

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 September 2014

Public Authority: North Yorkshire County Council
Address: County Hall
Northallerton
North Yorkshire
DL7 8AD

Decision (including any steps ordered)

1. The complainant has requested information relating to a warning notice issued to Richmond School. North Yorkshire County Council refused to provide the requested information under section 36(2)(c) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the Council has correctly applied section 36(2)(c) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 21 February 2014 the complainant requested information of the following description:

"Please could you provide:

- a copy of the warning notice issued to Richmond School under the Education and Inspections Act 2006.
- details of any information provided to the authority which led to the warning notice being issued.
- details and minutes of any meetings held in relation to the issuing of the notice including the dates, locations and who was present.

- copies of any correspondence between the authority (NYCC) and the head teacher relating to the issuing of the notice.”
5. On 21 March 2014 the Council responded. It provided the complainant with some information but withheld some information under section 36(2)(c) and section 40(2) FOIA.
 6. The complainant requested an internal review on 23 March 2014. The Council sent the outcome of its internal review on 16 April 2014. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 27 April 2014 to complain about the way her request for information had been handled.
8. The Commissioner has considered whether the Council was correct to apply section 36(2)(c) and section 40(2) FOIA to the withheld information.

Reasons for decision

9. Section 36 FOIA provides that,

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

(2)(b) would, or would be likely to, inhibit-

- i. the free and frank provision of advice, or
- ii. the free and frank exchange of views for the purposes of deliberation, or

(2)(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

7. The Council has applied section 36(2)(c) to the withheld information.
8. In determining whether section 36(2)(c) was correctly engaged by the Council, the Commissioner is required to consider the qualified person’s opinion as well as the reasoning which informed the opinion. Therefore

in order to establish that the exemption has been applied correctly the Commissioner must:

- Establish that an opinion was given;
 - Ascertain who was the qualified person or persons;
 - Ascertain when the opinion was given; and
 - Consider whether the opinion was reasonable.
9. The Council explained that the qualified person is Carole Dunn, Monitoring Officer of the Council. It said submissions were put to the qualified person on 12 March 2014. A copy of the submission was provided to the Commissioner. It explained that the qualified opinion was provided on 14 March 2014. The qualified person's opinion was that section 36(2)(c) FOIA was applicable in this case. It explained that the qualified person had access to the evidence base itself including the warning notice and a sample selection of emails concerning the school in question (which was 350+ pages in length). A copy of the qualified person's opinion was provided to the Commissioner.
 10. To summarise the qualified person's opinion was that disclosure would prejudice the process (that was ongoing at the time of the request) that the Local Authority was working with Ofsted to implement an Interim Executive Board to replace the Governing Body to stabilise the governance arrangements of the school following the resignation of the entire Governing Body.
 11. The withheld information is the full evidence base including the actual warning notice. The Commissioner is aware that in this case the warning notice was issued on 13 February 2014 and the entire Governing Body resigned on the same day. This led to the Council, on 27 February 2014, applying to the Department for Education for the implementation of an Interim Executive Board (IEB) to replace the Governing Body. This was approved by the DfE on 18 March 2014 and the IEM was implemented on 21 March 2014. As the issues surrounding the warning notice were live and ongoing at the time the request was made on 21 February 2014, the Commissioner considers the opinion of the qualified person is a reasonable one.
 12. As the Commissioner has decided that the exemption is engaged, he has gone on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In his approach to the competing public interest arguments in this case, the Commissioner has drawn heavily upon the Information

Tribunal's Decision in the case of Guardian Newspapers Limited and Heather Brooke v Information Commissioner and BBC (the Brooke case)¹.

13. The Commissioner notes, and adopts in particular, the Tribunal's conclusions that, having accepted the reasonableness of the qualified person's opinion that disclosure of the information would, or would be likely, to have the stated detrimental effect, the Commissioner must give weight to that opinion as an important piece of evidence in his assessment of the balance of the public interest. However, in order to form the balancing judgment required by section 2(2)(b), the Commissioner is entitled, and will need, to form his own view as to the severity of, and the extent and frequency with which, any such detrimental effect might occur. Applying this approach to the present case, the Commissioner recognises that there are public interest arguments which pull in competing directions, and he gives due weight to the qualified person's reasonable opinion that disclosure would, or would be likely to inhibit the free and frank provision of advice.

Public interest arguments in favour of disclosing the requested information

14. The Council acknowledged that transparency in the conduct of public affairs is very important and that it is in the public interest that Local Authority processes are shown to be followed and implemented transparently.

Public interest arguments in favour of maintaining the exemption

15. The Council argued that when the request was made the public interest at that time was the need for the re-establishment of strong and stable governance at the school. It said the IEB was an interim board that had been established to begin that process. It said that this statutory process was necessary so that a future Governing Body could be established upon strong foundations of governance to move the School forward. It said that if the requested information was disclosed at that time, it could have been used to cause unnecessary interference and distraction to the role of the IEB. It said that if the IEB failed as a result of such a challenge it would have had a negative impact upon the education of the pupils at the School which would not be in the public interest. It said that the intensity of the challenge faced by the IEB by

¹ EA/2006/0011; EA/2006/0013

local media and certain individuals (even without disclosure of the withheld information) is prevalent as it resulted in the chair of the IEB resigning from his post almost immediately.

Balance of the public interest arguments

16. The Commissioner considers there is a strong public interest in Local Authority processes being shown to be followed and implemented transparently. He considers this is particularly important in relation to the governance of a school such as in this case as it affects a large community of individuals.
17. The Commissioner does however consider that at the time the request was made the School was going through a sensitive and challenging time, when upon the service of a warning notice the entire Governing Body resigned. The Commissioner considers that there is a very strong public interest in not disclosing information which would have prejudiced the process the Council was involved in to support the School in re-establishing governance.
18. As the issues surrounding the withheld information were very much live and ongoing at the time of the request and because the Council has explained that the IEB faced arduous challenge even without disclosure of the withheld information, the Commissioner considers that this significantly strengthens the public interest arguments in favour of maintaining the exemption at the time the request was made.
19. On balance the Commissioner considers that in this case, the public interest arguments in favour of disclosure are outweighed by the public interest arguments in favour of maintaining the exemption. Section 36(2)(c) FOIA was therefore correctly applied in this case.
20. As the Commissioner considers that section 36(2)(c) FOIA was applicable to all of the withheld information, he has not gone on to consider the application of section 40(2) FOIA.

Right of appeal

21. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF