

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 March 2017

**Public Authority:** The Whitby High School  
**Address:** Sycamore Drive  
Whitby  
Ellesmere Port  
CH66 2NU

#### Decision (including any steps ordered)

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1. The complainants have requested information from the Whitby High School ("the School") about the amount of money that the School spent on legal advice.
2. The Commissioner's decision is that the School has complied with section 1 of the FOIA and provided the complainants with all of the recorded information falling within the scope of the requests which it held. She has also decided that the School has complied with section 1 by informing the complainants that it did not hold recorded information where this was relevant to their requests. Accordingly, the Commissioner does not require the School to take any steps as a result of this notice.

#### Request and response

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3. On 11 October 2016, the complainant wrote to the School and requested information in the following terms (numbers with brackets have been added for ease of reference):

*"For the academic years 2014/15, 2015/16 and the academic year to date can you please supply the following information:*

- 1) *How much money did The Whitby High School spend on legal advice?*
- 2) *How much money have The Whitby High School paid to [named firm]?*

- 3) *Please provide a break down of any hours and the hourly rate charged for any work carried out by [named individual] (Partner [named firm]).*
  - 4) *Please include any hours, that you are aware of, that have yet to billed and paid for."*
4. The School responded on 15 November 2016. It provided some information broadly within the scope of the request, as follows:
- With reference to request 1), the School explained that it paid an annual rate of £950 to the Local Authority which covers 15 hours' consultation time and after that advice is charged at £90 per hour.
  - With reference to request 2), the school provided the following information:  
  
*"01.09.14 – 31.08.15 - Legal Fees paid to [named firm] -Nil*  
  
*01.09.15 – 31.08.16 - Legal Fees paid to [named firm] -£4,500 + VAT"*
  - With reference to request 3), the school explained that membership of "[named firm] HR Rely Education Services Scheme" commands a fixed fee, and that they did not hold information as to individuals' charging rates nor any breakdown of hours from [named firm].
  - With reference to request 4), the School explained that it had renewed "the membership."
5. Following an internal review, the School wrote to the complainant on 6 December 2016 and explained that it had provided what it considered to be the admissible information, and that it believed that anything else would fall outside the FOIA. After the complainants expressed dissatisfaction with the response, the School replied more fully on 16 December 2016 with the outcome of its internal review. It upheld its original position, and stated that it considered that questions about the earnings of [named individual] would be exempt from disclosure under section 40 of the FOIA (Personal information).
6. The School provided further submissions to the Commissioner on 1 March 2017. It clarified what information was held. In particular, it explained that no information was held with regard to request 3), since it did not hold an hourly breakdown of work carried out. The School speculated whether information about an individual's earnings would be exempt from disclosure under section 43 of the FOIA (Commercial

interests). The School explained that it no longer considered that section 40 (Personal information) was relevant in this case.

## Scope of the case

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7. The complainants contacted the Commissioner on 5 December 2016 to complain about the response they had thus far received to their request for information. They were advised to return to the school and ask for an internal review.
8. Following the internal review response of 16 December 2016, the complainants returned to the Commissioner to ask her to investigate the School's handling of their information request.
9. The Commissioner's investigation has focused on whether the School has provided the complainants with all of the recorded information falling within the scope of the requests which it held at the date of the request; in other words, whether it has complied with section 1 of the FOIA.
10. In the event that some information has been withheld, she will go on to consider whether the information is exempt under section 43 of the FOIA (Commercial interests).

## Reasons for decision

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11. Section 1 of the FOIA states that:

“(1) 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.”
12. The Commissioner has sought to determine whether the School holds information which the complainants seek, and whether it has provided it to them.
13. The Commissioner notes that the School provided some information with regard to requests 1), 2) and 4), and did not provide any information with regard to request 3). Accordingly she has considered the handling of requests 1), 2) and 4) separately from request 3), below.

*Requests 1), 2) and 4)*

14. The Commissioner wrote to the School on 3 February 2017. She sought to clarify the information that had been provided to the complainants in respect of requests 1), 2) and 4).
15. On 1 March 2017, the School responded to the Commissioner. It answered the requests as follows:
  - For the academic year 2014-2015, it had spent £950 on legal advice (paid to Cheshire West & Chester Council ("the Council")). The School has explained that this is part of a package of services which it has to buy into each year as part of the Council's Scheme for Financing Schools;
  - For the academic year 2015-2016, it had spent £5450 on legal advice (£950 paid to the Council as above, and £4500 paid to [named firm]). The money paid to [named firm] had also attracted VAT but this had been reclaimed by the School;
  - For the current academic year, it had spent £950 to the Council as above, and £5850 plus VAT to [named firm] with the VAT being recoverable as above;
  - With regard to [named firm] the School had not paid any money other than that set out above;
  - No work undertaken by [named firm] for the academic years in question has yet to be billed.
16. The Commissioner is satisfied that the School holds no other information in respect of requests 1), 2) and 4). This information has now been provided to the complainants.

*Request 3)*

17. In her letter to the School of 3 February 2017, the Commissioner sought to determine whether the School held information regarding an hourly breakdown of work carried out by [named firm] and/or the rate charged for work carried out by [named individual] of [named firm].
18. Specifically, the complainants believed that information would be held because the School's internal review response of 16 December 2016 had stated that it believed such information was exempt from disclosure, which appeared to be inconsistent with their response of 15 November 2016.

19. In its response to the Commissioner of 1 March 2017, the School confirmed that it did not hold any information falling within the scope of this request. This was because it did not receive an hourly breakdown but paid a fixed annual retainer to [named firm] for legal advice. It explained that *"all of the work that was carried out by [named firm]... was covered by the retainer."*
20. Consequently, the School explained that it does not hold any information relating to *"the actual hours of work carried out by [named firm]."*
21. Furthermore, the School has explained that the increase in this year's fee paid to [named firm] is due to legal advice being needed for "a number of matters" and not to any additional legal work being charged by the hour.
22. The School has explained that it had explored the question of whether such information might be exempt from disclosure under FOIA, while not actually holding the information.
23. The Commissioner accepts that the School pays a flat fee to [named firm] and is satisfied therefore that the School holds no information falling within the scope of request 3).
24. Therefore, the Commissioner has not been required to consider whether any information, if held, would be exempt from disclosure under section 43 of the FOIA.
25. For the reasons set out above, the Commissioner is satisfied that the School has handled the complainants' requests in accordance with the FOIA.

## **Other matters**

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26. The Commissioner notes that the School's initial response did not clearly provide the information which it held within the scope of the complainants' requests 1), 2) and 4). In addition, the School was initially reluctant to provide clarification to the complainants. In future, the Commissioner expects the School to provide promptly such recorded information that it may hold, falling within the scope of a request, in an unambiguous manner.
27. In addition, the School caused some confusion by appearing to contradict itself with regards to information held within the scope of request 3) after its internal review. The Commissioner is satisfied that this information was not held and that the School was speculating on whether such information might be exempt from disclosure if it were

held. In future, the Commissioner recommends that the School responds clearly to requests about what information is held.

## Right of appeal

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28. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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** .....

**Alun Johnson**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**