Westfield Academy
Address: Tolpits Lane
Watford
Hertfordshire
WD18 6NS

Decision (including any steps ordered)

1. The complainant has requested confirmation of whether a named individual was a former pupil at Westfield Academy (the public authority).
2. The Commissioner's decision is that on the balance of probabilities the requested information is not held.
3. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

4. On 28 December 2020, the complainant wrote to the public authority and requested information in the following terms:

"I would be grateful if you would provide me with the following information, under the Freedom of Information Act 2000:

1. *Whether or not [redacted], dob: [redacted], was ever a pupil at your establishment in its earlier incarnation as Westfield Community Technology College or otherwise; and*

- 2. If so, the date on which she first became a pupil at the establishment and the date on which she ceased to be a pupil."*
5. On 7 January 2021, the public authority responded to the request. It said that it only keeps records of former students up to them reaching 25 years of age, and as the data subject is now above this age, it is therefore unable to confirm whether she was ever a pupil.
 6. The complainant replied on the same day and asked the public authority to confirm that if any records for the data subject existed, they would have been destroyed in line with its 'policy' when she reached 25 years of age. The public authority replied on the same day. It said that once students reach 25 years of age, it does not keep any records.
 7. The complainant replied on the same day and said that he does not feel that the public authority's reply was adequate (it failed to confirm or deny whether any information was held). He asked it to carry out a review of his request. The public authority replied later the same day and denied holding the requested information. It said that the relevant records management policy requires that all student files are destroyed after students 25th birthday.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner has considered whether, on the balance of probabilities, the requested information is held by the public authority.

Reasons for decision

10. 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."

11. The Commissioner has sought to determine whether, on the balance of probabilities, the public authority holds any information which falls within the scope of the request. He will apply the civil test of 'the balance of probabilities' in line with the approach taken by the Information Rights Tribunal when it has considered the issue of whether information is held by a public authority.
12. In deciding where the balance of probabilities lies in this case, the Commissioner will consider explanations provided by the public authority, together with searches it has carried out and any other information offered, which is relevant to his determination. He will also consider any comments made by the complainant.

The complainant's view

13. The complainant said that the public authority must 'expressly confirm' that it does not hold any records of the data subject identified in the request. He said it is not sufficient for the public authority to claim that it does not have to keep records of the data subject identified in the request.
14. He also said that his complaint raises important issues as to the effectiveness of the FOIA if, "*as in this case, its requirements can be evaded by a series of wholly unpersuasive representations made by the information holder and the unquestioning acceptance of those by the ICO without even addressing the matter of their credibility.*"

The public authority's view

15. The public authority said that the data subject would have been of secondary school age between September 1983 and July 1990.
16. The public authority explained that student files are held in accordance with 'Data Protection principles' and the 'Data Retention white paper'. Student files are therefore transferred to the next school that the student attends or must be retained until their 25th birthday, when, they must be destroyed (if the student has remained at the school until the statutory leaving age). It conducted a search and there was no record of any files relevant to the scope of the request being destroyed.
17. The public authority said that it also searched its Electronic Management Information System (MIS) for information within the scope of the request. This is its electronic system that stores student information. The earliest records in the MIS are for the academic year of 2001 – 2002. Although this date is after the data subject would have left secondary schooling, it nevertheless searched the data subject's

forename, surname and date of birth in the MIS, however, no information relevant to the scope of the request was found.

18. The public authority also searched its 'log of archived student files'. These are records that are maintained about students' registration / admission. The log was generated at the point when the school moved building in 2016 and onsite storage was greatly reduced, so archived files were stored off site. The log is an electronic spreadsheet that is saved on the school's one drive. It searched the data subject's forename, surname, date of birth and then year of birth, however, no information relevant to the scope of the request was found.
19. The public authority also searched 'historic admission records'. It said that the records are not a complete set. It explained that there are 12 books dating from 1897 through to April 1982 and February 1990. It said that there are no books between the dates of the latter two books and no record of the destruction of these record books. The latter two books were searched. Although 1982 would have been the year before the data subject would have moved up to secondary school, and 1990 would have been the final year of sixth form if the data subject had remained at the school until that time (these are the most relevant books in the set).
20. The public authority conducted searches of the data subject's forename and surname in alphabetised sections at the front of the books (which show admission number, forename and surname) and also the more detailed section at the back of the books (which show forename, surname, admission number, date of admission, parents' names, address, date of birth, previous school and last date of attendance and reason for leaving / destination). The books were searched twice, however, no information relevant to the scope of the request was found.
21. The public authority also conducted a consultation with its longest-standing member of staff, who, joined the organisation in September 1997 as a classroom Teacher. This means that they joined the school seven years after the last year that the data subject may have attended the school (had she remained until the second year of sixth form). The member of staff had no recollection of the data subject. She recalls attendance registers being used in 1997, however, the public authority said that there are no remaining copies of the registers and no record of when or how they were destroyed.

The Commissioner's position

22. The Commissioner notes the complainant's views, however, he basis his decision on the application of the civil test of 'the balance of probabilities', and takes in to account explanations provided by the public authority and any searches carried out.
23. The Commissioner notes that although the public authority initially did not confirm or deny whether information within scope of the request was held, it has since denied that any information is held and provided explanations for this, as well as details of extensive searches that were carried out (for the information).
24. The Commissioner notes the dates the data subject would have been of secondary school age, the fact that the public authority only holds student files until a student's 25th birthday, and that the searches carried out did not identify any record of files relevant to the scope of the request being destroyed.
25. The Commissioner also notes that the earliest records in the public authority's MIS date back to the academic year of 2001 – 2002, that this date is after the data subject would have been of secondary school age, that searches of the system were nevertheless carried out, and did not identify any information relevant to the scope of the request.
26. The Commissioner also notes the searches carried out of the log of archived student files and historic admission records, the information contained within the log / records, the search terms used and that these searches did not identify any information relevant to the scope of the request. In regard to the records, he notes that these were not a complete set, and that the most relevant books were nevertheless searched twice and did not identify any information relevant to the scope of the request.
27. The Commissioner also notes that although the FOIA only places an obligation on a public authority to search for information (within the scope of the request) held in a recorded form, the public authority in this case also conducted a staff consultation, and that the longest standing member of staff confirmed that they did not have any recollection of the data subject attending the school.
28. For the reasons given above, the Commissioner is satisfied that, on the balance of probabilities, the requested information is not held by the public authority.

Right of appeal

29. 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

30. 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.
31. 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
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