

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 March 2015

**Public Authority:** St Giles Junior School  
**Address:** Hayes Lane  
Exhall  
Coventry  
CV7 9NS

### Decision (including any steps ordered)

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1. The complainant requested information from St Giles Junior School ('the School') in relation to a news report concerning a pupil who was left out of a reward trip for 100% attendance. The complainant wished to know who made the final decision to exclude the pupil from the trip and the number of academic staff that achieved 100% attendance for the year.
2. The School advised that it did not hold information about who made the decision to exclude the pupil from the trip and applied section 40(2) of the FOIA in refusing to disclose the number of academic staff that achieved 100% attendance.
3. The Commissioner's decision is that the School has complied with the FOIA.
4. The Commissioner does not require the School to take any steps.

### Request and response

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5. On 8 June 2014, the complainant wrote to the School and requested information of the following description:

*"...who made the final decision to exclude [the pupil] from the trip reward for 100% attendance? <http://m.bbc.co.uk/news/uk-england-coventry-warwickshire-28362378>*

*Please provide me with the school attendance policy. I should hope this demonstrates that any non attendance for whatever tragic reason means the child will be ineligible for any reward.*

*How many academic staff obtained 100% attendance (please note absence on strike days should be counted as absence) during the year?*

*How many staff who attended the reward visit had also obtained 100% attendance?"*

6. The School issued a refusal notice in response to the request in which it advised that it did not hold information about who made the decision to exclude the pupil from the trip reward for 100% attendance.
7. The School also refused the request for its attendance policy under section 21(2)(b) of the FOIA advising that the information was reasonably accessible by other means via the schools website.
8. The School also refused to provide information about how many academic staff obtained 100% attendance during the year and how many staff who attended the reward visit had obtained 100% attendance, under section 40(2) of the FOIA on the basis that the information constituted personal data and its disclosure would be unfair and breach the first principle of the Data Protection Act 1998 (DPA).
9. On 25 September 2014, the complainant contacted the School to request an internal review.
10. On 24 October 2014, the School issued its internal review decision. The School confirmed that it did not hold information about who made the final decision to exclude the pupil from the trip reward. It provided a link directing the complainant to a statement apologising and explaining the circumstances which led to the pupil being left out of the reward trip.
11. The School also upheld its decision to apply section 21 to the request for its attendance policy confirming that the information was available via the School's website.
12. The School also upheld its decision to refuse to provide information about how many academic staff obtained 100% attendance confirming that it was relying on section 40(2) of the FOIA.
13. The School did confirm that staff who attended the reward visit had achieved 100% attendance and advised that the information was provided on the basis that consent had been given by those individuals.
14. On 11 November 2014, the complainant lodged a complaint with the Information Commissioner.

## Scope of the case

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15. The Commissioner understands that the complainant was provided with information about the school's attendance policy and how many staff who attended the reward visit obtained 100% attendance, as such this part of the request has been excluded from this investigation.
16. The focus of this investigation has been to determine whether the School handled the complainant's information request in accordance with the FOIA. Specifically whether it is correct in stating that it does not hold information regarding who made the final decision to exclude the pupil from the trip award for 100% attendance and whether it is correct in relying on section 40(2) of the FOIA in refusing to provide information about how many academic staff obtained 100% attendance during the year.

## Reasons for decision

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17. Section 1(1) of the FOIA 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."*

18. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
19. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
20. The School confirmed that it did not hold information identifying who was responsible for the decision to exclude the pupil from the reward trip because it was not a decision taken by any individual. The statement provided by the School explained that it was an automated decision based solely on a computer generated list produced by its SIMS system which identifies children who achieved 100% attendance but

does not take into account the reasons for absence for those who did not achieve 100% attendance. The School also advised the Commissioner that there was no human intervention in determining who was eligible for the reward nor was anyone responsible for checking and confirming who was eligible for the reward. The School also advised that it has since changed its policy regarding attendance and rewards.

21. The Commissioner considers that on the balance of probability and in the absence of any evidence the contrary the School is correct in stating that it does not hold the information requested about the final decision to exclude the pupil from the trip.

### **Section 40(2)**

22. Section 40(2) sets out an exemption for information which is the personal data of a third party, the disclosure of which would be in breach of the principles of the DPA. In this case the School sought to rely on the first principle of the DPA which states that personal data must be processed fairly and lawfully.
23. Personal data is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.
24. The Commissioner has considered whether the information to be disclosed would allow individuals to be identified. The School advised the Commissioner that it has 11 members of academic staff and has already provided information to the complainant confirming that the members of staff who attended the trip reward achieved 100% attendance.
25. In the Commissioner's view given that the data set is so small, staff are named on the School's website and the school has already confirmed that two of its academic staff achieved 100% attendance disclosure of the information requested, and the use of local knowledge held by parents and other members of the local school community, would be sufficient to identify individual teachers.
26. Having identified that the requested information is personal data consideration has to be given to whether its release would be fair.
27. In considering whether disclosure of the requested information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
  - the consequences of disclosure to the data subject;

- the data subject's reasonable expectations of what would happen to their personal data; and
  - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
28. The School advised the Commissioner that overall attendance data for staff is already publically available. However staff do not hold the reasonable expectation that their individual attendance records will be disclosed to the world at large, therefore disclosure of such information is likely to be distressing. Whilst the information to be disclosed would not reveal a great amount of detail from the teachers' attendance records it would still be likely to cause some distress.
  29. The School also explained that it has received a high volume of negative correspondence including threats towards staff in light of this incident and so any disclosure of information relating to staff that had no responsibility for the matter could cause further distress. The Commissioner has not identified a significant legitimate public interest in disclosure beyond a general public interest in understanding the performance of the staff at the school. The school would have its own mechanisms in place to manage staff attendance – it is not necessary to disclose the information for the teachers to be held to account for their attendance publicly. Also, disclosure of the figure for all teachers would not significantly enhance public knowledge about the decision to exclude the pupil from the trip.
  30. The Commissioner is satisfied that staff would not have a reasonable expectation that information and disclosure is likely to be distressing particularly given the circumstances surrounding the reported incident and subsequent attention and correspondence the School has received.
  31. The Commissioner is also of the view that there is no overriding public interest in the disclosure of this information which is sufficient to outweigh the rights and freedoms of individuals in this case.
  32. Disclosure of the information would be unfair and therefore breach the first data protection principle. The Section 40(2) exemption was correctly applied by the School.

## **Right of appeal**

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33. 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)

34. 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.
35. 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**  
**Head of Policy Delivery**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**