

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 July 2016

Public Authority: The Charter School
Address: Red Post Hill
London
SE24 9JH

Decision (including any steps ordered)

1. The complainant has requested from the Charter School (the 'School') a copy of all emails with the subject line containing "Year 9 fire issue".
2. The Commissioner's decision is that the School has correctly applied the exemption for personal data at section 40(2) of the FOIA. Therefore the Commissioner does not require the School to take any steps.

Request and response

3. On 25 February 2016, the complainant wrote to the School and requested information in the following terms:

"However, following the receipt of the SAR for [name redacted], we would like to make the following Freedom of Information Request.

Please supply a copy of all emails with the subject line containing "Year 9 fire issue".

The first email was dated 16 December 2015, 12:21 from [name redacted].

We do not consider this request vexatious because we do not believe the SAR for [name redacted] would have ensured that all emails were supplied; only emails containing the name [name redacted] would have been supplied."

4. The School acknowledged the request on 26 February 2016.
5. On 17 March 2016 the School responded and explained its reasons why the line within the email in question had been redacted.

6. Following an internal review the School wrote to the complainant and maintained its decision to redact the line in question.

Scope of the case

7. The complainant contacted the Commissioner on 27 March 2016 to complain about the way her request for information had been handled.
8. The Commissioner considers the scope of the case is to determine whether the School was correct to apply the exemption for personal data at section 40(2) of the FOIA to the requested information.

Reasons for decision

Section 40(2) – personal information

9. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the "DPA").
10. Firstly, the Commissioner must consider whether the requested information is personal data. Personal data is defined in Section 1 of the DPA as follows:

"personal data" means data which relate to a living individual who can be identified –

 - (a) from those data, or
 - (b) 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."
11. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that, the School considered that disclosure would breach the first data protection principle.
12. The Commissioner has viewed the withheld information in this case and accepts that the requested information falls within the definition of

personal data as outlined above. The information contains the name of an individual and details of an incident which occurred. Having accepted this he must now go onto consider if disclosure would contravene any of the data protection principles.

13. The first principle requires, amongst other things, that the processing of personal data is fair and lawful.
14. The School has argued that the disclosure of the information would be unfair to the individual referred to in the redacted line of the email. It also considers that there is little legitimate interest in disclosure of this information into the public domain.
15. When considering whether the disclosure of personal data is fair, the Commissioner will consider whether disclosure would be within the reasonable expectations of the data subjects. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
16. The School considered that disclosure would not be in the reasonable expectations of the individual as the School's Privacy Policy makes it clear what individual students can expect regarding the handling of their personal information:

"(TCS Policy extract) "We The Charter School are a data controller for the purposes of the Data Protection Act. We collect information from you and may receive information about you from your previous school and the Learning Records Service.

We hold this personal data and use it to:

- *Support your teaching and learning;*
- *Monitor and report on your progress;*
- *Provide appropriate pastoral care, and*
- *Assess how well your school is doing.*

This information includes your contact details, national curriculum assessment results, attendance information and personal characteristics such as ethnic group, any special educational needs and relevant medical information. If you are enrolling for post 14 qualifications we will be provided with your unique learner number (ULN) by the Learning Records Service and may also obtain from them details of any learning or qualifications you have undertaken."

"We will not give information about you to anyone outside the school without your consent unless the law and our rules allow us to"

17. In this instance the Commissioner notes that the withheld information relates to a student. Given the nature of the information, the Commissioner does not consider that the individual would reasonably expect that their personal information would be placed into the public domain by way of disclosure under the FOIA.
18. The complainant has however argued that the email in question is a report of a conversation between Southwark Council and the Deputy Head of the School. The complainant stated that despite the reasonable expectations of the individual, she has a legitimate interest in understanding how a decision taken by the School, was influenced by Southwark Council.
19. The complainant accepts that it is essential that the School comply with the DPA but argued that it is also essential for a public authority to comply with the legal presumption of openness, in order that their decision making may be scrutinised. Furthermore, the complainant has argued that the information could be redacted to render it anonymous.
20. The Commissioner believes that the disclosure of the information in this case under FOIA would be unfair and in breach of the first principle of the DPA. Also, that any legitimate public interest would not outweigh the rights of the data subjects in this case. The Commissioner finds having viewed the withheld information, that it cannot be redacted to render it anonymous.
21. The Commissioner is satisfied disclosure of the requested information would be unfair and would contravene the first data protection principle. Consequently, he finds that section 40(2) of the FOIA is engaged.

Right of appeal

22. 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

23. 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.
24. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF