

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 January 2014

**Public Authority:** Banbridge High School  
**Address:** Primrose Gardens  
Banbridge  
Co. Down  
BT32 3EW

#### Decision (including any steps ordered)

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The complainant has requested minutes of Board of Governors meetings from Banbridge High School ("the School"). The School disclosed the information to the complainant, having redacted some third party personal information. Section 40(2) by virtue of section 40(3)(a)(i) was the basis for redaction. The Commissioner finds that the School has correctly applied section 40(2) of FOIA to the redacted information. The Commissioner also finds that the School has breached section 17(1) of FOIA as it failed to specify the exemption under which it was redacting the information. The Commissioner requires no steps to be taken.

#### Request and response

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1. On 16 November 2012 the complainant, with reference to the Board of Governors (BOG) meetings made the following request to the school for information under the FOIA for:  
**REQUEST 1:** "...full copies of the minutes for all BOG meetings since September 2009 until the present date."
2. On 29 November 2012 the complaint also requested the following:  
**REQUEST 2:** "...full copies of the minutes for all BOG meetings from the beginning of 2000 to the end of August 2009".
3. On 10 December 2012 the School informed the complainant that, with respect to his first request, he could collect the material he required from the school on 14 December 2012.

4. On 14 December 2012 the school informed the complainant that, with respect to his second request, the information he had requested would be available for collection on 21 December 2012.
5. In both responses, the School informed the complainant that third party data contained in both sets of information had been removed in line with the advice in paragraphs 63:2 (a-c) as contained in the Southern Area Education & Library Board (SELB) Scheme of Management for Controlled Schools. You also informed him that to release third party information would be a breach of the Data Protection Act 1998 (the DPA).
6. Following an internal review having been requested on 4 January 2013, the complainant complained to the Commissioner on 26 June 2013.
7. On 22 July 2013 the Commissioner wrote to the School explaining that it had not issued a proper refusal notice to the complainant, as per the requirements of section 17 of FOIA, in respect of the third party personal information which had been redacted from the minutes. The Commissioner also explained that the School should have provided details of its internal review procedure and the complainant's right to complain to the Commissioner. Instead of requesting that the School issue a full and proper response to the complainant's requests, the Commissioner asked the School to treat correspondence from the complainant of 6 March 2013 and 22 March 2013 as requests for internal review, and to carry out an internal review accordingly.
8. The Commissioner wrote to the complainant on the same date explaining the course of action it had asked the School to take.

### **Scope of the case**

9. The complainant again contacted the Commissioner on 31 August 2013 to complain about the way his request for information had been handled, stating that he had not received any further correspondence from the School in respect of any internal review.
10. The Commissioner has considered the handling of this case in its entirety, i.e. both the procedural elements and whether or not the School was correct to redact information from the minutes provided to the complainant. Although the School cited the Data Protection Act 1998 as the legislation under which it was redacting third party personal information, the Commissioner considers that section 40(2) of FOIA would have been the correct exemption to cite and has therefore considered the matter under the provisions of that exemption.

## Reasons for decision

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### Section 40(2) of FOIA

11. Section 40(2) of the FOIA provides that information is exempt from disclosure if it constitutes personal data and either the first or the second condition in section 40(3) is satisfied. The first condition in section 40(3) states that the disclosure of personal data would (i) contravene any of the data protection principles, or (ii) section 10 of the DPA. In this case the School has explained that it considers disclosing the remaining withheld information contained within the staffing committee minutes would breach the Data Protection Act 1998. The Commissioner has taken this to indicate that the School feels that disclosure would be unfair and would breach the first data protection principle.

### Personal data

12. The Commissioner has first considered whether the withheld information is personal data. Personal data is defined in section 1(1) of the Data Protection Act 1998 as:-

*"data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."*

13. The Commissioner's guidance on the exemption for personal data contained within the FOIA expands on what constitutes personal data: *"The two main elements of personal data are that information must 'relate to' a living person, and that person must be identifiable. Information will 'relate to' a person if it is:*
  - about them;*
  - is linked to them;*
  - has some biographical significance for them;*
  
  - is used to inform decisions affecting them;*
  
  - has them as its main focus; or*
  - impacts on them in any way."*

### Does the information relate to living persons?

14. The School has argued that the withheld information is the personal

data of more than one data subject in that it relates to annual leave, pay, sickness records and other staffing matters as well as matters pertaining to pupils.

15. Having inspected the withheld information the Commissioner considers that it relates to living individuals.

**Does the information identify living individuals?**

16. The Commissioner considers that the withheld information clearly identifies living individuals who are referred to by name. Therefore he considers that the withheld information is personal data.

**Sensitive personal data**

17. The Commissioner has gone on to consider whether any of the information is sensitive personal data. Section 2 of the DPA defines sensitive personal data as personal data as to:
- (a) the racial or ethnic origin of the data subject,
  - (b) his political opinions,
  - (c) his religious beliefs or other beliefs of a similar nature,
  - (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
  - (e) his physical or mental health or condition,
  - (f) his sexual life,
  - (g) the commission or alleged commission by him of any offence; or
  - (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.
18. Having viewed the withheld information the Commissioner considers that some of it does contain sensitive personal data.

**Would disclosure of the withheld information contravene any of the data protection principles?**

19. The first data protection principle states:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless a)*  
*at least one of the conditions in Schedule 2 is met; and*  
*b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

20. In considering whether disclosure of the information would be fair to the individuals concerned, the Commissioner has, in this instance, taken the following factors into account:
- the individuals' reasonable expectations as to what would happen to their personal information
  - balancing the rights and freedoms of the data subjects with legitimate interests.

### **Reasonable expectations**

21. The School has argued to the Commissioner that disclosure of the information would not be in the reasonable expectations of the data subjects. Specifically, it has explained that the data subjects would reasonably expect information related to annual leave, sick leave, career breaks and other staffing and wider school matters to remain undisclosed to the world at large.
22. The Commissioner has noted above that some of the information requested is sensitive personal data. Sensitive personal data is that which by its very nature, has been deemed to be information that individuals regard as the most private information about themselves. Individuals would not usually expect such information to be disclosed to the world at large, as is a disclosure under the FOIA. Due to the sensitivity of this type of information the Commissioner considers that it is generally unlikely that disclosure of such information would be fair. Having viewed the withheld information the Commissioner is of the view that some of the information is sensitive personal data, which it would be unfair to disclose in this case.
23. Where the information is not sensitive personal data the School has argued that it still would not be in the individuals' reasonable expectations for their personal data to be disclosed. It relates to such things as requests for career breaks and annual leave. The School has argued that those individuals would expect their employer to keep such details confidential and not disclose them to the wider public.
24. The Commissioner considers that disclosure of personal and sensitive personal information relating to employees has the potential for causing distress and harm to data subjects (for example to future career prospects or within an individual's private life). Taking into account the circumstances of the case, the Commissioner does not consider it within the reasonable expectations of the data subjects for their personal information to be disclosed where that relates to identifiable individuals.

## **Legitimate interests of the public and rights and freedoms of the data subjects**

25. The Commissioner has considered the legitimate interests of the public in regard to transparency and accountability. However, he does not consider that the legitimate interests of the public outweigh the expectation of privacy of the data subjects in this case.
26. The complainant has stated, as part of his grounds for complaint, that he believes that the redacted information contains personal information about him which has been withheld from him by the School. After having inspected the requested information in both redacted and unredacted formats, the Commissioner can categorically state that he is aware of no personal information which relates to the complainant and is contained in the minutes which has not already been provided to the complainant.

## **Procedural requirements**

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### **Section 17 – the refusal of a request**

27. Where a public authority is to any extent seeking to rely on an exemption contained in Part II of the FOIA, section 17(1) requires a public authority to issue a notice within 20 working days which –
  - (a) states the fact,
  - (b) specifies the exemption in question, and
  - (c) states (if that would not otherwise be apparent) why the exemption applies.
28. In this case the School, although it responded to the complainant's request within the statutory time limit, did not provide the complainant with a notice informing him of its reliance on section 40(2) of FOIA. The Commissioner has therefore determined that the School breached sections 17(1)(a), (b) and (c) in its initial handling of the request.

## Right of appeal

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29. 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: [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)

30. 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.
31. 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 .....**

**Rachael Cragg**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**