

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 August 2011

Public Authority: Council for Catholic Maintained Schools
Address: 160 High Street
Holywood
County Down
BT18 9HT

Summary

The complainant requested information relating to the provision of primary education in Loughgall Parish, County Armagh. The Council for Catholic Maintained Schools ("the CCMS") did not respond to the complainant's request within the 20 working day time limit as set out in section 10(1) of the Act. The CCMS then released some information to the complainant and released further information after protracted correspondence. The complainant informed the Information Commissioner ("the Commissioner") that she believed that the CCMS held further information falling within the scope of her request. The Commissioner's decision is that the CCMS, on the balance of probabilities, does not hold any further information within the scope of the request which has not already been provided to the complainant. The Commissioner also finds that the CCMS breached sections 1(1)(a), 1(1)(b) and 10(1) of the Act as it did not make the information it subsequently disclosed available within the statutory time for compliance, nor did it confirm or deny whether it held the information within that time limit. It also breached section 9(1) by not issuing a fees notice within the statutory time for compliance. The Commissioner requires no steps to be taken.

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.

Background

2. Federations are groups of two or more schools with a joint governing body. The schools retain their separate individual identities but their individual governing bodies are dissolved and a new joint instrument of governance establishes a single federated governing body in their place. All maintained schools may establish joint governing bodies.
3. A review of the provision of primary school education in Loughgall parish began in March 2008. One of the recommendations was that primary education provision in the parish should be advanced by way of federation. The complainant's request was for further information regarding the proposed federation.

The Request

4. On 15 May 2009 the complainant made the following request for information to the CCMS:

"I formally request the following under the Freedom of Information Act:

- *Minutes of all meetings/papers etc. relating to the new school for St Peter's Primary School, since the amalgamation of Loughgall Primary School and Collegelands Primary School.*
- *Copies of all minutes/papers/records etc. regarding the review of Primary Education provision in the Parish of Loughgall which commenced in March 2008. This should include any correspondence between CCMS and the Trustee of the primary schools in Loughgall Parish. In particular [we] request disclosure of any papers presented to the Diocesan Education Committee or to any other Committee or board meeting of CCMS which contains details of the recommendation that primary provision in Loughgall Parish be advanced by way of federation.*
- *A list of all Maintained Primary Schools that have shown an increase in pupil numbers in excess of 20% within the last 10 years, detailing the percentage increase.*
- *A list of all Maintained Primary Schools with over 105 pupils that have over 75% of the pupils educated in temporary classrooms*

- *A list of any other Federated Primary Schools currently in existence within the Maintained sector.*
 - *A list of any development proposals for federation in the maintained sector that have already been refused Department of Education approval or are awaiting approval. For any that have been refused I would ask that the reason for refusal is provided."*
5. On 17 June 2009 the CCMS responded to the complainant providing her with some of the requested information. In that response the CCMS did not indicate whether all or part of the information was being sent, say whether it held all of the requested information, or apply any exemptions as a basis for non-disclosure of the remainder of the requested information.
 6. On 8 July 2009 the complainant wrote to the CCMS expressing her dissatisfaction with its response and stating that the information she had received was incomplete. She again requested the remainder of the information and specified which information had not been provided.
 7. On 31 July 2009 the CCMS wrote to the complainant providing some of the outstanding requested information. It also said the following about the rest; it did not hold some of it, some would be provided when it was ratified, it had sought clarification in relation to some and some was in archive storage and may not be provided without a charge.
 8. On 11 August 2009 the complainant replied to the CCMS expressing her dissatisfaction with the handling of her complaint and requesting some of the information which was still outstanding.
 9. On 6 November 2009 the complainant submitted a further request for information and reminded the CCMS that there were still substantial elements of her 15 May 2009 request which remained outstanding.
 10. On 2 March 2010, following a change in staff, the CCMS provided the complainant with some further information in relation to her request of 15 May 2009. It referred to the information which was in archive storage, stating that it was not immediately accessible, but asking the complainant to clarify what specific information she was looking for so that it may more easily be searched for. No mention was made of a charge for the information in that letter.
 11. The complainant submitted a complaint to the Commissioner on 13 May 2010.

The Investigation

Scope of the case

12. On 13 May 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- The CCMS had not provided her with all of the requested information or clarified whether or not it held the remainder.
 - The CCMS' delays in providing her with the information she did receive.
 - The CCMS was seeking to impose a charge for providing some of the requested information.
 - Whether the CCMS holds further information in relation to her request which it has not provided.

Chronology

13. On 2 August 2010 the Commissioner wrote to the complainant to acknowledge receipt of her complaint and to request clarification of some issues.
14. The Commissioner called and wrote to the CCMS on 2 February 2011, detailing his understanding of what the outstanding information was and asking the CCMS to confirm its position regarding this.
15. On 25 March 2011, after an exchange of emails, the CCMS provided the Commissioner with a copy of an email it had sent to the complainant on 23 June 2010, stating that it believed this to contain all the information the Commissioner had understood was outstanding.
16. On 1 April 2011 the Commissioner contacted the complainant and asked her whether she had received the email of 23 June 2010 and if so, whether there was any further requested information which she had not received. The complainant responded on 12 April 2011 detailing the outstanding requested information as follows:
1. *"Minutes of the DEC and Sub-Committee meetings prior to 2005 (1996-2005) - CCMS have stated that they cannot currently access these so we accept that we will not get copies of these.*

2. *Copies of report provided by [name redacted] (private consultant) and or [name redacted] (CCMS Officer) to Senior Trustee/Armagh DEC to substantiate the claim that the **'none of the options would guarantee accessibility to Catholic Education to all the pupils in the parish'** The Analysis clearly shows a viable & working option. A decision on the statement in bold above but there is no backup information to explain how this conclusion was reached. This was the main reason we raised the FOI to determine why none of the 9 options were acceptable and where the option of Federation came from.*
 3. *CCMS have stated that they have no written record on who proposed Federation. Which we consider is very strange considering the fact that federation will have serious implication on the provision of Primary Education within Loughgall Parish."*
17. On 10 June 2011 the Commissioner asked the complainant whether she accepted that the CCMS did not hold any information relevant to point 3 of her request or whether she wished the Commissioner to investigate this further. The complainant said she wanted him to investigate this further.
 18. The Commissioner wrote to the CCMS on 14 June 2011 asking it to confirm whether or not it held any further information in relation to the complainant's request which it had not already provided. He put several questions to the CCMS and asked for its detailed responses to these in the event that it did not hold any further relevant information. The questions were designed to elicit from the CCMS how it had ascertained that it held no further relevant information. The CCMS wrote to the Commissioner on 1 July 2011 providing detailed responses to those questions.

Substantive Procedural Matters

Is the remaining requested information held by the CCMS?

19. Section 1(1)

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."

20. The Commissioner has considered whether the CCMS has complied with section 1(1)(a) and (b) of the Act.
21. In coming to a decision in this case the Commissioner has considered whether the complainant has provided any evidence in support of her submission that the remaining requested information is held. The complainant has suggested that, since federation will have a serious implication on the provision of primary education within Loughgall Parish, it would be very strange for the CCMS not to hold any written record of who proposed federation.
22. On 14 June 2011, the Commissioner asked the CCMS the following questions to determine what information it held that was relevant to the scope of the request:
 - Was any further recorded information ever held, relevant to the requested information, by the CCMS or anyone on behalf of the CCMS?
 - If so, what was this information? What was the date of its creation and deletion? Can the CCMS provide a record of its deletion/destruction and a copy of the CCMS' records management policy in relation to such deletion/destruction? If there is no relevant policy, can the CCMS describe the way in which it has handled comparable records of a similar age?
 - Is there a reason why such information (if held or ever held) may be concealed?
 - What steps were taken to determine what recorded information is held relevant to the scope of the request? Please provide a detailed account of the searches that you have conducted to determine this.
 - If the information were held would it be held as manual or electronic records?
 - Is there a business purpose for which the requested information should be held? If so what is this purpose?
 - Are there any statutory requirements upon the CCMS to retain the requested information?

- Is there information held that is similar to that requested and has the CCMS given appropriate advice and assistance to the applicant?
23. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is the test the Commissioner will apply in this case.
24. In discussing the application of the balance of probabilities test, the Tribunal clarified that test required consideration of a number of factors:
- the quality of the public authority's initial analysis of the request;
 - the scope of the search that it decided to make on the basis of that analysis and the thoroughness of the search which was then conducted; and
 - the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light.
25. The Commissioner has therefore taken the above factors into account in determining whether or not the requested information is held on the balance of probabilities.
26. The Commissioner is also mindful of *Ames v the Information Commissioner and the Cabinet Office* (EA/2007/0110). In this case Mr Ames had requested information relating to the "Iraq's Weapons of Mass Destruction" dossier. The Tribunal stated that the dossier was "*...on any view an extremely important document and we would have expected, or hoped for, some audit trail revealing who had drafted what...*" However, the Tribunal stated that the evidence of the Cabinet Office was such that it could nonetheless conclude that it did not "*...think that it is so inherently unlikely that there is no such audit trail that we would be forced to conclude that there is one...*" Therefore the Commissioner is mindful that even where the public may reasonably expect that information should be held this does not necessitate that information is held.

27. On 1 July 2011 the CCMS responded to the questions detailed at paragraph 22 above. It explained that there had been a meeting between a senior representative of the Diocesan Unit, the Head of School Planning and Development and a senior Trustee of the School Board at which several options regarding Primary Education in the Parish of Loughgall were discussed. However, there were no minutes taken of that meeting and the CCMS holds no other written record of what was discussed at the meeting.
28. The CCMS explained to the Commissioner that the complainant's request was forwarded to the Armagh Diocesan Education Office, which has responsibility for the geographical area in which the parish of Loughgall is situated. That office searched all information it held regarding the review of primary education provision relating to St Peter's Primary School, Loughgall. One of the attendees at the meeting was contacted and confirmed that the meeting had not been minuted.
29. The CCMS also informed the Commissioner that it had provided the complainant with minutes of all meetings held (including at Diocesan and Council Committee level) at which St Peter's Primary School had been discussed. The CCMS has provided the complainant with a lot of information relevant to her request in a variety of formats - minutes, surveys, reports, correspondence, emails, notes of meeting - and assures the Commissioner that it is continuing to provide information in response to further requests under the Act from the complainant.
30. The Commissioner has considered the CCMS' explanation of its search procedures and has concluded that these were thorough and that the CCMS took all reasonable steps to ascertain what recorded information, if any, it held which was relevant to the complainant's request.
31. The Commissioner accepts the complainant's point that she would have expected there to be a written record of who proposed federation of the schools in the parish. Taking minutes of meetings is generally a matter of good practice. Nevertheless, the Commissioner considers that there would have been both an electronic and a hard copy of the minutes had they existed and he accepts that a thorough search of electronic and manual files would have been carried out by the Armagh Diocesan Education Office when the complainant's request was passed to it. He also accepts the assertion of a person who was present at the meeting that no minutes of the meeting were taken.
32. In coming to a conclusion on this case the Commissioner has considered what information he would expect the CCMS to hold and whether there is any evidence that the information was ever held. In

doing so the Commissioner has taken into account the responses provided by the CCMS to the questions posed by him during the course of his investigation. The Commissioner is also mindful of the Tribunal decisions highlighted at paragraphs 24 and 27 above. The Commissioner considers that on the balance of probabilities the CCMS holds no further recorded information relevant to the scope of the complainant's request. However, he has concluded that the CCMS failed to comply with section 1(1)(a) of the Act in relation to the information it did not hold, as it did not confirm or deny within the statutory time for compliance whether or not it held that information.

Procedural Requirements

Section 1 – general right of access and section 10 – statutory time for compliance with request

33. The complainant made her initial request on 15 May 2009. The CCMS provided the complainant with some of the requested information on 17 June 2009, however it did not indicate in its response whether it held the remaining requested information, nor did it state that it was applying any exemption as a basis for non-disclosure of the remaining requested information. After much protracted correspondence between the complainant and the CCMS, the CCMS wrote to the complainant on 23 June 2010 providing most of the remaining requested information and stating that it did not hold the rest. This was well outside the statutory 20 working day time limit for compliance as set out in section 10(1) of the Act above. Therefore the Commissioner finds that the CCMS breached sections 1(1)(a), 1(1)(b) and 10(1) of the Act.

Section 9 - Fees for complying with section 1(1)

34. Section 9(1) provides:

"A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a "fees notice") stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1)."

35. The CCMS indicated in its letter to the complainant of 31 July 2009 that there may be a charge for providing some of the requested information, which was in storage. It did not stipulate the amount of such a charge. As the CCMS did not indicate within the 20 day statutory time limit that there may be a charge, nor did it stipulate the amount of the charge, the Commissioner considers that it breached section 9(1) of the Act.

The Decision

36. The Commissioner's decision is that the CCMS did not deal with the request in accordance with the Act in the following respects as it breached the sections of the Act set out below:
- Section 1(1)(a) in failing to confirm or deny whether it held the requested information within 20 working days.
 - Section 1(1)(b) in failing to disclose the information it subsequently provided to the complainant within 20 working days.
 - Section 9(1) in not indicating within the statutory time limit that there may be a charge for provision of some of the requested information.
 - Section 10(1) in not providing the information it did hold or confirming or denying whether it held the remaining information within the statutory time limit.
37. The Commissioner also finds that, on the balance of probabilities, no further information falling within the scope of the complainant's request is held by the CCMS.

Steps Required

38. The Commissioner requires no steps to be taken.

Other matters

39. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
40. The Commissioner is concerned with the length of time taken by the CCMS to respond to the complainant in this case. The Commissioner has further concerns about the delays in providing information, the provision of information in a piecemeal fashion and the delays in responding to his correspondence in relation to his investigation. The Commissioner will continue to monitor the CCMS' compliance with the Act and has noted the details of this case in particular.

Right of Appeal

41. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

42. 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.
43. 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 23rd day of August 2011

Signed

**Faye Spencer
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General 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."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Section 9 – Fees for complying with section 1(1)

- (1) A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a “fees notice”) stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1).

Section 10 - Time for compliance with request

- (1) 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.