

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 August 2017

Public Authority: Wakefield City Academies Trust
Address: The d'Hervant
The Refectory
Nostell Business Estate
Wakefield
WF4 1AB

Decision (including any steps ordered)

1. The complainant has requested information relating to confidential minutes of meetings of the Wakefield City Academies Trust (WCAT) Trust Board since 1 January 2016.
2. WCAT withheld some of the information requested, citing section 40(2) of the FOIA (third party personal data) as its basis for doing so.
3. The Commissioner's decision is that WCAT has correctly applied section 40(2) of the FOIA to the remaining withheld information and does not need to take any further action. The Commissioner understands that at the time of WCAT's submission to her, it would contact the complainant to provide the information it now considers should be disclosed. If it is the case that WCAT has not yet disclosed this information then we recommend that it does so as soon as is practicable.

Request and response

4. On 9 November 2016, the complainant wrote to WCAT and requested information in the following terms:

"Please supply me with all the confidential minutes (ie those not marked public and posted on the Trust website) of meetings of the WCAT trust board since January 1, 2016".

5. WCAT responded on 29 November 2016 and confirmed that it holds minutes (marked confidential) of the following meetings of the Trust Board since 1 January 2016:

- 25 January 2016;
- 21 May 2016;
- 9 July 2016; and
- 2 November 2016.

It provided some information within the scope of the request but refused to provide the remainder. WCAT provided redacted copies of the minutes of the meetings dated 21 May 2016 and 2 November 2016 but it cited section 22, section 40(2) and section 43 as its basis for withholding and redacting information. It withheld the minutes of 25 January 2016 and 9 July 2016 in their entirety under section 40(2). In addition it considered section 42 applies to the minutes of 25 January 2016.

6. The complainant requested an internal review on 7 December 2016.
7. Following an internal review WCAT wrote to the complainant on 16 December 2016, maintaining its position.

Scope of the case

8. The complainant contacted the Commissioner on 16 December 2016 to complain about the way his request for information had been handled.
9. In correspondence with the Commissioner, the complainant raised concerns that WCAT's reliance on section 40 to withhold the confidential minutes of the meetings on 25 January 2016 and 9 July 2016 in their entirety is not in line with FOI practice and that the public interest far exceeds any embarrassment caused to individuals. The complainant explained that much of the information about financial conduct at the public authority is already in the public domain so raises serious questions of public interest and withholding all the information requested undermines public confidence in this public authority.
10. During the Commissioner's investigation, WCAT revised its position in relation to the confidential minutes of the meeting on the 9 July 2016. It considers that not all of the information within the confidential minutes of the meeting on the 9 July 2016 is personal data. It therefore provided the Commissioner with an amended copy of these minutes and now considers that the information not redacted in these minutes should be disclosed. It stated that it would now provide this information to the complainant.

11. The Commissioner considers the scope of this case is to determine whether WCAT is entitled to rely on section 40(2) as a basis for refusing to provide the remaining withheld information in the confidential minutes of meeting on 25 January and 9 July 2016. She will only consider section 42 to the minutes of 25 January 2016 if she concludes that section 40 does not apply to this whole document.

Reasons for decision

Section 40(2) – third party personal data

12. This exemption provides that any 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 (DPA).

Is the information personal data?

13. In order to rely on the exemption provided by section 40(2), the requested information must constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data 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.’

14. The Commissioner has considered the information withheld from the complainant, in particular that some information in the confidential minutes of the meetings on 9 July 2016 has been withheld by way of redaction, and that the confidential minutes of the meetings on 25 January 2016 has been withheld in its entirety.
15. WCAT has stated that the withheld information relates to individuals employed by the Trust, to board members of the Trust and to the Trust's legal advisor. It relates in the main to performance, disciplinary and conduct issues concerning employees and to their appointment and/or terms of employment.

16. The Commissioner therefore considers the withheld information in its entirety to be personal data.

Would the disclosure breach the Data Protection Principles?

17. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle, and the most relevant in this case, states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
18. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

19. In its submission to the Commissioner, WCAT has stated that those at the meeting and those referred to in the meeting of 25 January 2016 had a reasonable expectation that comments made at this meeting by and about individuals would not be disclosed. It further stated that the discussions took place in a board meeting which was stated to be confidential and those that attended did not expect the minutes of the meeting to be made public at any time in the future.
20. WCAT explained that discussions about the termination of employment for a number of individuals in both meetings were stated to be confidential and without prejudice. WCAT is of the view that these individuals would therefore have a reasonable expectation of privacy with regards to confidential discussions at board level concerning their employment.
21. WCAT has stated that a reasonable person involved in such events would expect such discussions not to be disclosed into the public domain.
22. WCAT has referred to the Information Tribunal case of *Rob Waugh v Information Commissioner and Doncaster College EA/2008/0038*, 29 December 2008 and in particular paragraph 40 which states that "*there is a recognised expectation that the internal disciplinary matters of an individual will be private. Even among senior members of staff there would still be a high expectation of privacy between an employee and his employer in respect of disciplinary matters.*"
23. In this case the individuals had a reasonable expectation that their information would not be disclosed and were informed that the discussions in the meetings were confidential. Considering the nature of

the withheld information, the Commissioner is of the view that the disclosure of the withheld information would not be within the reasonable expectations of the individuals to whom that information relates.

Consequences of disclosure

24. Disclosure of the information is unlikely to be fair if it would have unjustified adverse effects on the individuals at the meeting of 25 January 2016 and those referred to in this meeting and the meeting of the 9 July 2016. Although individuals may generally regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life.
25. WCAT is of the view that to release the withheld information would mean that a significant number of people would learn new information about the individuals in the minutes, and considers that to release the information would have an unjustified adverse effect on their professional standing, employment and/or career prospects.
26. Given the nature of the withheld information and the likely consequences of the disclosure, the Commissioner is of the view that it would be unfair to disclose the withheld information.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

27. The Commissioner accepts the legitimate interests in disclosure include the general public interest in transparency of public bodies, and in particular the expenditure of public money and performance of public bodies, (including in relation to alleged mismanagement by senior staff). An informed and involved public helps to promote good decision making by public bodies and ensures trust and confidence in the governance and processes within those bodies.
28. However, given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
29. The complainant considers that the public interest in disclosing the withheld information far exceeds any embarrassment caused to individuals. The complainant has explained that much of the information about financial conduct at the public authority is already in the public

domain so raises serious questions of public interest and withholding all the information requested undermines public confidence in this public authority.

30. WCAT does not consider that the legitimate interests of the public in accessing the requested information are sufficient to outweigh the individuals' right to privacy in this case.
31. WCAT also does not consider that the disclosure of these minutes to be necessary for the purposes of the legitimate interest of transparency.
32. WCAT has stated that it *"is subject to a number of regulatory regimes which ensure that there is public scrutiny of its use of public money, its educational standards, its leadership and management and its compliance with legislation and statutory guidance"*
33. WCAT is therefore of the view that disclosure of the withheld information would not achieve the legitimate interests of transparency and that the scrutiny of regulatory bodies achieves this aim in ways which has less of an adverse effect on the rights of the individuals concerned.
34. Having considered WCAT's submission and the views of the complainant, the Commissioner is satisfied that the complainant's arguments for disclosing the specific information in this case are not as compelling as those that WCAT has put forward for protecting the individuals' personal data, namely:
 - the individuals likely expectations about how their personal data will be managed;
 - the fact that the individuals were given specific assurances that the discussions were confidential; and
 - the likely consequences to the individuals of disclosing the information.

Conclusion

35. The Commissioner has concluded that to disclose the withheld information would be unfair and in breach of the first principle of the DPA. The Commissioner therefore finds that WCAT has correctly applied section 40(2) of the FOIA to the withheld information by virtue of section 40(3)(a)(i). She has therefore not gone on to consider section 42 in relation to the minutes of 25 January 2016.

Right of appeal

36. 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

37. 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.
38. 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
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