

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2016

Public Authority: Children's Academy Trust
Address: Listerdale Primary School
Beech Avenue
Brecks
Rotherham
S65 3HN

Decision (including any steps ordered)

1. The complainant has requested information relating to a confidential meeting that took place on 31 August 2015 to discuss the Headteacher of one of the schools within the trust. The trust released a redacted version of the minutes and informed the complainant that it wished to withhold information under section 30(1)(a) of the FOIA.
2. The Commissioner considers section 40 of the FOIA should have been applied in this case. She has considered the contents of the withheld information and she considers that section 40 of the FOIA applies.
3. Although the Commissioner requires no further action to be taken, she has noted that the trust breached sections 1, 10 and 17 of the FOIA whilst handling this request.

The request

4. On 21 September 2015, the complainant wrote to the trust and requested information in the following terms:
 - "The names of all members of the Governing Body of Listerdale Primary School and Anston Greenlands Primary School, any posts which they hold as a member of that body e.g. Chair of Disciplinary Committee etc. and the capacity in which they were elected or appointed e.g. parent governor, co-opted governor etc.

- The name and contact details of the Clerk to the Governing Body for Listerdale Primary School and Anston Greenlands Primary School
- The name and contact details for the and the Clerk or Secretary to the Children's Academy Trust (*the Academy Trust*)
- The names of all Trustees and Directors of the Academy Trust and the capacity in which they were elected or appointed e.g. parent governor, co-opted governor etc.
- The address of the registered office of the Academy Trust
- The Articles of Association of the Academy Trust and the Memorandum of Association of the Academy Trust
- The agenda and minutes of all meetings of the Trustees and or Directors for the years 2014 and 2015, including for these meetings the correspondence sent to Trustees and Directors for the purpose of calling the meeting and a list of to whom such correspondence was sent (or alternatively the individual correspondence send to each Trustee or Director).
- The annual reports and financial statements to 31 August for the financial years 2013, 2014, 2015 as prepared for the Education Funding Agency in accordance with Academies Accounts Direction 2014 to 2015 and as set out by the Charity Commission in its Statement of Recommended Practice (SORP 2005)
- The statement of regularity, propriety and compliance together with a regularity assurance report on the schools financial statement prepared by the appointed independent auditor for the years 2013, 2014, 2015.
- The following information(where it is not provided for in the annual report and financial statements to 31 August for the financial years 2013, 2014, 2015);
 - details of the sources of funding and income provided to the schools by a local authority or directly by central government or from elsewhere, including the private sector, together with the annual budget plan and the school's annual income and expenditure returns.
 - details of items of expenditure over £5000, including costs, supplier and transaction information.
 - details of the capital funding allocated to or by the school together with information on related building projects and other

capital projects. This should include any private finance initiative and public-private partnership contracts.

- Details of procedures used for the acquisition of goods and services and copies of all contracts that have gone through a formal tendering process.”
5. The trust responded on 11 October 2015. In its response to bullet point seven of the request, the trust provided the complainant with a list of meetings held and with unredacted copies of the minutes of these meetings.
 6. On 3 November 2015 the complainant made a further request to the trust, as follows:

“Please provide a copy of the decision or resolution (and or other authority) agreed by the Board of Directors (or individual Directors or Trustees) to suspend the Finance Officer of the Children's Academy Trust.”
 7. The trust responded to the complainant’s second request on 22 March 2016. It provided a redacted copy of minutes taken during a governing body meeting held on 31 August 2015. On examination the complainant realised that these minutes should have been disclosed to him as part of the trust’s response to his request of 21 September 2015. In addition the complainant noticed that the trust had neglected to include this meeting in the list of meetings held which the trust had sent him on 11 October 2015.
 8. The complainant therefore contacted the Commissioner on 29 March 2016 to raise concerns about the trust’s handling of his first request.
 9. The Commissioner wrote to the trust on 8 April 2016 to request that it carry out an internal review.
 10. The trust notified the complainant and the Commissioner of the outcome of the internal review on 5 May 2016. It explained why it was felt that the minutes of the meeting held on 31 August 2015 did not form part of the complainant’s information request dated 21 September 2015 at the time this was first handled and confirmed that it was unwilling to disclose a full copy of these minutes, as it considered the information redacted was exempt from disclosure under section 30(1)(a) of the FOIA.

Scope of the case

11. On receipt of the trust's internal review response the complaint was allocated to a case officer for full investigation on 1 June 2016.
12. The Commissioner's investigation has focussed on bullet point seven of the complainant's request of 21 September 2015 and the trust's decision to withhold the majority of the minutes taken for the meeting that took place on 31 August 2015 under the FOIA.
13. The Commissioner has not considered the application of section 30(1)(a) of the FOIA as she considers section 40 of the FOIA is the most appropriate exemption in this case.
14. The remainder of this notice will focus on the redacted information in the minutes of the meeting held on 31 August 2015 and the exemption provided by section 40 of the FOIA.

Reasons for decision

15. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and disclosure of that data would be in breach of any of the data protection principles outlined in the Data Protection Act (DPA).
16. Personal data is defined as:

..."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 that individual and any indication of the intentions of the data controller or any other person in respect of the individual..."
17. The Commissioner considers the first data protection principle is most relevant in this case. 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.”

18. The Commissioner must first consider whether the requested information is personal data. If she is satisfied that it is, she then needs to consider whether disclosure of this information would be unfair and unlawful. If she finds that disclosure would be unfair and unlawful the information should not be disclosed and the consideration of section 40 of the FOIA ends here. However, if she decides that disclosure would be fair and lawful on the data subject concerned, the Commissioner then needs to go on to consider whether any of the conditions listed in schedule 2 and 3 (sensitive personal data) if appropriate are also met.

Is the requested information personal data?

19. The withheld information is the discussions of the Directors of the trust at a confidential meeting which took place on 31 August 2015. The meeting was held to discuss the specific and only purpose of administering the trust's response to a number of emerging issues and concerns in relation to the Headteacher of one of its schools.
20. The withheld information is information from which the Headteacher concerned could be identified, either from this information alone or this information and other information available to the public with local knowledge or access to known media coverage. The Commissioner is satisfied therefore that the withheld information constitutes the personal data of a third party – the Headteacher (data subject).

Would disclosure be unfair?

21. The Commissioner wishes to highlight here exactly what disclosure under the FOIA effectively means. Disclosure under the FOIA is to the world at large not just to the applicant. If the Commissioner decides in this case that the information should be disclosed, this is effectively saying that any member of the public can have access to it.
22. In this case it is noted that the data subject had been suspended depending investigation after concerns were raised about their professional conduct. The meeting was held to solely discuss this issue and what should be done. No other business was discussed at this confidential meeting.
23. It is the Commissioner's view that the disclosure of information relating to disciplinary matters, suspension and an individual's professional conduct is information of a personal and private nature. She accepts that in such circumstances the data subject will hold an expectation of confidentiality and will have no reasonable expectation that details relating to their specific conduct in a particular situation will be disclosed

into the public domain. Given the expectations the data subject will hold, the Commissioner is of the view that disclosure would be unfair.

24. As stated above, disclosure under the FOIA is to the world at large and once information is released in this way there is little that can be done to control the use of this information and the length of time it remains in the public domain. Disclosure of this type of information could have long lasting damaging effects on the career of the data subject going forward and this would be unfair. Disclosure of this type of information would also be likely to cause the data subject considerable distress and upset.
25. For these reasons, the Commissioner is satisfied that the disclosure of the withheld information would be unfair and in breach of the first data protection principle.
26. The Commissioner accepts that members of the public may wish to know the circumstances surrounding the departure of a particular teacher or senior member of staff within a given school. She also accepts that there is a legitimate interest in understanding more clearly any issues that may have occurred at a particular school and how these are being dealt with. However, such legitimate interests must be weighed up against the distress disclosure would cause and the intrusion into the private life of the data subject. It is the Commissioner's view in this case that disclosure would cause significant distress and intrusion and any legitimate interest in this type of information is outweighed by these effects.
27. The Commissioner is also of the view that there are already appropriate mechanisms in place for dealing with disciplinary matters and concerns about a professional's conduct and the procedures that are currently in place are best placed to address such matters rather than public disclosure under the FOIA.

Procedural matters

28. The Commissioner notes that the withheld information fell within the scope of the complainant's request of 21 September 2016. The trust should have informed the complainant that it held this information in its response of 11 October 2015. However, the trust did not inform the complainant that it held this information until 22 March 2016 when it responded to his second request. The Commissioner has therefore found the trust in breach of section 1 of the FOIA in this case, as it failed to inform the complainant within 20 working days of his first request that it held this information.

29. In relation to the complainant's request of 3 November 2015 the Commissioner finds the trust to have breached section 10 FOIA by failing to respond within 20 working days.
30. In relation to the provision of the redacted document on 22 March 2016 the trust breached section 17 of the FOIA by failing to specify the exemption in question and failing to state why the exemption applied.

Other matters

31. The complainant has asked the Commissioner to consider whether a possible section 77 offence has occurred in this case. The Commissioner does not consider that the trust has deliberately concealed information in this case (confidential meeting minutes of 31 August 2015 or otherwise referred to as the withheld information in this notice) in order to prevent or delay its disclosure. The trust has explained that it did not consider this information initially fell within the scope of the complainant's first request and so was not provided at this stage. The Commissioner considers the trust's failure to notify the complainant of the existence of the withheld information and the provision of a redacted copy until it responded to the complainant's second request was more than likely due to the trust's interpretation of his first request rather than any deliberate act to conceal the existence of the information. The Commissioner has therefore decided not to take any further action in this case although internal records will be kept of the issues raised which may inform future work the Commissioner may wish to do with the trust should any further concerns be raised.

Right of appeal

32. 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

33. 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.
34. 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

Samantha Coward
Senior Case Officer
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SK9 5AF