

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2017

Public Authority: Belsay School
Address: Belsay
Newcastle Upon Tyne
NE20 0ET

Decision (including any steps ordered)

1. In two requests, the complainants have requested information about particular meeting minutes, and admission numbers. With regard to the first request, Belsay School ('the School') released some information and suggested that it holds no further relevant information. The School indicated that it did not hold the information requested in the second request but then went on to release this information to the complainants.
2. With regard to Request 1, the Commissioner's decision is as follows:
 - 1.1 – The School has, on the balance of probabilities, now released all the relevant information it holds and has complied with section 1(1) of the FOIA.
 - 1.2 – The School has breached section 1(1)(a) of the FOIA as it has not confirmed to the complainants whether it does or does not hold information within the scope of this part.
 - 1.3 – The School has correctly applied section 40(2) to the information it holds and has withheld, because it is the personal data of third persons and it would be unfair to release it.
 - The School breached section 10(1) with regard to 1.1 as it did not comply with section 1(1) within the 20 working day requirement.

The School has also breached section 10(1) with regard to 1.2 as it has not complied with section 1(1)(a) with regard to this part.

3. With regard to Request 2, the Commissioner's decision is that:
 - the School breached section 1(1)(a) as it did not clearly communicate to the complainants whether or not it held the requested information; and that
 - the School breached section 10(1) because it did not comply with both elements of section 1(1) within 20 working days.
4. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
 - Issue a response to request 1.2 that satisfies the requirements of section 1(1).
5. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Requests and response

Request 1

6. On 8 January 2017 the complainants made the following request for information under the FOIA:

"In preparation for the appeal meeting we would be grateful if you could supply:

[1] dates and minutes (if available) and list of attendees, of all meetings in which the Governing Body (or any sub-group of it) discussed the consultation in any form or made decisions in relation to it. For clarity, [2] please also provide the dates the minutes were produced and circulated; [3] copies (anonymised of course) of any written concerns raised by parent regarding the consultation and the School's handling of it and any responses given.

In each case, please can we have any documents 2 weeks in advance of the meeting to allow us to read them."

7. On 31 January 2017, a School Governor responded to this request. She said the information the complainants had requested was outside her remit as Governor and Panel member of a particular Hearing and

advised the complainants that FOI requests should be directed to the School. Communication between both parties continued.

8. On 2 February 2017, the Governor advised that the meeting minutes the complainants had requested would be available for them to pick up on 3 February 2017.
9. In correspondence to the complainants dated 3 February 2017, the School explained that, with regard to request 1.3, it held relevant information but considered it to be exempt from release under section 40(2) of the FOIA.
10. The complainants were dissatisfied with the information they received and requested an internal review on 5 February 2017.
11. The School provided a review on 16 March 2017 in which it said it upheld its refusal. In further correspondence dated 28 March 2017, the School said it had provided the complainants with all the information it is possible for it to provide.

Request 2

12. On 22 November 2016 the complainants had requested particular information regarding admission numbers and have told the Commissioner that the School had told them that the information was not to hand.
13. The complainants repeated this request by email on 8 January 2017, as follows:

"We asked for recent admission numbers for the school from NCC. These have not been supplied (or I am not clear where they are in the information supplied). Please could you confirm final admission numbers from the recent application process (for year 5)."
14. On 13 January, the School indicated to the complainants that it did not hold this information.
15. On 30 January 2017, the complainants wrote to the School again, as follows:

"We are not asking for final, confirmed numbers. We just want the numbers based on the applications that have been made. These must be to hand or easily accessible as the applications / admissions process happened in Autumn last year."
16. On 31 January 2017, the School again indicated to the complainants that it did not hold this information.

17. On 23 March 2017, the complainants wrote to the School again about this request, as follows:

"[Redacted] and I previously asked for the number of pupils who are intending to stay at Belsay First School when they progress to Year 5 in September 2017 / the number of pupils that are to enter Year 5 at Belsay First School in September 2017. Your response was that the information was not to hand. However, as the local authority has now concluded the application process, positions have been offered and parents have confirmed their intentions, this information must now be to hand. Please would you be kind enough to confirm the information to us."

18. The School responded on 28 March 2017. It appeared to again suggest to the complainants that it did not hold this information, advising them to contact Northumberland County Council (NCC).
19. The complainants told the Commissioner that the next day (29 March 2017) NCC wrote to them and indicated that it had recently obtained part of the requested information from the School. The complainants say that when they raised this with the School, the School then sent them the information they had requested.

Scope of the case

20. The complainants first contacted the Commissioner on 10 April 2017 to complain about the way their requests for information had been handled.
21. Having subsequently discussed the case with the Commissioner, the complainants confirmed that, with regard to Request 1, they consider that they have not had all the minutes covered by the scope of request 1.1. With regard to request 1.2 the complainants consider they have not received information on the dates the minutes were produced and circulated.
22. Finally, the complainants do not consider they have received a satisfactory response to request 1.3.
23. With regard to Request 2, the complainants have confirmed that they have now received all the information they requested on 23 March 2017 but dispute that the School did not hold this information when they submitted their request on 23 March 2017 (and before).
24. The Commissioner's investigation has focussed on whether the School has released to the complainants all the non-exempt information it holds within the three parts of Request 1 and has complied with sections 1(1),

10(1) and 40(2) with regard to this request. She has also considered whether the School complied with its obligations under section 1(1) and 10(1) of the FOIA with regard to Request 2.

Reasons for decision

Background

25. By way of a background, the School has told the Commissioner that it is a small village school that changed from being a First School to a Primary School in September 2017.
26. It says that, in 2016, the School, along with all other schools within the Ponteland Partnership, went through a very difficult consultation process, which was undertaken by NCC. This consultation concerned moving from a three-tier system ('first school', 'middle school', 'upper school') to a two-tier system ('primary school' and 'high school') and was, the School says, very difficult. A number of Belsay Governors resigned during this period and during 2017, the Head Teacher retired in December 2016 and a new Head Teacher was appointed in April 2017.
27. Three new Governors were asked to oversee an Appeal Complaint, following an investigation and report provided by NCC. The complaint had been made by the complainants in the current case.

Section 1 – general right of access to information

Request 1 parts [1] and [2]

28. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to him or her if it is held.
29. Section 10(1) of the FOIA says that a public authority must comply with section 1(1) as soon as possible and within 20 working days following the date of receipt of a request.
30. The School has provided the Commissioner with a submission regarding its handling of both requests. With regard to Request 1, it has told the Commissioner that full Governor meetings occur each term and other committee meetings should also take place on a termly basis. The School says that draft minutes from the 'Full Governing Body' (the Commissioner understands that this is a reference to the Governor meetings) are emailed from its Clerk at NCC to the Chair and Headteacher. Other Governors do not see these minutes until two weeks prior to the Full Governing Body. Draft committee meetings are

also emailed to the Headteacher, who sends them to the Clerk at NCC ready for the next Full Governing Body, at which time these minutes will also be ratified. The minutes are not put in the public domain until after they have been put through this process. All ratified minutes are kept as hard copies in a file in the School Office.

31. Request 1.1 (of 8 January 2017) is for: '*dates and minutes (if available) and list of attendees, of all meetings in which the Governing Body (or any sub-group of it) discussed the consultation in any form or made decisions in relation to it.*' The complainants consider the School holds further information relevant to this part that it has not provided to them.
32. The School says that when it received this request it went through the above file, and also the email box 'Staff Admin' to check all documents. It says it sent to the complainants all relevant minutes that had been requested, and were present. The School has provided this information to the Commissioner and she notes that it comprises Governing Body meetings from May 2016 and June 2016 and a 'Timeline' document concerning an emergency Governing Body meeting in May 2016 and the minutes from that emergency meeting.
33. The School has told the Commissioner that minutes from a November 2016 meeting were ratified in a March 2017 Full Governing Body meeting and were subsequently posted to the complainant on 6 April 2017. The School has provided the Commissioner with these November 2016 minutes which, again, are from a Full Governing Body meeting.
34. In the Commissioner's view, although they were not ratified, the School should have either released to the complainants the version of the November 2016 minutes that it held at the time of the request, or issued the complainant with a refusal notice, in line with section 17(1) of the FOIA, that explained why it considered these minutes to be exempt from release. Refusal notices are discussed further at paragraph 52.
35. Further relevant information – minutes from two sub-committee meetings – was identified during the Commissioner's investigation. The School released this to the complainants on 13 October 2017.
36. In its submission, the School has confirmed to the Commissioner that in response to the complainants' request, it searched its Governing Body folder (hard copy) which holds all Governing Body minutes as well as all folders in the 'School Admin' email account. The School says it used the search terms 'minutes' and 'consultation' to search electronic data.
37. The School says it was not able to access other emails as the Headteacher and relevant Governors, who could have possibly held relevant information, were no longer at the School. Draft minutes can be held on the Headteacher's email account which would have been part of the School's IT network; however the Headteacher in question had

left the School and the School says it was therefore unable to access any of their emails.

38. The School also says that draft minutes have not been available to obtain but that once minutes have been ratified by the Full Governing Body, then they are available in the manual file, which is kept in the School's office.
39. With relevance to paragraph 34, minutes not being ratified at a point when they are requested does not automatically exclude them from release under the FOIA. Again, the Commissioner reminds the School that if an authority holds information within the scope of a request, it is obliged to communicate the information to the applicant within the required timescale, or issue an appropriate refusal notice within the timescale.
40. The School has indicated that no relevant information has been deleted or destroyed. Finally, the School says that formal minutes of the Full Governing Body meetings are held with its Clerk at NCC and that sub-committee minutes are distributed to Governors two weeks prior to Full Governor meetings. The School has checked with its Clerk who has confirmed that no minutes for the sub-committee meetings were sent to her.
41. The Commissioner notes that request 1.1 is not for all minutes between particular dates but for minutes of any meetings at which the consultation was discussed.
42. She is prepared to accept that the School has now carried out adequate searches for information within the scope of request 1.1 and has now communicated to the complainants all the information that it holds that is relevant to this part. However, she finds that the School has breached section 10(1) with regard to this part because it did not communicate all the held information to the complainants within the 20 working day requirement.
43. Request 1.2 is for: *"... the dates the minutes were produced and circulated"*. The complainants consider that they have not received an adequate response to this part because they had not received specific dates. In its correspondence to the School dated 30 March 2017, the complainants say that the School has only told them that minutes are *"distributed alongside other papers approx 2 weeks before next Governors meetings."* In its submission to the Commissioner, the School has not addressed its response to this part.
44. The FOIA concerns information held in recorded form. With regard to this part, the Commissioner finds that the School has breached section 1(1)(a) as it has not clearly communicated to the complainants whether it does or does not hold in recorded form information that addresses

request 1.2. The School has therefore also breached section 10(1) with regard to request 1.2.

Request 2

45. Request 2, for admission numbers for Year 5, was re-submitted on 8 January 2017. On 28 March 2017, the School told the complainants that NCC had not provided the School with the final numbers for the September Year 5 intake and referred them to NCC. Having been told by NCC on 29 March 2017 that it had received some of the requested information from the School, the complainants contacted the School and the School then sent them the requested information. The complainants therefore dispute that on 8 January 2017 and 28 March 2017 the School did not hold the information they had requested.
46. The School has explained to the Commissioner that, as a Council school, it does not manage admission numbers and that this is done by NCC. It says that it understood that, under NCC's regulations, the School was not permitted to give out the requested information prior to the information being in the public domain.
47. It says that this was the reason why it referred the complainants to NCC who it considered held the most up to date information and would be able to make the decision on what is permitted to be published. The School says it was not deliberately withholding the information but advising that NCC would be the best place for the complainants to obtain the information they were seeking.
48. The School says that at the earliest opportunity that the School was able to confirm the admission numbers to the complainants, namely on 7 April 2017, it did so.
49. As above, section 1(1) places an obligation on a public authority to confirm (a) whether or not it holds information that has been requested and (b) to communicate it to the applicant if it is held.
50. From the information given to the Commissioner by the School, it appears to her that, on 28 March 2017 the School *did* hold information within the scope of Request 2. Under section 1(1)(a), the School should have clearly confirmed this to the complainants. While the Commissioner does not agree with the complainants that the School had explicitly told them that it did not hold the information they had requested, she considers that, in its response of 28 March 2017, the School could have made its position clearer and she has therefore decided that its response breached section 1(1)(a).
51. Under section 1(2) of the FOIA, a public authority is not obliged to then comply with section 1(1)(b) if the authority considers the information is exempt from release. It appears to the Commissioner that the School

considered that the information it held – the admission number – was not finalised and that it was therefore not prepared to release it.

52. As referred to previously, in cases where an authority is refusing to release information it considers is exempt from disclosure, section 17(1) of the FOIA requires the authority to provide the applicant with a refusal notice that cites the exemption upon which it is relying. In the current case, it appears that the School could have refused to disclose the information it held under an exemption that it considered appropriate. This perhaps could have been section 22 of the FOIA, for example, which covers information intended for future publication.
53. As it was, the School then released the requested information on 7 April 2017 at which point it complied with section 1(1)(b). Since its compliance with both section 1(1)(a) and 1(1)(b) fell well outside the 20 working day requirement set out under section 10(1) of the FOIA, the Commissioner finds that the School breached section 10(1) with regards to Request 2.

Section 40(2) – third person personal data

Request 1 part [3]

54. Request 1.3 is for: *'...copies (anonymised of course) of any written concerns raised by parent regarding the consultation and the School's handling of it and any responses given.'*
55. In its correspondence to the complainant of 3 February 2017, the School confirmed that it holds information within the scope of request 1.3 and had not released it to the complainants because it considers it to be exempt from disclosure under section 40(2) of the FOIA.
56. Section 40(2) of the FOIA says that information is exempt from disclosure if it is the personal data of third persons, ie someone other than the requester, and the conditions under either section 40(3) or 40(4) are also satisfied.
57. The Commissioner has therefore first considered whether the information the School has withheld is the personal data of third parties.
Is the information personal data?
58. The Data Protection Act (DPA) says that for data to constitute personal data it must relate to a living individual and that individual must be identifiable.
59. The information withheld in this case are emails and letters to the school from individuals, expressing views about the two-tier/three-tier argument and containing those individuals' names and contact details.

60. The Commissioner is satisfied that names and contact details relate to living individuals and that the individuals can be identified from it. The Commissioner is therefore satisfied that this information is the personal data of third persons. She has gone on to consider whether the content of the correspondence can also be categorised as personal data; that is, whether, even if their name and contact details were redacted, an individual could be identified only from information provided and/or views expressed in their correspondence.
61. The School says it was concerned that by releasing letters without the consent of the individuals concerned, many of whose children have left the school, individuals who had made comments could be identified, particularly because Belsay School is a small school.
62. It says that as well as containing personal data such as individuals' names and sometimes their children's' names, the separate letters and emails sent to the School outside a consultation survey (discussed at paragraph 74) contain other references that make it possible to identify people. The School considers that although these letters can be anonymised to some degree there is still a risk, because it is a small school, that individuals could be identified from their opinions alone.
63. As an example, the School says that if a parent from Year 4 has given an opinion in a letter or email about the consultation that was different from the other parents of that class, by a simple process of elimination it would be easy to identify that person and their 'political' opinion regarding the two-tier/three-tier argument. This means that, in these cases, the content of the letter becomes that person's personal data.
64. Given the small community of the School, in the Commissioner's view, a determined person with local knowledge may well be able to identify individuals from views expressed in the correspondence combined with other information in the correspondence, and information known more generally. She has had reference to her own published guidance in reaching this view¹.
65. The Commissioner is therefore satisfied that the correspondence in its entirety can be categorised as the personal data of third persons. She

¹ <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

<https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

has gone on to consider whether any of the conditions under section 40(3) have been met.

Would disclosure breach one of the conditions under section 40(3)?

66. Section 40(3)(a) of the FOIA says that personal data of third persons is exempt from disclosure if disclosing it would contravene one of the data protection principles or would cause damage or distress and so breach section 10 of the DPA.
67. The Commissioner has considered whether disclosing the information would breach the first data protection principle: that personal data 'shall be processed fairly and lawfully...'
68. When considering whether disclosure would be unfair, and so breach the first principle, the Commissioner takes three factors into account:
 - Has the individual concerned (the data subject) given their consent to disclosure?
 - What reasonable expectation does the individual have about what will happen to their personal data?
 - What might be the likely consequences resulting from disclosure
69. Assessing fairness however, also involves balancing the individual's rights and freedoms against the legitimate interest in disclosure to the public. It may still be fair to disclose the information if there is an overriding legitimate interest in doing so. The Commissioner has therefore finally considered these interests.
70. The School's position appears to be that disclosing individuals' personal data would not be fair and would breach the first data protection principle.
71. The Commissioner has therefore first considered whether any of the individuals concerned have consented to their personal data being disclosed. She has noted that, in its submission, the School has told her that one or two of those who wrote to it, separately to the consultation survey discussed below, said they were happy for their correspondence to be made public. However, a number of others who had written to the School expressed concern that their comments could identify them, even when anonymised, and said that had they known their letters would be published it would have put them off expressing their views ie they had not consented to their personal data being disclosed.
72. The Commissioner has next considered what reasonable expectations the individuals concerned would have about what would happen to their personal data.

73. In support of its position that disclosure would not be fair, the School has re-stated to the Commissioner that there had been a very difficult consultation associated with a proposed move to a two-tier system for the School. Students' parents and carers expressed views to the Head Teacher and the School says it was never stated that these views would be placed in the public domain.
74. The School has confirmed that a separate survey that formed part of the consultation was sent out to parents, carers and members of the local community. The results and comments made by people completing the survey *were* made public and formed a formal part of the consultation process. The School has provided the survey information to the Commissioner.
75. The School has acknowledged that whilst opinions from the survey were published, people understood that this survey formed part of the consultation process. It was not stated that personal emails and letters sent to the School separately would be published. The Commissioner therefore considers that the individuals who wrote to the School would have had the reasonable expectation that this correspondence, containing their personal data, would not be published.
76. The Commissioner has gone on to consider the likely consequences of disclosing the withheld information.
77. The School says that even though some individuals consented to their correspondence being made public, the Governing Body had decided that to protect peoples' identities it would not publish any of the emails or letters submitted through the consultation process, to protect those individuals who had expressed concerns.
78. It strongly believes that parents/carers being able to communicate freely to the Head Teacher and also Governors involves trust. The School says releasing personal letters has the potential to damage relations with its parents and carers and could prevent them from writing to the School with their views in the future.
79. The Commissioner has considered another likely consequence; namely that, given the background to, and circumstances of, this case, releasing individuals' personal data into the public domain is likely to cause those individuals a degree of damage or distress.
80. Finally, as part of the process of assessing whether disclosing the withheld information would be fair, the Commissioner has balanced the rights and freedoms of the individuals concerned against the legitimate public interest in disclosure. In this case, while she appreciates that the withheld information is of interest to the complainants she does not consider that the information is of wider public interest such that it overrides the individuals' rights and freedoms. She notes that the

process of the School moving to a two-tier system went through a public consultation process. This included a survey; the results of which were published.

81. The School says it has been a very difficult decision to make and it has tried to balance the issues. It has confirmed that it is not trying to hide information nor is it trying to be obstructive, it says it is simply that this is an exceptionally sensitive issue. While it considers that there is a risk that individuals can be identified from the correspondence, the School has expressed willingness to follow the Commissioner's advice on whether this should be released.
82. The Commissioner has reviewed the withheld information; that is the emails and letters that were sent to the School during the consultation process. As discussed at paragraphs 58 to 65, she is satisfied that the withheld correspondence in its entirety is the personal data of third persons.
83. She has gone on to consider whether releasing this particular information would be unfair and so a breach of the first data protection principle. Having considered the School's submission and arguments, she is satisfied that a condition under section 40(3) is met because disclosing this information would not be fair.
84. This is because at least some of the individuals concerned have actively not consented to the release of their personal data; the majority of the individuals concerned would have the reasonable expectation that their personal data would not be released into the wider world; and it is likely that, if it were released, individuals would suffer a degree of distress and relationships the school has with parents and careers would be damaged. The Commissioner does not consider the withheld information has significant wider public interest that would justify the disclosure of people's personal data. The Commissioner is therefore satisfied that the information requested at request 1.3 is exempt from release under section 40(2) of the FOIA.
85. As referred to above, the School has told the Commissioner that one or two people who sent correspondence to it regarding the consultation indicated to the School that they were content for their correspondence to be made public. The Commissioner advises that the School *may* choose to volunteer to release this particular information but it is not obliged to under the FOIA. This is because she has found this information to be exempt from release under the FOIA, under section 40(2).

Right of appeal

86. 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

87. 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.
88. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF