

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **10 November 2015**

Public Authority: **The Governing Body of Oswald Road Primary School**

Address: **Oswald Road
Chorlton
Manchester
M21 9PL**

Decision (including any steps ordered)

1. The complainant requested copies of emails sent between named staff at Oswald Road Primary School ("the School") on the subject of school uniforms. The School disclosed some information but withheld the names of staff under 40(2).
2. The Commissioner's decision is that the School has correctly applied section 40(2) to the withheld information and consequently he does not require it to take any further steps to ensure compliance with the legislation.

Request and response

3. On 18 May 2015 the complainant wrote to the School and requested the following information under FOIA:

*"All emails and responses between: [Named members of staff]
Date: on the 5 April 2014.*

Subject content:

Purchasing school uniform tops for children to wear on trips.

Photographing the children wearing uniform to display in school

Wearing of uniform for events

School image, vision and branding

Cost of buying uniform and how to manage storage of it etc

Use of pupil premium to pay for costs"

4. The School responded on 15 July 2015 and provided some information within the scope of the request but refused to provide the remainder. It cited the exemptions in sections 36(2)(c) and 40(2) for withholding the information.
5. The complainant requested an internal review on 18 July 2015. The School provided the result of its internal review on 21 July 2015 in which it maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 24 July 2015 to complain about the way her request for information had been handled. She specifically complained about the School's refusal to disclose all of the information that she had requested.
7. During the course of the Commissioner's investigation, the School released further information to the complainant and withdrew its reliance on section 36.
8. The Commissioner considered whether the School was entitled to rely on section 40(2) to withhold the remaining information.

Reasons for decision

Section 40(2) – Personal information

9. The School sought to rely on section 40(2) to withhold the names of staff members, with the exception of the Headteacher, who were involved in the email exchanges that were the subject of the request and also other information which it believed would identify those members of staff.
10. Section 40(2) provides an exemption for information which is the personal information of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.
11. Section 40(2) states 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."
12. 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."
13. In this case the relevant condition is contained in section 40(3)(a)(i). This applies where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act ("DPA").
14. The Commissioner therefore considered:
- (1) whether the withheld information constitutes personal data; and if so
 - (2) whether disclosure would breach one of the data protection principles.

(1) Does the withheld information constitute personal data?

15. In order to establish whether section 40(2) had been correctly applied, the Commissioner first considered whether the withheld information is the personal data of parties other than the complainant.
16. Personal data is defined in the DPA as information about a living individual who can be identified from that information, or from that information and other information in the possession of, or likely to come into the possession of, the data controller.

17. The School has withheld the names of members of staff who involved in the mail exchanges that were the subject of the request. It has also withheld a small amount of information that it believes would allow some of those members of staff to be identified if it were disclosed. The Commissioner is satisfied that the withheld information constitutes the personal data of the relevant members of staff. However, the fact that information constitutes the personal data of individuals does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the data protection principles. The Commissioner therefore went on to consider whether disclosure of the withheld information, which constituted individuals' personal data, would breach one of the data protection principles.

(2) Would disclosure breach one of the data protection principles?

18. The School informed the Commissioner that it believed that disclosure of the information to which it had applied section 40(2) would breach the first data protection principle. The first data protection principle requires that any disclosure of personal data is fair and lawful and that at least one of the conditions in schedule 2 of the DPA is met.
19. The Commissioner firstly gave consideration to whether the disclosure of the withheld information would be fair. In doing so, he took into account the following factors:
 - (i) the individuals' reasonable expectations of what would happen to their information;
 - (ii) whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals concerned; and
 - (iii) whether the legitimate interests of the public in disclosure were sufficient to justify any negative impact to the rights and freedoms of the individuals concerned.

(i) Reasonable expectations of the individuals concerned

20. The Commissioner considered the reasonable expectations of the individuals in terms of what would happen to their personal data. These expectations can be shaped by factors such as an individual's general expectation of privacy and also the purpose for which they provided their personal data.
21. The School pointed out to the Commissioner that the members of staff whose names had been withheld had contributed to an informal discussion, prompted by the Headteacher on a Saturday morning,

outside school hours, about her proposal to introduce uniform for School trips and they were merely responding to her expressed views. It went on to explain that it had agreed to the content of the e-mails being released and it did not consider that it added anything further to disclose the names of members of staff. It further explained that the Headteacher, who had the public facing role for the School and was responsible for policy decisions, had agreed to her name being disclosed. The School had consequently reached the conclusion that it was not within the reasonable expectation of the relevant members of staff that, when providing and sharing opinions with other staff members, that their names should be disclosed to the world at large, particularly in respect of employees who did not hold a senior management position or public facing role.

22. The complainant argued that she believed that the members of staff involved were senior staff who were still in post at the time of the request and, given their seniority, there was an expectation that their names would be disclosed. She referred the Commissioner to a previous decision that he had served in relation to the School in which he had ordered the disclosure of communications from senior members of staff and this included disclosure of their names. She explained that she believed that the same arguments for the disclosure of staff names in the previous decision by the Commissioner were equally applicable in this case.
23. The Commissioner considers that employees of public authorities should be open to scrutiny and accountability. They should expect that some personal data about them may be released because their jobs are funded by the public purse. When considering what information an individual should expect to have disclosed about them, the Commissioner considers that a distinction should be drawn as to whether the information relates to their public or private life. The Commissioner's view is that information which relates to an individual's private life (i.e. their home, family, social life or finances) will deserve more protection than information about them acting in an official or work capacity (i.e. their public life).
24. The Commissioner notes that the personal data withheld by the School concerns its staff acting in a work related capacity. In light of this, the Commissioner's view is that the information may not attract the same level of protection as information which relates to their private lives.
25. To the extent that the withheld information relates to senior members of staff at the School, the Commissioner's view is that senior staff within a public authority should expect that it would disclose more information about them than junior staff. This is because senior staff should expect their posts to carry a greater level of accountability, since they are likely

to have a greater responsibility for policy decisions and the expenditure of public funds than more junior staff.

26. As regards the previous decision that the Commissioner issued in relation to the School (under case reference FS50569146), he notes that this concerned discussions between its senior staff and local authority advisors, governors and parents in trying to reach a decision regarding the future of Flexi-Schooling arrangements within the School. In his view, these were much more formal consultations than the internal discussions which are the subject of this request. The discussions that took place in this case, as the School has pointed out, took place outside normal school hours on a Saturday. The relevant staff were clearly being used by the Headteacher as an informal sounding board for an idea that she had had overnight about school uniforms. It was clearly not intended to be part of any formal consultation or formal policy decision making process.
27. In addition, the School explained to the Commissioner that staff, including some of those who were party to the email exchanges which were the subject of the request, had received anonymous, offensive correspondence related to carrying out their duties at the School over an extended period of time. This was a matter which was currently under investigation by the police with a view to identifying the person or persons responsible for the correspondence.
28. The Commissioner also understands from the School that the issue of the introduction of school uniforms for school trips had resulted in some complaints to the School. It believed that if the views of individual member of staff about this subject were made public, this could result in them being targeted in future, causing them stress and anxiety and undermining their ability to carry out their roles effectively.
29. In light of the above, the Commissioner believes that the staff involved in the email correspondence would have had a reasonable expectation, given all the relevant circumstances, that their names would not be disclosed to the public.

(ii) Consequences of disclosure

30. The Commissioner has already noted, in relation to (i) above, the possible consequences of disclosure to the public of the names of the staff in the email correspondence, including the potential stress and anxiety that this might cause to the individual members of staff concerned.

(iii) General principles of accountability and transparency

31. The Commissioner notes that, notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, depending on the circumstances of the case, it may still be fair to disclose information if there is a more compelling public interest in disclosure. In considering 'legitimate interests', the Commissioner's view is that such interests can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
32. The Commissioner acknowledges that there is a general public interest in the disclosure of information that may help to shed light on how effectively schools are being managed, including the decision making process in relation to particular policies such as the wearing of school uniform by pupils. However, he notes in this case that the information that has been withheld is simply the names of relevant members of staff rather than the discussions that took place. He also notes that these discussions were very informal exchanges of ideas and were not part of a formal consultation or decision making process. On this basis, the Commissioner believes that there is a very limited public interest in the disclosure of the names of the individuals concerned in the email exchanges.
33. The complainant informed the Commissioner that she believed that there was a significant public interest in the disclosure of the names of the staff who sent the emails in question as they raised issues as to the professional conduct of those staff, which was a matter that had not yet been investigated.
34. The Commissioner would not generally expect a public authority, in response to a request under FOIA, to identify members of its staff who are or may be the subject of allegations of misconduct. He is of the view that if a member of the public believes that circumstances suggest that some form of misconduct may have occurred within a public authority, they should make a complaint to the relevant public authority and, if appropriate, relevant professional or statutory body so that a full and thorough investigation can be carried out. Consequently, the Commissioner is not persuaded that the complainant's argument concerning the public interest in disclosing the names of staff involved in the email exchanges adds significantly to any factors in favour of disclosure.
35. The Commissioner believes that any limited public interest that there may be in disclosure in this case must be weighed against the potential prejudices to the rights, freedoms and legitimate interests of the staff whose personal data is contained within the withheld information.

Taking into account all of the points discussed above, he has concluded that any legitimate interest in disclosure is not sufficient to outweigh the rights of the relevant data subjects to privacy. This decision has been informed by his consideration of the reasonable expectations of the members of staff and the possible consequences of disclosure, as detailed above.

36. The Commissioner has therefore concluded that it would not be fair to disclose the personal data of staff contained in the withheld information. As he has determined that it would be unfair to disclose this information, it has not been necessary for him to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met. The Commissioner has therefore determined that the School has correctly applied section 40(2) to the information that it has continued to withhold.

Other matters

37. The Commissioner understands from the complainant that she has obtained some of the withheld information. This information, as detailed above, constitutes the personal data of individual members of staff at the School. The School has confirmed that it has not authorised the disclosure of this information. The Commissioner would warn any person who discloses such information to members of the public that this may result in breaches of the Data Protection Act and could result in an investigation by the ICO to identify the person or persons responsible for any such unlawful disclosures.

Right of appeal

38. 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

39. 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.
40. 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

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