

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2022

Public Authority: Cambridgeshire County Council
Address: Scott House
5 George Street
Huntingdon
PE29 3AD

Decision (including any steps ordered)

1. The complainant has requested Cambridgeshire County Council (the council) to disclose information relating to the introduction of an Interim Executive Board (IEB) at Spinney Primary School. The council disclosed some information but refused to disclose the remainder citing sections 36(2)(b) and 40 of FOIA.
2. The Commissioner's decision is that the council is entitled to refuse to disclose the remaining withheld information in accordance with section 36(2)(b) of FOIA. However, the Commissioner has recorded a procedural breach of section 17(3) of FOIA, as the council failed to complete its deliberations on the balance of the public interest within a reasonable time.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 1 May 2022, the complainant wrote to the council and requested information in the following terms:

"Please can I request any information held about the introduction by the LA of the Interim Executive Board at the Spinney Primary School in

Cambridge. Specifically the LA will hold a copy of the letter leading to it (called a warning notice) as the local authority must give a copy of any warning notice they issue to the relevant RD; similarly, an RD must give a copy of any warning notice they issue to a maintained school to its local authority.

If held I also request

The communication demonstrating the LA obtained consent from the RD before appointing an Interim Executive Board (IEB) or the reverse

The local authority letter written to the governing body to give them notice that the IEB would be established. This notice specifies a date when the IEB will commence and will usually also give a date when the IEB will cease, or an exit plan.

Any further LA commissioned or held reports, summaries or communications about the governance at the Spinney primary school since June 2021."

5. The council wrote to the complainant on 31 May 2022 to notify him that it had applied an extension of time under section 10(3) of FOIA to determine the balance of the public interest test and the new deadline was now 30 June 2022.
6. The council responded on 19 July 2022. It disclosed some information but refused to disclose the remainder citing section 36(2)(b) and 40 of FOIA.
7. The council conducted an internal review on 16 August 2022 and upheld the application of the exemptions cited.

Scope of the case

8. The complainant contacted the Commissioner on 16 August 2022 to complain about the way his request for information had been handled.
9. The Commissioner has not requested sight of the remaining withheld information. He is satisfied that section 36(2)(b) of FOIA applies based on what the remaining withheld information would encompass, the circumstances at the time of the request and various other decisions he has made around similar circumstances and requests.
10. The next section will explain why the Commissioner has decided that section 36(2)(b) of FOIA applies to all remaining withheld information.

Reasons for decision

Section 36 – prejudice to the effective conduct of public affairs

11. Section 36(2) states that information is exempt from disclosure if, in the reasonable opinion of the qualified person, disclosure of the information –
 - (b) would, or would be likely to, prejudice-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
 - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
12. The council confirmed that the qualified person is the Monitoring Officer and they were provided with the relevant information about the request and produced a signed and dated opinion prior to the publication of its final response. It stated that in the reasonable opinion of the qualified person disclosure of the remaining withheld information would be likely to inhibit the free and frank exchange of views for deliberation, as set out in section 36(2)(b)(ii), especially in relation to the need for honest input and feedback in the context of a governance review.
13. The Commissioner must first consider whether this opinion is a reasonable opinion to hold. It is important to highlight that it is not necessary for the Commissioner to agree with the opinion of the qualified person in a particular case. The opinion also does not have to be the only reasonable opinion that could be held or the 'most' reasonable opinion. The Commissioner only needs to satisfy himself that the opinion is reasonable or, in other words, it is an opinion that a reasonable person could hold.
14. The Commissioner notes that an IEB is generally appointed when a governing body is judged to be incapable of improving performance and turning a school around even with support. Looking at the information available on the school's website, the IEB terms of reference was approved on 6 May 2022 and a meeting was held with parents on 19 May to tell them all about it. The complainant's request was made on 1 May 2022. Considering the timing of the request and the IEB only just being introduced, the Commissioner considers it is a reasonable opinion to hold that disclosure would be likely to prejudice the free and frank exchange of views for the purposes of deliberation. The council and the school required the safe space to exchange views frankly, completely

and honestly and deliberate on the best plans for the school going forward. Disclosure at the time of the request would have been likely to hinder this process which in turn would have been likely to hinder the improvement the school requires.

15. For the above reasons, the Commissioner is satisfied that section 36(2)(b)(ii) is engaged.

Public interest test

16. The council recognised the general public interest in transparency and accountability and in understanding the reason why certain decisions are made, such as the appointment of an IEB at the primary school. It stated that there is a public interest in the overall performance of the school and how key decisions are made in order to assist the school accomplish these targets.
17. However, it considered the public interest rests in maintaining the exemption. It stated that discussions on this matter between officers and the school should take place in a safe space where views can be expressed freely, frankly and completely. If not, then parties would be less inclined to commit to written opinions and views if they believed that those records would be disclosed publicly. It argued that reports and audits aiding investigations were partly sourced from feedback provided from a variety of parties who gave their views and advice on this matter. The council considers it is unlikely that such views would be openly given on sensitive matters should these parties believe it may be disclosed in full.
18. The council went on to say that it is critical that officers and individuals are able to voice their opinions in a full and frank way. This enables the council to make decisions based on clear information without the fear that information is being withheld or individuals are not giving their honest opinions due to fear of disclosure. This enables all options to be considered, policies formed from discourse and decisions made on the best information.
19. The Commissioner considers the public interest test considerations under section 36 of the FOIA require him to consider the extent, severity and frequency of the inhibitions claimed by the public authority.
20. The Commissioner acknowledges the public interest in favour of disclosure. For the parents and staff at the school, and for the local community as a whole, it will have been a concerning time and there will inevitably be clear public interest in why an IEB is necessary and what actions are being taken to improve the performance of the school.

21. That being said, the request was made just prior to the approval of the terms and reference of the IEB – i.e. when the decision to implement an IEB had only just been taken and not fully introduced to the concerned parents and staff. The issue was very much live, ongoing and required further deliberations and planning. The council and the school clearly still required the safe space to deliberate and exchange views and advice openly, candidly and as frank as possible. Such safe space is required to ensure that the best possible options are openly and frankly discussed so that the most appropriate action is taken to improve the performance of the school. The Commissioner does not consider it is the wider interests of the public to prejudice the ability of the council and the school to do that.
22. For the above reasons the Commissioner has decided that the public interest rest in maintaining the exemption.

Section 17 – refusal of request

1. Section 1(1) of FOIA says that an individual who asks for information from a public authority is entitled to (a) be informed whether the authority holds the information and (b) if the information is held, to have that information communicated to them.
2. Section 10(1) of FOIA states that a public authority must respond to a request “promptly and in any event not later than the twentieth working day following the date of receipt.”
3. Section 10(3) of FOIA states that, where a public authority is considering the balance of public interest, it can extend the 20 working day deadline “until such time as is reasonable in the circumstances.”
4. Section 17(3) of FOIA states that where a public authority is relying on a qualified exemption, it can have a “reasonable” extension of time to consider the public interest in maintaining the exemption or disclosing the information.
5. Although FOIA does not define what constitutes a reasonable time, the Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to justify the time taken fully.
6. The Commissioner notes that the council took a further three weeks to carry out the public interest test exercise and provide its response to the complainant. It extended the deadline initially to 30 June 2022 but did not respond until 19 July 2022. The Commissioner does not consider

there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest test within a reasonable timeframe, the council has therefore not complied with section 17(3) of FOIA.

Right of appeal

7. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

8. 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.
9. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF