

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 March 2015

**Public Authority:** Durham County Council  
**Address:** County Hall  
County Durham  
DH1 5UF

#### **Decision (including any steps ordered)**

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1. The complainant has requested to know how many teachers were reported following and investigation by the council and the reasons why they were reported. The council initially responded by neither confirming nor denying holding the information. During the Commissioner's investigation the council amended its response. It provided some information but refused the remaining under section 40(2) and 41 of the FOIA.
2. The complainant asked the Commissioner to consider if the council was correct to refuse the information and whether any more was held. The Commissioner's decision is that the council was correct to rely on section 40(2) of the FOIA to withhold the information, so did not go on to consider section 41 of the FOIA. The Commissioner also determined that the council held no other information with regards to the request. Lastly the Commissioner found that the council breached section 10(1) of the FOIA, as it did not provide its full response within the required timeframe of the FOIA. As a full response has now been provided, the Commissioner does not require the council to take any steps.

#### **Request and response**

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3. On 27 August 2014, the complainant wrote to the council and requested information in the following terms:

*"Can you tell me if the 8 members of dcc staff ( teachers ) from the Pru who were disciplined regarding the safeguarding investigation at the Pru have been reported for investigation from the following below.*

*If not can dcc state why ?*

*If dcc have can you please list how many and the reasons why ?"*

4. The council responded on responded on 1 September 2014 relying on section 40(5)(i) of the FOIA to neither confirm nor deny holding the information as it considered to do so would breach the data protection principle regarding fair and lawful processing.
5. The complainant requested an internal review on the 1 September 2014. He stated that he did not request a name or names in the request and only wanted the numbers, not the names.
6. The council provided its internal review response on 10 September 2014. It maintained its decision to neither confirm nor deny, but clarified it was doing so under section 40(5)(b)(i) of the FOIA.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 10 September 2014 to complain about the council refusing to provide him with the information requested.
8. During the Commissioner's investigations, the council amended its decision to neither confirm nor deny holding the information. It instead wrote to the complainant on the 18 November 2014 to advise that the number of teachers disciplined regarding the safeguarding investigation, which were reported to the relevant regulatory bodies was zero.
9. Following this response, the complainant queried this with the Commissioner as he considered that zero was incorrect. Following further investigations from the Commissioner the council, informed the complainant, on the 5 December 2014, that one teacher had been reported to the relevant regulatory body.
10. The complainant also pointed out that he did not consider that the council had responded to the second part of his request which asked why or why not staff had been reported.
11. The council advised the complainant on 28 January 2015. It stated that the person was reported because they breached the council's procedures

and their behaviour was judged, following a disciplinary investigation, to meet the criteria for a referral.

12. The complainant advised the Commissioner that the response of the 28 January 2015 did not specify the specific reasons as to why the person was reported.
13. Following further contact by the Commissioner to the council, the council wrote to the complainant again on the 4 February 2015. It advised that to provide a detailed reasoning as to why the member of staff was reported is exempt under section 40(2) of the FOIA – third party personal data -and section 41 of the FOIA – Information provided in confidence.
14. The complainant has asked that the Commissioner issues a decision notice to determine whether the council is able to rely on section 40(2) and 41 of the FOIA and also whether there was more than the one person reported for investigation.
15. The Commissioner considers the scope of the request is to determine whether the council is correct to rely on section 40(2) of the FOIA to provide a detailed explanation as to why the person was reported for investigation. He will only go on to consider if section 41 is engaged if he finds section 40(2) of the FOIA is not.
16. Following this, the Commissioner will then go on to determine whether the council is correct when it says only one person was reported for investigation.
17. Lastly the complainant has expressed dissatisfaction with the time it has taken the council to provide its full response to him. So the Commissioner will conclude whether it has breached section 10(1) of the FOIA with regards to its response time.

## **Reasons for decision**

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### **Section 40(2) of the FOIA – Third party personal data**

18. Section 40(2) of the FOIA states:

*"Any information to which a request for information relates is also exempt if-*

*a) it constitutes personal data which do not fall within subsection (1), and*

*b) either the first or second condition below is satisfied."*

19. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (the DPA).
20. The council has advised the Commissioner that the information being withheld under section 40(2) and 41 of the FOIA has already been refused by the council in a previous request from the complainant, made on the 1 May 2014 which was also refused under section 40(2) and 41 of the FOIA.
21. The council states that the withheld information relates to the same disciplinary process that the 1 May 2014 request was in relation to. That request was considered by the Commissioner issuing a separate decision notice under reference FS50544713<sup>1</sup> supporting the council's position, finding section 40(2) of the FOIA was engaged.
22. It was also considered by the Information Tribunal<sup>2</sup>. The appeal being dismissed and the decision to withhold the information upheld.
23. The complainant recently discovered and provided a link to a gov.uk website<sup>3</sup> that provides reports on teacher misconduct outcomes. These misconduct outcomes list the names of the teachers investigated and the reasons for investigation, so he considers that this now changes the expectations of the information being withheld.
24. On investigation of this website, the Commissioner notes that although it does provide teacher misconduct outcomes, no information about this particular case are available on the website. So as it is not in the public domain, the Commissioner does not consider that the expectations of the information being withheld changes.

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<sup>1</sup> <http://search.ico.org.uk/ico/search/decisionnotice>

<sup>2</sup> EA/2013/0168

<sup>3</sup>

[https://www.gov.uk/government/publications?keywords=&publication\\_filter\\_option=decisions&topics%5B%5D=schools&departments%5B%5D=national-college-for-teaching-and-leadership&official\\_document\\_status=all&world\\_locations%5B%5D=all&from\\_date=&to\\_date=&commit=Refresh+results](https://www.gov.uk/government/publications?keywords=&publication_filter_option=decisions&topics%5B%5D=schools&departments%5B%5D=national-college-for-teaching-and-leadership&official_document_status=all&world_locations%5B%5D=all&from_date=&to_date=&commit=Refresh+results)

25. The Commissioner is of the view that as the information being withheld is the same as some of the information that was withheld in the previous decision notice FS50544713; and because the requests were only 4 months apart from each other, he can rely on the arguments put forward in that decision and the Tribunal's decision in order to determine that the information in this request was correctly withheld under section 40(2) of the FOIA by the council.
26. As the Commissioner has determined that the information is exempt under section 40(2), he has not gone on to consider section 41 of the FOIA.

### **Section 1 of the FOIA – Information held/ Not held**

27. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
28. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. The Commissioner must decide whether on the balance of probabilities, the public authority holds any further information which falls within the scope of the request (or was held at the time of the request).
29. In this case, to determine whether more than one person was reported for investigation following a safeguarding investigation.
30. The complainant has explained that the Pupil Referral Unit (PRU) had 13 staff suspended for over 18 months of which 8 staff members were disciplined. He considers, due to the seriousness of the overall case, more than one person would have been reported to the authorities.
31. The council confirmed to the Commissioner that PRU was shut down for two weeks for health and safety reasons, due to staff shortages as a result of the action taken in response to a safeguarding issue.
32. The police investigated the safeguarding allegations, and once concluded the council undertook a disciplinary investigation in relation to a number of individuals. The council provided a redacted copy of these investigation reports to the complainant – which became subject to the Commissioner's decision notice FS50544713 mentioned above.
33. From this investigation the council has confirmed that one person was referred to the Disclosure and Barring Service (DBS).

34. It has advised the Commissioner that it contacted its Children and Adult Services to determine that this figure is correct. It has also stated that if further information were held, it would be in paper format on the investigation file and in the teacher's personal file.
35. The council has stated to the Commissioner that no information has been deleted or destroyed in relation to this request. If there had been others reported it would have had to be held for statutory purposes associated to referrals to the DBS.
36. The Commissioner, in considering whether anyone else was reported following the PRU investigation understands that the complainant has suspicions that further information is held, due to the fact that the council told him previously no one had been reported before he questioned that response.
37. However, as the council has stated that it has confirmed with the appropriate department and there is no evidence that more people were reported than the one, he has determined that on the balance of probabilities that only one person was reported for investigation.

### **Section 10(1) of the FOIA**

38. Section 10(1) of the FOIA states that:

*"...a public authority must comply with section 1(1) of the FOIA promptly and in any event not later than the twentieth working day following the date of receipt."*

39. Therefore a council must provide its full response within 20 working days from receipt of the request.
40. In regards to this case, the complainant made his request on the 27 August 2014 and although the council provided its initial response on the 1 September 2014, it did not provide the complainant with its full response until 4 February 2015.
41. As this is outside the required 20 working days, the Commissioner finds that the council breached section 10(1) of the FOIA.
42. As the full response has now been given, the Commissioner does not require the council to take any steps.

## **Right of appeal**

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

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

Tel: 0300 1234504

Fax: 0870 739 5836

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

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

44. 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.
45. 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 .....**

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