

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2024

Public Authority: The Governing Body of Hillmead Primary School

Address: Woburn Avenue
Bishop's Stortford CM23 4PW

Decision (including any steps ordered)

1. The complainant has requested information associated with Governing Board meetings. Hillmead Primary School ('the School') disclosed a lot of information but withheld some under sections 36, 40, 41 and 43 of FOIA. These exemptions concern prejudice to the effective conduct of public affairs, personal data, information provided in confidence and commercial interests respectively. As a result of the Commissioner's investigation, the School identified further information it considers it can disclose but it is continuing to withhold the remainder.
2. The Commissioner's decision is as follows:
 - The School correctly applied section 36(2)(b)(ii) of FOIA to the information to which it has applied this exemption.
 - The small amount of information to which the School has applied sections 41(1) and 43(2) doesn't engage these exemptions.
 - The School hasn't complied with sections 1(1) and 10(1) of FOIA as it hasn't communicated all the non-exempt information within the statutory time frame.
 - The School's refusal notice didn't meet the requirements of section 17(1).

3. The Commissioner requires the School to take the following steps to ensure compliance with the legislation:
 - Disclose the information the School has discussed in its submission to the Commissioner and in correspondence directly with him which it has identified it can disclose, and the information which the Commissioner has found doesn't engage sections 41(1) and 43(2). The School should redact any personal data from this information as appropriate.
4. The School must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant made the following information request to the School on 17 May 2024:

"For every Governing Board or Committee meeting since January 2022 to present day, a copy of the following documents:

 1. The Agenda
 2. The signed minutes
 3. Draft minutes of meetings not yet signed
 4. Any report or other paper supporting, including confidential reports or papers considered at such meeting, with identifying data redacted and the limited exception of staff salaries, or named staff members.
 5. Details of any documents that have not been provided, and the reasons"
6. On 25 May 2024, the School wrote to the complainant and advised that some of the information was already published. It also said there may be a cost associated with complying with the request.
7. The School provided a substantive response to the request on 19 June 2024. It advised that some information was already published, disclosed a large amount of information, and advised that it was withholding the remaining information for a variety of reasons.
8. The complainant requested an internal review on 8 July 2024. They said, in effect, that the School hadn't confirmed what FOIA exemptions it was relying on to withhold information. The complainant indicated that information about salaries and parents' or pupils' names could be withheld but queried the timeliness of the School's response.

9. The School provided an internal review on 10 July 2024. It confirmed that it's relying on sections 40, 41, 43 and 36 of FOIA to withhold some information the complainant has requested. The School finally confirmed that it doesn't hold the "verbal reports" that the complainant had referred to in their internal review request.
10. In its submission to the Commissioner the School confirmed that it had identified some information that it could disclose. And following discussion with the Commissioner, the School confirmed that there is further information that it will disclose.

Reasons for decision

11. Because the School has applied this exemption to the majority of the information it's withholding, this reasoning focusses on the School's reliance on section 36(2)(b)(ii) of FOIA. If and where necessary, the Commissioner will consider the other exemptions the School has applied to this information.
12. The Commissioner will then consider the School's application of section 43(2) and 41(1) to the small amount of remaining information.
13. The School has provided the Commissioner with a copy of the information it's withholding.

Section 36 – prejudice to effective conduct of public affairs

14. The School has applied section 36(2)(b)(ii) of FOIA to various pieces of information in the meeting minutes for different months across the three years specified in the request.
15. Under section 36(2)(b)(ii) information is exempt from disclosure if, in the reasonable opinion of a qualified person, its disclosure would otherwise inhibit or would be likely to otherwise inhibit the free and frank exchange of views.
16. These two exemptions under section can only be engaged on the basis of the reasonable opinion of a qualified person (QP).
17. From its submissions to him, the School has applied section 36(2)(b)(ii) to information in the following documents:

[1] March 2022 Part 2B Confidential Minute

[2] July 2022 – EGM Minutes (May and June)

[3] February 2023 - Part 2 Confidential Minute

[4] May 2023 – Part 2 Confidential Minute

[4] December 2023 - Part 2A Confidential Minute

[5] December 2023 – Part 2B Confidential Minute

[6] February 2024 – Part 2A Confidential Minute

[7] February 2024 – Part 2B Confidential Minute

18. In all the instances where the School has applied section 36(2)(b)(ii) it has described the information to the Commissioner; what is being discussed and the background and context behind the discussion. He doesn't intend to detail the information in this notice.
19. The School has advised that, in all cases, the QP was the Chair of the Full Governance Board. The Commissioner is satisfied that, under section 36(5) this person is an appropriate QP.
20. The QP's opinion was that disclosing the information would be likely to discourage staff from openly discussing similar matters in the future. This could undermine future decision-making processes.
21. It's important to note that 'reasonableness' in relation to the QP's opinion isn't determined by whether the Commissioner agrees with the opinion provided but whether the opinion is in accordance with reason. In other words, is it an opinion that a reasonable person could hold? This only requires that it's a reasonable opinion, and not necessarily the most reasonable opinion.
22. The QP is the Chair of the Governance Board of a relatively small primary school. As such, the Commissioner considers that that individual would have sufficient background knowledge and information about the School to enable them to make a decision on the matter of whether disclosing certain information in meetings would be likely to inhibit the free and frank exchange of views, and why that would be the case.
23. Their view is that the envisioned inhibition would be likely to happen, rather than would happen. The Commissioner will accept that the lower level is a credible level of likelihood ie that there's more than a hypothetical or remote possibility of the envisioned inhibition occurring.
24. Some of the withheld information goes back to 2022 and so matters discussed then could be considered no longer to be 'live' at the time of the request. However, section 36(2) is about the processes that may be inhibited, rather than what is in the information. The issue here is

whether disclosure would inhibit the process of exchanging views. The Commissioner accepts that disclosure would have a chilling effect in meetings where it's necessary for attendees at Governance Board meetings to feel able to talk freely about sensitive matters, such as those discussed in the minutes in question. The Commissioner therefore finds that the QP's opinion that disclosing the information in this case would be likely to inhibit the exchange of views in meetings is a reasonable one.

25. Since the Commissioner finds that the QP's opinion is a reasonable one, he must find that section 36(2)(b)(ii) has been correctly applied. He's gone on to consider the public interest test associated with this exemption.

Public interest test

26. In their complaint to the Commissioner, the complainant has said they are concerned about transparency, and the integrity of the School's decisions - how and why they are made, and how finances are managed to support children. They said that such decisions impact the wellbeing and safety of the entire School community.
27. In its submission, the School has acknowledged that there's a public interest in transparency within public bodies, including schools. However, the School says, in this case, the public interest in protecting the effective functioning of the school and allowing staff to deliberate freely on sensitive matters outweighs the public interest in disclosure. The School argues that ensuring that leaders can engage in frank discussions without fear of reprisal or misinterpretation is critical its operational effectiveness and decision-making process.
28. When he considers the balance of the public interest, the Commissioner takes account of the weight of the QP's opinion, the timing of the request, and the severity, extent and frequency of the envisioned prejudice or inhibition.
29. The QP in this case was the Chair of the Board of Governors. As such they had the requisite knowledge about the School and the consequences of any disclosure. Their opinion that the envisioned inhibition would be likely to happen therefore carries weight.
30. Chilling effect arguments are likely to be strongest if the issue in question is still live. The Commissioner has noted that some of the matters discussed in the minutes, from 2022 and 2023 in particular, may have been resolved and are therefore no longer 'live' as such. However, the events discussed are not in the distant past and, as the

Commissioner will go on to discuss, it is the effect of disclosure on the process of the Board meetings that is key in this case.

31. Because regarding severity, extent and frequency, the issue is about the potential inhibition to the process of exchanging views, rather than what is in the information exchanged. The School considers that disclosing the information would have a chilling effect on the willingness those attending senior leadership meetings to have frank discussions about sensitive matters involving the School.
32. The Commissioner has reviewed the information the School has withheld. He considers that that information is sensitive and that the School would need to feel confident that it could discuss these situations completely openly in order to resolve them.
33. If people didn't feel able to offer their views about sensitive matters such as these – concerned that those views could be disclosed to the world at large under FOIA – this could lead to not all the relevant and pertinent views and facts emerging. In turn, this could weaken discussions and decisions about those matters.
34. The complainant hasn't detailed any specific concerns about the School. But the Commissioner appreciates that they have an interest in the information they've requested, and he notes that they've received a great deal of it. The Commissioner also notes that the School publishes Governing Board meeting minutes and Ofsted reports, pupils' performance data, information about Special Educational Needs and Disabilities and a range of other information about the School is published, by the School and on GOV.COM. The Commissioner considers that this satisfactorily addresses the general public interest in the School being transparent.
35. In the circumstances of this case the Commissioner considers that there's greater public interest in the School's leadership being willing to talk openly about sensitive matters in its meetings. Complete frankness is more likely to lead to issues and concerns being identified, understood and acted upon appropriately. This would ensure the School operates effectively and to the benefit of its staff, students and community. There's a considerable public interest in that.
36. The Commissioner is therefore satisfied that, on balance, the public interest favours maintaining the section 36(2)(b)(ii) exemption in this case.
37. That being the case, it hasn't been necessary for the Commissioner to consider other exemptions the School has applied to the same information.

38. The Commissioner will, however, go on to consider the remaining information, to which the School didn't apply section 36(2)(b)(ii) and which it's continuing to withhold.

Section 43 – commercial interests

39. The School has applied section 43 (and section 41) to a small amount of information in a minute from February 2023 - Part 2.
40. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
41. When he's considering whether section 43(2) is engaged the Commissioner considers whether the envisioned prejudice relates to commercial interests, whose commercial interests would be prejudiced, how disclosure would cause the prejudice, and the degree of likelihood of the prejudice occurring.
42. In its submissions to him, the School has confirmed that the information it's continuing to withhold relates to staffing matters.
43. However, while the School has been given more than one opportunity to explain why disclosing this information would or would be likely to prejudice its (or another person's) commercial interests, it hasn't done this; its submissions focus on other information in this minute that it's now going to disclose.
44. Without that explanation, the Commissioner cannot find that section 43(2) is engaged; it's not his role to do a public authority's reasoning for it.
45. Because he's found section 43(2) isn't engaged, the Commissioner will consider the School's application of section 41 to this information.

Section 41 – information provided in confidence

46. Section 41(1) of FOIA states that information is exempt from disclosure if (a) the information was obtained by the public authority from any other person and (b) disclosing the information to the public would constitute an actionable breach of confidence.
47. The Commissioner has considered the information to which the School has applied this exemption. He doesn't consider that this information was given to the School by another person, and the School's submissions haven't made a case that it was. As such, section 41(1) therefore cannot be engaged.

Procedural matters

48. Under section 1(1) of FOIA a public authority must (a) confirm whether it holds information an applicant has requested and (b) communicate the information if it's held and isn't exempt information.
49. Under section 10(1) the authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
50. In its submissions to the Commissioner, the School proactively identified further information it considers it can disclose. The School therefore hasn't complied with section 1(1) and 10(1) in respect of that information.
51. Finally, regarding exempt information, section 17(1) of FOIA requires a public authority to provide a refusal notice that cites the relevant exemption the authority is relying on and states why that exemption is engaged. It should provide the refusal notice within 20 working days of the request.
52. In this case the complainant submitted their request on 17 May 2024 and the School didn't cite any explanations or reasoning until its internal review of 10 July 2024. The School therefore didn't comply with section 17(1).

Right of appeal

53. 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

54. 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.
55. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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