

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2012

Public Authority: King's College Cambridge
Address: Cambridge
CB2 1ST

Decision (including any steps ordered)

1. The complainant made a number of requests to King's College Cambridge (the "College"). The College disclosed some information. However, it also withheld some information under section 36(2)(b)(i) and (ii). In relation to some of the requests it also stated that no further information was held. During the investigation it confirmed that further information was held, some of which it was now prepared to disclose. In relation to the outstanding information it confirmed that it was withholding it under the third party personal information exemption (section 40(2)), and the legal professional privilege exemption (section 42(1)).
2. The Commissioner has decided that some information is exempt under sections 40(2) and 42(1). The Commissioner also decided that some of the requested information was exempt as he considers it to be the complainant's own personal data (section 40(1)); and also in relation to one of the requests that the College could rely upon section 40(5)(a) in order to refuse to confirm or deny whether any information was held (as if it was held it would be the complainant's personal data). However, he has also decided that some of the information is not exempt under these exemptions. Finally, the Commissioner is also not satisfied that further relevant information was not held in relation to two of the requests.
3. The Commissioner requires the College to take the following steps to ensure compliance with the legislation.
 - It should now disclose the information it has identified for disclosure to the complainant – as set out in its letter to the Commissioner dated 30 August 2011.

- It should now disclose the information set out in paragraphs 2, 6, 7, 10 and 11 of the confidential annex – subject to the redaction of third party personal information – which the Commissioner has ordered upheld under section 40(2).
 - It should now confirm or deny to the complainant whether it holds any further relevant information in relation to requests (v) and (viii) – that may be held by the school governors (unless an exemption from this duty applies). If further information is held it should provide this to the complainant, or provide a refusal notice under section 17 of the FOIA.
4. The College must take these steps within 35 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. For the reasons discussed in the 'Scope of the case' section below, this case is concerned with the College's handling of certain elements of a request made by the complainant on 13 November 2009. The College's original handling of this, and other requests, was the subject of a previous case investigated under case reference FS50285876.¹ In this previous case the Commissioner decided that information held by King's College School Cambridge (the "School") is held by the College for the purposes of the FOIA. This current case is concerned with the College's handling of these requests subsequent to the conclusion of this previous case.
6. The complainant made a number of requests to the College on 13 November 2009. The requests relevant to this case were for:
- (v): *"Details of who drafted the Provost's letter dated 6 November 2009 and the advice given on the drafting of such letter."*
 - (vii): *"All correspondence and emails (along with supporting papers) between the headmaster, senior management and staff on the*

¹ The decision notice for this previous case is available on the ICO website, at http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx

matter of the DCSF inspection, including minutes of each and every meeting held to discuss this matter."

- (viii): *"All correspondence and emails (along with supporting papers) with any Governor on the matter of the DCSF inspection, including minutes of each and every meeting held to discuss this matter."*
- (ix): *"Detailed minutes (along with supporting papers) of all King's School Governor's meetings since May 2008, including minutes of any sub-committee (including the Legal sub-committee)."*
- (xiii): *"Copies of any correspondence (including emails and supporting papers) between the senior management of King's and the Governors in response to [the complainant's] letters to the Chairman of Governors (on 19 April and 23 October), Kester Cunningham John (25 March 2009) and [a named individual] (22 February 2009) in which they repeatedly refer to the systematic failure in procedures (including regulatory failures)."*

For ease of reference these will be referred to as requests (v), (vii), (viii), (ix) and (xiii) throughout the rest of this notice.

7. The College responded to these requests (and a number of others) in a letter dated 10 December 2009. It confirmed that it held some information relevant to these requests, but that, *"most of it, to the extent that the records exist, is held by the King's College School rather than King's College."* It went on to explain that as the School was an independent school it was not subject to the FOIA.
8. Following the original complaint, the Commissioner issued a decision notice (under case reference FS50285876) on 21 October 2010 in which he found that information held by the School was held by the College for the purposes of the FOIA. Therefore, the College was required to confirm or deny whether it held any relevant information and provide a copy of it, or issue a refusal notice stating which exemption(s) it believed applied.
9. Subsequently the College wrote to the complainant on 24 November 2010. It made reference to having withheld some information under sections 40(2), 42(1), and 43(2) – although it did not specify which requests it was applying these exemptions to. In relation to the requests relevant to this case its responses were as follows:
 - (v) *"There are no records of this beyond the answer you received on 10 December 2009."*

(vii) & (viii): *"Copies for (vii) and (viii) are enclosed insofar as they relate to that inspection and are not included in (ix)."*

(ix): *"Enclosed."*

(xiii): *"Neither the School nor the College holds this information."*

10. The complainant wrote to the College on 29 November 2010 and requested an internal review of some of its responses. In relation to requests (v), (viii) and (xiii) he queried whether any further information was held and asked for an internal review. In addition, although he did not specifically request an internal review in relation to requests (vii) and (ix), he noted that the disclosed documents had been redacted, and asked for an unredacted version of these documents. Finally, in relation to request (vii) he also queried whether any further relevant information was held. The Commissioner is satisfied that these expressions of dissatisfaction are requests for internal reviews.
11. On 17 December 2010 the College wrote to the complainant with the results of its internal review. In response to requests (v) and (viii) it stated that no further information was held. In relation to request (xiii) it stated that it had now located some relevant information, but that it was exempt from disclosure under sections 36(2)(b)(i) and (ii). It did not refer to requests (vii) or (ix).

Scope of the case

12. The complainant contacted the Commissioner to complain about the way his requests had been handled.
13. The Commissioner wrote to the complainant in a number of emails dated 28 June, 4 July and 1 August 2011, and set out what he considered to be the scope of his complaint:
 - In relation to **request (v)** whether any further relevant information was held.
 - In relation to **request (vii)** whether any further relevant information was held, and whether the College was correct to make redactions from the information disclosed to the complainant.
 - In relation to **request (viii)** whether any further relevant information was held.

- In relation to **request (ix)** whether the College was correct to make certain redactions from the information disclosed to the complainant.
 - In relation to **request (xiii)** whether the College was correct to withhold the requested information under section 36(2)(b)(i) and (ii).
14. During the investigation of the case the Commissioner put these points to the College. Subsequently, the College changed or clarified its position in relation to these requests. Its position in relation to each of these requests is now as follows:
- In relation to **request (v)** additional information had now been located, and it was prepared to disclose some of this to the complainant. However, it was withholding the names of third parties within this information under sections 40(2) and 40(3)(a)(i), as well as an extract from an email. In addition to this, it was also relying upon section 42 in order to withhold some of this additional information.
 - In relation to **request (vii)** additional information had been located. This was being withheld under sections 40(2) and 40(3)(a)(i), and section 42. It also confirmed that it had made redactions from the information already disclosed to the complainant under sections 40(2) and 40(3)(a)(i). It also stated that other redactions had been made because the information fell outside the scope of the request.
 - In relation to **request (viii)** additional information had now been located, and it was prepared to disclose some of this to the complainant. However, it was withholding the names of third parties within this information under sections 40(2) and 40(3)(a)(i). In addition to this, some of this information was also being withheld under section 42.
 - In relation to **request (ix)** it confirmed that it had made redactions from the information already disclosed to the complainant under sections 40(2) and 40(3)(a)(i). However, it was now prepared to disclose some of the previously withheld information. It also confirmed that it had previously disclosed the paper headed "Preparing for Inspection" in full to the complainant.
 - In relation to **request (xiii)** it accepted that some of the requested information was the personal data of the complainant. In relation to the information that was not his personal data, it

argued that this information was exempt under sections 40(2) and 40(3)(a)(i). It did not provide any further arguments to support its use of section 36.

15. Consequently, the scope of this case has been to consider the College's position in relation to each of these requests. In addition to the above points, he has also considered whether any further relevant information is held in relation to **requests (vii) and (xiii)**. Finally, he has also considered whether the College could rely upon sections 40(1) and 40(5)(a) in relation to information that was, or would be if held, the personal information of the complainant.

Reasons for decision

16. The Commissioner has considered the College's position in relation to each of these requests in turn.

Request (v)

17. The College is relying upon sections 40(2) and 40(3)(a)(i) to withhold the names of third parties contained in the additional relevant information it has located, together with an extract from an email. It has also sought to rely upon section 42 to withhold some of this additional information.
18. However, the Commissioner has first considered whether there is any additional relevant information held by the College that has not been identified.

Is any further relevant information held?

19. The College has provided the Commissioner with details of the searches that it had carried out in order to establish what information was held that fell under the scope of request (v).
20. During the investigation the Commissioner contacted the College. He noted that having gone through the details of the searches, there was no reference to whether the College had sought to establish whether the school governors held any relevant information. Given the wording of request (v) he considered that it was possible that relevant information may be (or may have been) held by school governors. Therefore, he asked the College to confirm whether it had undertaken searches to establish whether any relevant information was held by the governors.
21. The College informed the Commissioner that it had not carried out such searches. Nor did it consider that it had to. It argued that as the

governors were volunteers, rather than employees of the School, any information held by them was not held on behalf of a public authority.

22. The Commissioner appreciates that the circumstances in this case are somewhat unusual, as King's College School is a fee-paying independent school, and is not – for the purposes of the FOIA – a public authority in its own right. Instead, it falls under the FOIA by way of being part of the College for the purposes of the FOIA.
23. In reaching a view on this issue the Commissioner has taken into account his findings in his earlier decision FS50285876 where he found that there was strong evidence that the Governing Body of the School had close ties with the Governing Body of the College and the College's Council. In addition, he also notes that in relation to maintained schools, and in relation to higher education institutions and universities, FOIA applies to the governing bodies of all of those bodies (sections 52 and 53 FOIA). Bearing this in mind, the Commissioner is satisfied that if information is held by the governors of the School, that would fall under the scope of request (v), this information would be held by the College for the purposes of the FOIA.
24. Therefore, after taking this into account, together with the College's statement that it has not undertaken any searches to establish whether any relevant information is or was held by the school governors, the Commissioner is not satisfied that further relevant information is not held.
25. The Commissioner now requires the College to carry out searches to satisfy it whether any further relevant information is held by the School's governors. The College will then need to confirm or deny to the complainant whether further information is held (unless an exemption from the duty to do so applies), and – if further information is held – disclose a copy of this to the complainant, or issue a refusal notice in line with the requirements of section 17 of the FOIA. It may be necessary for the College to consider the Commissioner's latest guidance on private emails and official information².
26. As noted above, during the investigation of this case the College located some additional information that fell under this request. It informed the Commissioner that it was prepared to disclose some of this to the complainant. However, it was withholding some of this information

² http://www.ico.gov.uk/news/latest_news/2011/ico-clarifies-law-on-information-held-in-private-email-accounts-15122011.aspx

under section 42(1). In addition to this, it was also seeking to rely upon sections 40(2) and 40(3)(a)(i) to withhold the names of individuals from all of this additional information – including the information it was now prepared to disclose to the complainant.

27. The Commissioner has gone on to consider the College's application of section 42.

The legal professional privilege exemption

28. Section 42(1) provides an exemption for information in respect of which a claim to legal professional privilege ("LPP") could be maintained in legal proceedings. This exemption is subject to a public interest test.
29. There are two types of LPP; advice privilege and litigation privilege. After considering the arguments the College has made, together with the withheld information in question, the Commissioner considers that it has argued that this information is subject to advice privilege.
30. For advice privilege to apply, the information must be confidential, made between a client and professional legal adviser acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice.
31. In this instance, the College has applied this exemption to two types of information – communications between it and an individual who is legally qualified, and between it and a professional legal advisor.
32. In relation to the first type of information the College has provided further arguments as to why advice privilege applies. Because of the nature of the College's arguments the Commissioner cannot discuss them freely in this notice, as to do so may give some indication as to the contents of the withheld information. Further details of those arguments, and the Commissioner's consideration of them, are contained in paragraphs 1 to 5 of the confidential annex attached to the end of this notice.
33. Having considered the College's arguments, and the withheld information in question, and for the reasons set out in the confidential annex, the Commissioner does not consider that advice privilege applies to this information. Therefore, in relation to some of the withheld information to which section 42 has been applied, the Commissioner does not consider that this exemption is engaged.
34. The College has not applied any other exemptions to this information – other than sections 40(2) and 40(3)(a)(i) to the names of individuals contained in this information. Therefore, in relation to the contents of this information the Commissioner considers that this should be

disclosed. This information is identified at paragraph 2 of the confidential annex.

35. In relation to the second type of information, the Commissioner is satisfied that these communications were confidential, made between a client and professional legal adviser acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice. Therefore the Commissioner considers that advice privilege applies to this information. Therefore section 42 is engaged in relation to this information.
36. The Commissioner has gone on to consider the public interest test – namely whether the public interest in maintaining the exemption outweighs the public interest in disclosure.
37. In respect of the public interest in disclosure, the complainant has argued that his requests have arisen as a result of an unannounced emergency inspection by the Independent Schools Inspectorate (the "ISI"), which resulted in several criticisms of the School, and the actions of the College and the School in informing the parents of the results of this inspection (via the letter referred to in the wording of this request). The complainant has described the results of this inspection as 'damning' – although this is not accepted by the College or the School. He has gone on to state that this inspection came about as a result of the behaviour of a teacher, and concerns raised about that behaviour. As well as being critical of the way in which the College and the School handled the results of the inspection (in particular, how it informed the parents of pupils), he also has concerns over the management and governance of the College and the School. Given this, he is seeking to obtain answers to pertinent issues, and in particular *"get to the bottom of the failed inspection and the breakdown in governance of the school..."*
38. The Commissioner recognises that there is an assumption built into the FOIA that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to their activities. He notes that the context of these requests is an ISI inspection, which did make some findings against the School. The letter which is referred to in this request was the one which informed the parents of pupils of the findings of this inspection – the contents of which have been criticised by the complainant.
39. Bearing these factors in mind, the Commissioner considers that given the ISI inspection, there is a public interest in increasing transparency into the events surrounding the inspection and the subsequent actions of the College and the School. The disclosure of this information would increase this transparency.

40. In regard to the public interest in maintaining the exemption the Commissioner considers that:

- It is in the public interest to safeguard openness in all communications between client and lawyer to ensure access to full and frank legal advice.
- It is important that a public authority is able to seek legal advice so it can make its decisions in the correct legal context.
- There is an inbuilt public interest in the maintenance of LPP.

41. In considering the balance of the public interest in connection with this exemption, the Commissioner has in particular taken into account the inbuilt public interest in the concept of legal professional privilege.³

42. Bearing these points in mind, and having considered the withheld information in question, the Commissioner considers that the public interest in maintaining this exemption outweighs the public interest in favour of disclosure. Therefore this information should be withheld.

The third party information exemption

43. The Commissioner has gone on to consider the College's application of sections 40(2) and 40(3)(a)(i) to withhold the names of third parties contained in the additional relevant information it has located, together with an extract from an email. Given his findings in relation to section 42, the Commissioner has only reached a decision on the application of this exemption in relation to:

- the information which – other than the names contained in it – the College is now prepared to disclose to the complainant,
- the names of individuals contained within information identified in paragraph 2 of the confidential annex, which the Commissioner does not consider to be exempt under section 42, and
- the extract from the email.

³ *Bellamy v Information Commissioner & Secretary of State for Trade and Industry* [EA/2005/0023], para 35.

44. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.
45. 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 1998 (the "DPA"). This is an absolute exemption, and is therefore not subject to a public interest test.
46. The College has sought to rely upon this exemption to withhold the names of individuals where they appear in the information that is held that falls under the scope of this request, together with an extract from an email. The College has argued that the disclosure of this information would be in breach of the first principle of the DPA.
47. In order to establish whether this exemption has been correctly applied the Commissioner has first considered whether the withheld information is the personal data of third parties.
48. 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.
49. In this case, the names of individuals clearly identify several individuals. Bearing this in mind, the Commissioner is satisfied that this withheld information is the personal data of third parties.
50. However, in relation to the extract of the email withheld under this exemption, the Commissioner does not consider that it is the personal data of a third party. In reaching this decision the Commissioner considers that this information does not, in itself, identify any individual. Nor does he consider that it is information about the third party identified by the College. Therefore, this exemption is not engaged in relation to this information.
51. The College has not applied any other exemption to this information. Therefore it should be disclosed. This information is identified in paragraph 11 of the confidential annex.
52. The Commissioner has gone on to consider whether the disclosure of the names of individuals withheld under this exemption would be in breach of the first data protection principle. This requires, amongst other things, that personal data is processed fairly.
53. The Commissioner has first considered whether the disclosure of the withheld information would be fair.

54. In considering whether disclosure of this information would be fair the Commissioner has taken the following factors into account:
- whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
 - the individual's reasonable expectations of what would happen to their information; and
 - are the legitimate interests of the public sufficient to justify any negative impact to the rights and freedoms of the data subject.
55. The College has argued that the disclosure of this information would be unfair. It has pointed out to the Commissioner that some of the individuals concerned are only public officials by virtue of the unusual relationship between the School and the College – and that they are employees of an independent fee paying school. These individuals were not making any decisions in relation to the expenditure of public finance, and nor did any of the decision making reflected in this information affect public policy. Therefore disclosure of this information would be an unwarranted invasion of privacy. In addition to this, it has also argued that the individuals concerned would have had no reasonable expectation that their name would be disclosed into the public domain as, at the time of the request, the School (and consequently its employees) was not aware that it was subject to the FOIA.
56. Finally, it has added that disclosure of this information is not necessary to meet the legitimate interests of the public because (in relation to the information it is now prepared to disclose) information about actual decision making will now be disclosed, and the legitimate interests are not served in knowing the names of the individuals involved. If evidence of any wrong-doing was revealed by this information, any concerned individual could report it to the appropriate authorities. It would not be necessary to know the names of the individuals concerned in order to do this.
57. To a certain extent, the Commissioner accepts the College's arguments about the status of some of the individuals concerned as public/private officials. The relationship between the College, the School, and the FOIA, is an unusual one. The School is an independent fee paying school and, other than for its close relationship with the College, would not be subject to the FOIA. The Commissioner is satisfied that the matters under discussion in these emails did not relate in any way to the expenditure of public money. The Commissioner recognises that his original decision that the School was part of the College for the purposes of the FOIA (case reference FS50285876) was a potentially unique one, based on the unusual circumstances of the historical relationship

between the two institutions. Bearing this in mind, he accepts that at the time that this information was originally recorded, and at the time that the request was originally made on 13 November 2009, it would have been unlikely that these individuals would have had any reasonable expectation that this information would be disclosable under the FOIA.

58. Taking all these factors into account, the Commissioner considers that the disclosure of this information would be an invasion of the privacy of the individuals concerned.
59. In relation to the legitimate interests in disclosure of this information, the Commissioner considers that the public interest arguments in favour of disclosure already discussed in relation to section 42 (paragraphs 37 to 39 above) are also relevant here. In particular, the Commissioner considers that there is a public interest in increasing transparency into the events surrounding the ISI inspection and the subsequent actions of the College and the School.
60. However, this has to be balanced against any negative impact to the rights and freedoms of the individuals concerned. Taking into account his findings that the disclosure of this information would be an invasion of the privacy of those individuals, the Commissioner finds the arguments in favour of withholding this information particularly weighty. He also considers that the legitimate interest in this case will largely be met by the information that the College is now prepared to disclose – as it shows much of the advice given in the drafting of the letter that is the focus of this request.
61. Taking all these factors into account, the Commissioner considers that the disclosure of this information would be unfair. Therefore the names of individuals withheld under this exemption are exempt from disclosure. In addition, he also considers that the names of any individuals contained in this information should also be withheld for the same reasons.

Request (vii)

62. As noted above, the complainant has complained about the redactions that had been made in the documents that had been disclosed to him in relation to this request. These documents were:
 - Minutes of the Senior Management meetings on 21 September, 28 September, 5 October, 12 October and 19 October 2009.
 - An email from the headmaster to the governors dated 21 September 2009.

63. The College has confirmed that it redacted information from the minutes referred to at the first bullet point on the basis that it fell outside the scope of the request. In relation to the second bullet point, the redacted information was withheld under sections 40(2) and 40(3)(a)(i).
64. In addition to this, during the investigation of this case the College located additional information that fell within the scope of this request. However, it applied section 42 to this information. In addition, it also applied sections 40(2) and 40(3)(a)(i) to withhold the names of third parties referred to in this additional information.
65. The Commissioner has first considered the redactions made in the information already provided to the complainant.

Minutes of the Senior Management meetings

66. Request (vii) focuses on correspondence between senior employees of the School relating to the ISI inspection, together with the minutes of meetings held to discuss this inspection.
67. During the investigation the Commissioner obtained an unredacted version of these minutes. Having compared these with the information already provided to the complainant he is satisfied that the redacted information does not relate to discussions of the ISI inspection. Therefore he is satisfied that this information does not fall with the scope of this request.

Email dated 21 September 2009

68. The College has redacted some information from this email under sections 40(2) and 40(3)(a)(i), on the basis that it is third party information, the disclosure of which would be in breach of the first principle of the DPA.
69. However considering this exemption, the Commissioner has first considered the application of section 40(1) to this information – namely whether the redacted information is the personal data of the complainant.
70. Section 40(1) states that requested information is exempt from disclosure (under the FOIA) if it is the personal data of the applicant.
71. In this instance, the Commissioner considers that the redacted information is the personal data of the complainant. Therefore this information is exempt from disclosure under the FOIA because of section 40(1).

72. The Commissioner has commented on this further in the 'Other Matters' section at the end of this notice.
73. The Commissioner has gone onto consider the College's position in relation to the additional information. He has first considered its application of section 42 to this information.

The legal professional privilege exemption

74. The information in question is identified in paragraph 6 of the confidential annex.
75. For the same reasons as given at paragraph 29 above, the Commissioner considers that the College has argued that this information is subject to advice privilege
76. Whilst not able to discuss the withheld information in detail, the Commissioner notes that the College has applied this exemption to a communication between it and an individual who is legally qualified.
77. For the reasons given at paragraph 33 and 34 above, and paragraphs 3 to 5 of the confidential annex, the Commissioner does not consider that advice privilege applies to this information. Therefore, the Commissioner does not consider that this exemption is engaged in relation to this information.
78. The College has not applied any other exemptions to this information – other than section 40(2) to the names of individuals contained within this information which is considered below. Therefore, in relation to the contents of this information the Commissioner considers that this should be disclosed.

The third party information exemption

79. The Commissioner has gone on to consider the College's application of sections 40(2) and 40(3)(a)(i) to withhold the names of third parties contained in :
 - information which – other than the names contained in it – the College is now prepared to disclose to the complainant, and
 - the names of individuals contained within the information identified in paragraph 6 of the confidential annex – which the Commissioner does not consider to be exempt under section 42.
80. The Commissioner has previously considered the application of this exemption to similar information in relation to request (v). Therefore he does not consider that he needs to set out detailed considerations again.

However, for the reasons set out at paragraphs 44 to 49, and 52 to 61 above, the Commissioner considers that the disclosure of this information would be unfair. In addition, he also considers that the names of any individuals contained in this information should also be withheld for the same reasons. Therefore this information is exempt from disclosure under this exemption.

Request (viii)

81. The College is relying upon sections 40(2) and 40(3)(a)(i) to withhold the personal information of third parties contained within the additional relevant information it has located. It has also sought to rely upon section 42 to withhold some of this information.
82. However, the Commissioner has first considered whether there is any additional relevant information held by the College that has not been identified.

Is any further relevant information held?

83. The College has provided the Commissioner with details of the searches it had carried out in order to establish what information was held that fell under the scope of request (viii).
84. During the investigation of the case the Commissioner informed the College that given the wording of request (viii) he considered that it was possible that relevant information may be (or may have been) held by school governors. Bearing this in mind, he asked the College to confirm whether it had undertaken searches to establish whether any relevant information was held by the governors.
85. The College informed the Commissioner that it had not carried out such searches. Nor did it consider that it had to, as the governors were volunteers, rather than employees of the School, and therefore any information held by them was not held on behalf of a public authority.
86. However, for the same reasons as outlined at paragraph 23 above, the Commissioner is satisfied that information held by the governors, that would fall under the scope of request (viii) is held by the College for the purposes of the FOIA. Therefore the Commissioner is not satisfied that no further relevant information is held.
87. The Commissioner now requires the College to carry out the same steps as outlined at paragraph 25 above.
88. As noted above, during the investigation of this case the College located some additional information that fell under this request. It informed the Commissioner that it was prepared to disclose some of this to the

complainant. However, it was withholding some of this information under section 42(1). In addition to this, it was also seeking to rely upon sections 40(2) and 40(3)(a)(i) to withhold the names of individuals from all of this additional information – including the information it was now prepared to disclose – and to some of the contents of this information.

89. The Commissioner has first considered the College's application of section 42.

The legal professional privilege exemption

90. The information in question is identified in paragraph 7 of the confidential annex.
91. For the same reasons as given at paragraph 29 above, the Commissioner considers that the College has argued that this information is subject to advice privilege
92. Whilst not able to discuss the withheld information in detail, the Commissioner can note that the College has applied this exemption to a communication between it and an individual who is legally qualified.
93. For the reasons given at paragraph 33 and 34 above, and paragraphs 3 to 5 of the confidential annex, the Commissioner does not consider that advice privilege applies to this information. Therefore, the Commissioner does not consider that this exemption is engaged in relation to this information.
94. The College has applied sections 40(2) and 40(3)(a)(i) to some of the contents of this information, as well as to the names of the correspondents. However, it has not applied any other exemption. Therefore, in relation to the information identified in paragraph 7 of the confidential annex the Commissioner considers that this should be disclosed – other than the information he has referred to at paragraphs 96, and 98 to 101 below.

The third party information exemption

95. The Commissioner has gone on to consider the College's application of sections 40(2) and 40(3)(a)(i) to withhold the names of third parties contained in :
- the information which – other than the names contained in it – the College is now prepared to disclose to the complainant, and
 - the information identified in paragraph 7 of the confidential annex – which the Commissioner does not consider to be exempt under section 42.

96. In relation to the names of correspondents, for the reasons set out at paragraphs 44 to 49 and 52 to 61 above the Commissioner considers that the disclosure of this information would be unfair. In addition, he also considers that the names of individuals contained in this information should also be withheld for the same reasons. Therefore this information is exempt from disclosure under this exemption.
97. The College has also sought to rely upon sections 40(2) and 40(3)(a)(i) to withhold some of the contents of this information. This is identified in paragraph 8 of the confidential annex.
98. After considering the identified sections of the relevant information, the Commissioner is satisfied that this is the personal data of third parties.
99. Whilst not able to detail the information in question, the Commissioner notes that it does not relate to employees of the School or College. He does not consider that these individuals were making any decisions in relation to the expenditure of public finance. Therefore he considers that the disclosure of this information would be an invasion of privacy. In addition to this, he also considers that these individuals would have had no reasonable expectation that their personal data would be disclosed into the public domain.
100. In relation to the legitimate interests in disclosure of this information, although the Commissioner considers that there is a legitimate interest in increasing transparency into the events surrounding the inspection and the subsequent actions of the College and the School, he does not consider that this information has much relevance to these legitimate interests.
101. Taking all these factors into account, he considers that the disclosure of this information would be unfair. Therefore this information is also exempt from disclosure under this exemption.

Request (ix)

102. In relation to this request, the complainant has complained about certain of the redactions that had been made in the documents that had been disclosed to him in relation to this request.
103. During the course of the investigation the College informed the Commissioner that one of the documents referred to by the complainant – a paper headed “Preparing for Inspection” – had previously been provided to him in full. The Commissioner has noted that the complainant has, indeed, provided him with a copy of this paper in relation to FS50285876. Therefore he is satisfied that this has previously been provided to the complainant, and he has not gone on to consider this document any further.

104. The College also informed the Commissioner that it had already fully disclosed item 3 of the minutes of the governors meeting on 26 February 2009 to the complainant. However, the complainant has provided the Commissioner with a copy of these minutes that was disclosed to him by the College which shows a section of this part of the minutes redacted. This is identified in paragraph 9 of the confidential annex attached to the end of this notice.
105. Therefore, although the College has informed the Commissioner that this extract from these minutes was disclosed to the complainant in full, he has been provided with evidence that it was not.
106. However the Commissioner considers that this redacted information is the personal data of the complainant. Therefore this information is exempt from disclosure under the FOIA because of section 40(1).
107. The Commissioner has commented on this further in the 'Other Matters' section at the end of this notice.
108. In addition to this, the College has informed the Commissioner that it is now prepared to disclose some of the previously reacted information to the complainant, namely:
- Items 1(1), 1(8), and 2 to 4 of the minutes of the Governors Legal, Administrative and General Purpose Sub-Committee on 20 October 2009.
109. In relation to the other outstanding redactions the College has confirmed that this information has been withheld under sections 40(2) and 40(3)(a)(i).
110. Having considered the redacted sections of these minutes, the Commissioner is satisfied that they are all the personal data of third parties.
111. The majority of this information relates to a number of topics, namely: pupils of the School, information on new teaching staff, staffing appointments, and information of a personal nature about a particular individual.
112. Whilst not able to detail the contents of this information, the Commissioner notes that some of this information relates to children. In relation to all of this information, he does not consider that these individuals were making any decisions in relation to the expenditure of public finance, and nor did any of the decision making reflected in this information affect public policy. Taking these factors into account he considers that the disclosure of this information would be an invasion of privacy. In addition to this, he also considers that these individuals

would have had no reasonable expectation that their personal data would be disclosed into the public domain.

113. In addition to this, although the Commissioner accepts that there is a legitimate interest in increasing the openness and transparency of the actions of public authorities, he does not consider that there are any specific legitimate interests in relation to the disclosure of this information.
114. Therefore, he considers that the disclosure of this information would be unfair. Therefore this information is exempt from disclosure under this exemption.
115. However, in addition to the above, one of redacted sections relates to the appointment of a school governor to a committee. The Commissioner has identified this information at paragraph 10 of the confidential annex.
116. The Commissioner notes that this information is of a high level, and does not record any detail of a personal nature about the governor concerned. In addition, he notes that the School publishes the names of its governors. The College has also provided no specific arguments as to why the disclosure of this information would be a breach of that individual's privacy, nor how it would be harmful or detrimental to that individual. Bearing these points in mind, the Commissioner does not consider that the disclosure of this information would be an invasion of privacy for that individual.
117. In relation to the legitimate interests in the disclosure of this information, the Commissioner notes that this information relates to the governance of the school. Bearing this in mind, he considers that there is a legitimate interest in the disclosure of this information. Therefore he considers that the disclosure of this information would be fair.
118. The first data protection principle also requires that the processing of personal data is lawful and one of the conditions of schedule 2 of the DPA is met.
119. In relation to lawfulness, the Commissioner is not aware of any duty of confidence or statutory bar protecting this information. Therefore he is satisfied that the disclosure of this information would be lawful.
120. The Commissioner has gone on to consider whether any of the conditions in schedule 2 of the DPA can be met for the disclosure of this information.
121. The Commissioner considers that the most applicable condition in this case is likely to be condition 6 which gives a condition for processing

personal data where the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

122. In order to consider whether this condition is met the Commissioner considers that disclosure must satisfy a three part test:

- there must be a legitimate interest in disclosing the information;
- the disclosure must be necessary for that legitimate interest; and
- even where the disclosure is necessary, it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms and legitimate interests of the data subject.

123. The Commissioner has detailed the legitimate interests in the disclosure of this information at paragraph 117 above. The Commissioner considers that the disclosure of this information is necessary for these legitimate interests.

124. Having already established that the processing is fair, the Commissioner is also satisfied that the release of this information would not cause any unnecessary interference with the rights, freedoms and legitimate interests of the data subjects. Therefore he is satisfied that this schedule 2 condition is met.

125. Therefore, the Commissioner is satisfied that the disclosure of the information identified at paragraph 10 of the confidential annex would not be a breach of the first data protection principle. As such, he does not consider that this information is exempt under sections 40(2) and 40(3)(a)(i). Therefore this information should be disclosed.

Request (xiii)

126. The College initially withheld all the information it held that fell within this request under sections 36(2)(b)(i) and (ii), and sections 40(2) and 40(3)(a)(i).

127. During the Commissioner's investigation the College acknowledged that some of this information was – in fact – the personal data of the complainant.

128. Bearing this in mind, the Commissioner has first considered the application of section 40(5)(a) to any information held by the College that fell under this request.

129. Section 40(5)(a) states that a public authority is not required to confirm or deny whether it holds requested information in relation to information which is (or if it were held by the public authority would be) the personal data of the applicant.
130. In this instance, the Commissioner considers that due to the wording of this request – and having considered the information held by the College – the relevant information held by the College (for the purposes of the FOIA) is the personal data of the complainant.
131. Therefore the College was under no duty to confirm or deny whether it held any information that fell under the scope of this request because of section 40(5)(a). As this applied, the College would also not be required to disclose any held information under the FOIA.
132. Although this exemption was not cited by the College, given his dual role as regulator of both the FOIA and the DPA the Commissioner considers that it is appropriate to consider the application of this exemption in relation to information of this kind.
133. The Commissioner has commented on this further in the 'Other Matters' section at the end of this notice.

Other matters

134. Section 7 of the Data Protection Act gives an individual the right to request copies of personal data held about them – this is referred to as the right of Subject Access.
135. There are unusual circumstances in this case. Although for the purposes of the FOIA the School is part of the College, for the purposes of the DPA the School and the College are separate data controllers. Therefore, although information held by the School is held by the College for the purposes of the FOIA, for the purposes of the DPA the two bodies are separate, and the information is only held by the School. Consequently, any subject access request for information held by the School would have to be made directly to the School, rather than the College.
136. Whilst the Commissioner acknowledges that this case is complex due to a number of reasons – in particular the unusual relationship between the College and the School, and the nature of the requests – he wishes to note his concerns about the way in which the College has dealt with certain aspects of these requests. In particular, he is concerned that additional relevant information that falls under the scope of these requests has only been located by the College after the commencement of the Commissioner's investigation. He is also concerned about the

College's failure to explain some of the redactions made from the information it has already disclosed to the complainant, or to quote the exemptions that it was relying upon. Finally, the Commissioner is also concerned about the College's failure to identify some of the requested information as the personal data of the complainant.

Right of appeal

137. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

138. 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.

139. 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

Steve Wood
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Information Commissioner's Office
Wycliffe House
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SK9 5AF