

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 9 March 2023

**Public Authority:** Governing Body of Plashet School  
**Address:** Plashet Grove  
London  
E6 1DG

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about an "equalities club". The above public authority ("the public authority") relied on sections 22 (intended for publication) and 40(2) of FOIA (third party personal data) to withhold the requested information.
2. The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to withhold the information falling within the scope of element [1] of the request. In respect of elements [2], [3] and [4], the emails can be sufficiently anonymised to the point that they are no longer personal data and therefore section 40(2) does not apply. Section 22 of FOIA does not apply to any of the withheld information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the information falling within the scope of elements [2], [3] and [4]. The public authority must make the redactions described in the confidential annex to remove identifiable information.
4. The public authority must take these steps 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.

## Request and response

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5. On 8 December 2022, the complainant wrote to the public authority and requested information in the following terms:
- "[1] The attendance of headteacher Rachel McGowan, as a percentage, per term, for all three terms of 2021/22, and the first term of 2022/23.
  - "[2] Copies of all email chains sent to or from the headteacher's office - meaning, to Mrs McGowan herself, or to her assistant/secretary/receptionist - between September 1, 2022, and December 8, 2022, which include the words 'equalities' and 'club'.
  - "[3] Copies of all email chains sent to or from the headteacher's office - defined as at question 2 - which include the words 'equalities' and 'trip'.
  - "[4] Copies of all email chains sent to or from the headteacher's office - defined as at question 2 - which include the words 'ofsted' and 'feedback.'"
6. The public authority responded on 19 January 2023. It relied on section 40(2) of FOIA to withhold the information it held within the scope of elements [1], [2] and [3] of the request.

## Reasons for decision

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### Element [1]

- 7. Section 40(2) of FOIA allows a public authority to withhold personal data if there would be no lawful basis, under data protection law, that would allow the information to be published.
- 8. Information is personal data if it can be linked to an identifiable living individual and is of biographical significance to that individual or has that individual as its focus.
- 9. The information falling within the scope of element [1] is very different to the remaining information. The request clearly identifies the headteacher and this information has the headteacher as its focus. It is therefore the headteacher's personal data.
- 10. Since teachers are not usually permitted to take leave outside of school holidays, it is a reasonable assumption that most instances of absence

will be due to some form of health reason. The Commissioner therefore considers that the information is special category personal data because it relates to the data subject's health.

11. In the Commissioner's view, even if a person could not use the data to identify exactly which, or how many, absences (if indeed there were any) were due to health reasons, the information would remain special category data. Because the most likely reason for absence is health, a higher or lower figure could be used to judge the data subject's health to a reasonable degree.
12. For the avoidance of doubt, the Commissioner is not revealing what the headteacher's absence rate was, nor whether any absence (if indeed there was any) was for health reasons – only that these are the considerations that the public authority must make when asked for similar information about this or any other employee.
13. Special category data is afforded special treatment under data protection legislation and can only be disclosed in very limited circumstances. Publication to the world at large would only be justified if the data subject had either made the information public themselves or consented to its publication. As the Commissioner is not aware that either condition is satisfied it follows that there is no lawful basis on which this information could be disclosed. Disclosure would therefore be unlawful and section 40(2) of FOIA is engaged.

### **Elements [2] and [3]**

14. The majority of the information within scope of these elements comprises of emails from parents. There is some evidence to suggest that these emails were sent as part of a co-ordinated campaign and there is considerable overlap in their content.
15. The emails themselves do contain identifying information in that the parent includes their name, email address and the name of their child.
16. However, for most of the emails, once this identifying information is removed, they become rather generic. Indeed, such is the similarity, once identifying information has been removed, some parents may struggle to even identify their own email correctly.
17. There is also a small amount of other personal data in the emails, much of it special category data. As with element [1], given the special protection awarded to special category data, there is no lawful basis on which this information could be published.
18. However, once this identifiable information is removed, the remaining information becomes anonymised and ceases to be personal data. As

the public authority has not relied upon any other exemption to withhold this information it must be disclosed.

19. The redactions the public authority is required to make to anonymise the information are set out in the confidential annex to this notice.

### **Element [4]**

20. In respect of elements [2], [3] and [4], the public authority provided a large number of emails. It did not specify which emails it considered to fall within the scope of which element, but the Commissioner considers that section 22 has been applied to emails 81, 82 and 83 of the file the public authority provided.
21. The public authority has not provided a comprehensive justification for the use of section 22, but it did refer, in its submission to the fact that Ofsted is due to publish a report "at a later date".
22. The Commissioner would be surprised if the content of any of the emails he has seen made it into Ofsted's final, published report. This is not Ofsted's usual practice with the published version of its reports. For section 22 to apply, there must be an intent to publish the actual information (or an updated version) being withheld – not an intention to publish something vaguely related.
23. The Commissioner therefore does not consider section 22 of FOIA applies to this or any other parts of the withheld information. As no other exemption has been cited, the information must be disclosed – with the exception of the personal data redactions set out in the confidential annex.

### **Confidential Annex**

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24. This decision notice involves a confidential annex which is only being provided to the public authority. This is because, in order to identify information that the public authority must redact it is necessary to refer to information that the Commissioner considers must be withheld – either directly or by inference. To place such information in the body of the decision notice would defeat the purpose of applying the exemption – as well as denying the public authority a meaningful right of appeal, should it wish to exercise that right.

## **Other matters**

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25. The Commissioner notes that, in its refusal notice, the public authority stated that it did not have an internal review process for dealing with FOIA requests.
26. There is no statutory requirement to have an internal review procedure for dealing with requests made under FOIA, but the section 45 FOIA Code of Practice states that it is best practice for a public authority to have such a procedure. There is also a statutory requirement to have an internal review procedure to deal with requests for environmental information.
27. It is not unreasonable to expect the vast majority of public authorities to be able to find a different (and, ideally, more senior) person to review the initial response to a request for information. This avoids complaints to the Commissioner by picking up basic or avoidable errors at an early stage.
28. The public authority should review its processes so that it has a mechanism available to review responses to information requests.

## Right of appeal

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29. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**