

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 May 2023

Public Authority: Colchester Royal Grammar School

Address: 6 Lexden Road
Colchester
CO3 3ND

Decision (including any steps ordered)

1. The complainant has requested the responses to an internal staff survey undertaken by the Colchester Royal Grammar School ("the School"). The School disclosed some information, but withheld the raw data and free text comments under section 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the School is entitled to withhold the information under section 40(2).
3. The Commissioner does not require further steps.

Request and response

4. On 4 November 2022, the complainant wrote to the School and requested information (following earlier requests for clarification from the School) in the following terms:

"I am happy to narrow this request once more. Please provide the raw data and anonymised comments from any surveys sent to staff regarding their experience of the academy, leadership and management of the academy, or wellbeing within the last 6 months.

I am able to obtain parental feedback using other forums so hereby exclude parent and student surveys from this request.

I am aware of at least one survey sent electronically, and note there were 186 members of staff recorded in the latest accounts filed with Companies House. If you are still of the view that fulfilling this request will exceed the £450 cost limit set out by the ICO then please list the titles of any surveys completed by staff, dates of survey and the percentage of staff who completed each survey."

5. The School responded on 24 January 2023. It disclosed some statistical information (being the total number of responses by type of staff member, along with the number of responses that included free text comments), but withheld the raw data and free text comments.
6. Following an internal review, the School wrote to the complainant on 27 February 2023. It maintained its earlier position.

Reasons for decision

7. This reasoning covers whether the School is entitled to rely on section 40(2) (Personal information) of the FOIA to refuse to provide the requested information.
8. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
9. Section 3(2) of the Data Protection Act 2018 defines personal data as:

"any information relating to an identified or identifiable living individual."

10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. In this case, the School has withheld the raw data and free text comments collated as part of an internal staff survey.
12. The raw data represents the 49 participants' answers to multiple choice questions. The Commissioner notes that there were 5 available answers to choose for each question.
13. The free text comments were voluntary, and only provided by 32 of the participants.
14. The Commissioner has reviewed the withheld information. In respect of the raw data, the Commissioner notes that it represents the opinions of a relatively small cohort of individuals (School staff) who are likely to be aware of each other's identities. The Commissioner also notes that for each of the multiple-choice questions, there is a range of responses spread across the 5 available answers, and that in most cases there are very low numbers (less than 5) of specific answers. In such a context, the Commissioner considers that the identities of each of the participants may be reasonably identifiable to each other based on the answers to the questions, and that the raw data therefore represents personal data.
15. In respect of the free text comments, the Commissioner notes that they represent detailed and specific opinions. In such a context, the Commissioner considers that the identities of each of the participants may be reasonably identifiable to each other, and that the free text comments represent personal data.
16. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
17. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
18. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.

19. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
20. However, the Commissioner recognises the request is seeking information that may be related to identifiable individuals in the context of an internal staff survey, as part of which they will have been invited to provide candid opinions, including in the form of free text comments. There is no indication to the Commissioner that these individuals would have held a reasonable expectation that their answers would be shared with colleagues, or disclosed into the public domain under the terms of the FOIA. In such a context, the Commissioner considers that the individuals will have provided their opinions in the expectation of privacy.
21. The Commissioner further considers that the School's disclosure of more general information (noted in paragraph 7) addresses some of the legitimate interest by disclosing to the public that a survey has been undertaken, and what staff engagement it received.
22. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals. Therefore, he considers that there is no legal basis for the School to disclose the requested information and to do so would be in breach of principle (a).
23. The Commissioner's decision is that the School is entitled to rely on section 40(2) of FOIA to refuse to provide the requested information. The Commissioner requires no further action to be taken by the School in relation to this request.

Right of appeal

24. 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

25. 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.
26. 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

Daniel Perry
Senior Case Officer
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