

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 November 2010

Public Authority: The Governing Body of All Saints (CE) Primary School
Address: Slatefell Drive
Cockermouth
Cumbria
CA13 9BH

Summary

The complainant requested a number of items of information from All Saints (CE) Primary School ('All Saints'). Although All Saints responded by providing a significant amount of the requested information, it refused two parts of the request, which asked for the contact details of governors at the public authority and information pertaining to the complaints it had received in 2009/10. These were refused under section 40(2) and section 41(1) of the Act respectively. During the course of the Commissioner's investigation, All Saints agreed to clarify the nature of the complaints it had received but maintained its refusal of the governors' contact details. Apart from one piece of information that was also disclosed during the investigation, the Commissioner finds that the governors' contact details would constitute their personal data and that the disclosure of this personal data would be in breach of the first data protection principle. The Commissioner therefore considers that All Saints was correct to apply section 40(2) to the information. However, the Commissioner has determined that All Saints breached sections 1(1)(b), 10(1) and 17(7) by its handling of the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The Commissioner notes that the governing body of All Saints (CE) Primary School ('All Saints') is the public authority for the purposes of the Act.
3. On 14 June 2010, the complainant submitted by email an information request to All Saints which was broken down into 18 parts. Only the following two of these, however, formed the basis of a complaint to the Information Commissioner:
 12. *"I request a copy of the email addresses and phone numbers for the Governors."*
 18. *"I request a list with a description of complaints received during 2009 and 2010 and resolution or current status."*
4. All Saints responded to the request on 9 July 2010 by providing copies of a number of documents relating to the request. However, it refused parts 12 and 18 of the request, listed above, under section 40(2) and 41(1) respectively.
5. On 12 July 2010, the complainant asked All Saints to review its refusal to comply with parts 12 and 18 of the request. All Saints provided the outcome of its internal review on 15 July 2010, which upheld the decision to apply the previously cited exemptions.

The Investigation

Scope of the case

6. On 20 July 2010 the complainant contacted the Commissioner to complain about the refusal of All Saints to provide information relating to parts 12 and 18 of his original request.
7. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
 - All Saints agreed to the release of information which would satisfy part 18 of the request. With the complainant's consent, this

element of the complaint has therefore been removed from the scope of the Commissioner's determination.

Chronology

8. Between 22 September and 27 September 2010, the Commissioner sought clarification of the basis of All Saints' refusal in relation to parts 12 and 18 of the complainant's request. Among its responses, All Saints provided the Commissioner with details of the governors' email addresses and correspondence relating to the complaints the authority had received.
9. On 28 September 2010, All Saints provided the complainant with information that satisfied part 18 of the request. In regards to part 12 of the request, the contact details of one governor – specifically, the Headteacher of All Saints – were communicated to the complainant on 11 October 2010.

Findings of fact

10. With the exception of the Headteacher of All Saints, whose official email address and telephone number have been released, the Commissioner has been informed that the outstanding contact details of the governors have not been officially designated by the school. Therefore, the email addresses and telephone numbers may also be used by the governors for matters that do not in anyway correspond with their official functions.

Analysis

11. The full wording of all the statutory provisions referred to in the body of this notice is included in the attached legal annex.

Procedural Matters

Sections 1 and 10 – the provision of information

12. Section 1(1) of the Act 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."*

13. Section 10(1) provides:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

14. With reference to paragraph 9, the contact details of the Headteacher were communicated to the complainant during the course of the Commissioner's investigation. This was because All Saints determined that the information was not subject to any exemption.

15. As the Headteacher's contact details were not disclosed within the statutory time-limit of 20 working days of the date of the request, however, the Commissioner has determined that All Saints breached sections 1(1)(b) and 10(1) of the Act.

Section 17 – the refusal of a request

16. Section 17(7) of the Act states that:

"A notice under subsection (1), (3) or (5) must –

- (a) *contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and*
- (b) *contain particulars of the right conferred by section 50."*

17. By failing to inform the complainant of his right to escalate his complaint via the channels set out at (a) and (b) above, the Commissioner finds All Saints in breach of section 17(7).

Exemption

Section 40(2) – third party personal data

18. Section 40(2) of the Act provides an exemption to the right to access recorded information held by a public authority where the information constitutes the personal data of any third party.

19. In order for All Saints to rely on section 40(2), it would have to be satisfied that:

- the requested information is the personal data of the governors; and
- disclosure of that information would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA). The first data protection principle, which requires the fair and lawful processing of personal data, is the relevant principle in this case.

20. The Commissioner addresses each of these points in turn.

Is the requested information personal data?

21. The Commissioner has been informed that both the phone numbers and email addresses held by All Saints are specific to the individual governors, and do not represent generic contact information. For example, where held, the email addresses correspond with each governor and do not refer to a shared email account. The Commissioner is therefore satisfied that the contact details are the governors' personal data.

Would disclosure of the personal data be unfair and therefore in breach of the first data protection principle?

22. In considering whether disclosure of the requested information would be fair, the Commissioner has taken into account the obvious but competing interests that will influence his decision. On the one hand is the promotion of transparency in the workings of a publicly accountable body. On the other, is the competing interest that defends an individual's right to privacy.

23. To guide him when weighing up these competing interests, the Commissioner has borne in mind the following factors:

- i. The consequences of disclosure.
- ii. The data subjects reasonable expectations of what would happen to their personal data.
- iii. The balance between the rights and freedoms of the data subject and the legitimate interests of the public.

24. Full consideration of these factors is set out below.

The consequences of disclosure

25. The Commissioner is not aware of any evidence to suggest that the release of the contact details would likely cause harm to the governors or necessarily subject them to harassment.

26. However, the Commissioner also recognises that the email addresses and phone numbers held by All Saints have not been allocated by the authority. Consequently, the governors may legitimately use these channels of communication for their own purposes.
27. On this basis, the Commissioner has taken the view that to place the contact details in the public domain would be an intrusion into the lives of the governors outside of their official functions with All Saints. Therefore, the Commissioner believes it more than probable that disclosure would cause some distress to the data subjects.

Reasonable expectations

28. The Commissioner has no doubt that, as governors, the data subjects would have expected some degree of scrutiny of their roles. This is because of the influence a governor may have in shaping the direction of a school. To quote the website of the National Governors' Association:

"[Governors] have an important part to play in raising school standards through their key roles of setting strategic direction, ensuring accountability and monitoring and evaluating school performance."

29. Furthermore, the Commissioner perceives that by providing their contact details to All Saints, the governors were offering a means of communication by which any official matters could be raised.
30. Yet, the Commissioner considers that there is an intuitive acceptance that the contact details of an individual which do not principally relate to their official role should be afforded protection.
31. This view is reinforced by previous decisions of the Commissioner. In particular, the Commissioner has drawn a distinction between information concerning the public life of an official at an authority and information about that official's private life. The Commissioner has emphasised that disclosure of information should normally only relate to an official's public functions and responsibilities.
32. In this instance, it is apparent that the requested contact details are not bound in with the governor's official functions. The Commissioner therefore considers that the governors would have a reasonable expectation that their contact details would not be released.
33. This expectation would be strengthened by the knowledge that, according to All Saints, the requested information would not normally

be disclosed to any third party without the express permission of the governors.

The balance between the rights and freedoms of the data subject and the legitimate interests of the public

34. The Commissioner understands that, because of their involvement with the school, there will be legitimate reasons why a member of the public would wish to contact a governor directly. The complainant has also voiced his concerns that, by denying him direct access to each of the governors, the school would be able to manage or restrict any communications with the body that is charged with overseeing it.
35. However, the Commissioner is also aware that, in accordance with the Guide to the law for School Governors, individual governors have no power or right to act on behalf of the governing body, except where the whole governing body has delegated a specific function to that individual.
36. Allowing that, in most cases, it is the governing body and not the individual that is responsible for decisions, the Commissioner considers it reasonable for All Saints to ask that any communications for the attention of a governor be funnelled through the clerk to the governors or passed to the Chair of the governing body.
37. In any event, the Commissioner does not consider that, in this instance, the legitimate public interest in the information would outweigh the governors' right to the protection of information that is, in essence, of a private nature. Disclosure would therefore be disproportionate in the circumstances.

Conclusion

38. As demonstrated above, the Commissioner has found that the rights and expectations of the governors in this situation would outweigh the legitimate interest in the disclosure of the requested information.
39. Accordingly, the Commissioner does not consider that disclosure would satisfy the first data protection principle which requires the fair processing of personal data.

The Decision

40. The Commissioner's decision is that the public authority correctly withheld information relating to part 12 of the complainant's request under section 40(2).
41. However, the Commissioner has also decided that the public authority breached sections 1(1)(b), 10(1) and 17(7) of the Act by its handling of the request.

Steps Required

42. The Commissioner requires no steps to be taken.

Right of Appeal

43. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 15th day of November 2010

Signed

**Pamela Clements
Group Manager, Complaints Resolution**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Right of access

Section 1(1) provides 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.

Time for compliance

Section 10(1) provides that –

Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

Refusal of request

Section 17(1) provides that –

A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states the fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

Section 17(7) provides that –

A notice under subsection (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.

Personal Information

Section 40(2) provides that –

Any information to which a request for information relates is also exempt information if –

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

Section 40(3) provides that –

The first condition is –

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

Confidential Information

Section 41(1) provides that –

Information is exempt information if –

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of this information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

The Data Protection Act 1998

Interpretative provisions

Section 1(1) provides –

In this Act, unless the context otherwise requires –

“data” means information which –

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
- (b) is recorded with the intention that it should be processed by means of such equipment,
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

“data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

“data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

“data subject” means an individual who is the subject of personal data;

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

“processing”, in relation to information or data, means obtaining, recording, or holding the information or data or carrying out any operation or set of operations on the information or data, including –

- (a) organisation, adaptation or alteration of the information or data,
- (b) retrieval, consultation or use of the information or data,
- (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or

“relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

Section 1(2) provides –

In this Act, unless the context otherwise requires –

- (a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
- (b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

Section 1(3) provides –

In determining for the purposes of this Act whether any information is recorded with the intention –

- (a) that it should be processed by means of equipment operation automatically in response to instructions given for that purpose, or
- (b) that it should form part of a relevant filing system,

It is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

Section 1(4) provides –

Where personal data are processed only for the purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.

Section 2 provides –

In this Act “sensitive personal data” means personal data consisting of information as to –

- (a) the racial or ethnic origin of the data subject,
- (b) his political opinions,
- (c) his religious beliefs or other beliefs of a similar nature,
- (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
- (e) his physical or mental health or condition,
- (f) his sexual life,
- (g) the commission or alleged commission by him of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed by him, such as the disposal of such proceedings or the sentence of any court in such proceedings.

Schedule 1

The Data Protection Principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

4. Personal data shall be accurate and, where necessary, kept up to date.

5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

6. Personal data shall be processed in accordance with the rights of data subjects under this Act.

7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.