

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

### **Decision notice**

**Date:** 28 July 2014

**Public Authority:** St John's Church of England Primary School

**Address:** Charlton Park  
Keynsham  
Bristol BS31 2NB

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

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1. The complainant has requested from the St John's Church of England Primary School ("the School") information relating to a body of email correspondence held on the personal computer of an ex-Chair of governors of the School which was sent to Governor Services at Bath and North East Somerset Council ("B&NES"). The School provided all information it had received from B&NES relating to the above and confirmed that it did not hold any further information in relation to the request. The complainant was not satisfied with the response and submitted a complaint to the Commissioner.
2. The Commissioner's decision is that further information is not held. He therefore does not require the School to take any steps to comply with the legislation.

## Background

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3. In 2012 the Chair of the Governing body of the School sent a body of email correspondence to Governor Services at B&NES for the purpose of seeking advice on matters of governing body governance. The Chair of the Governing body subsequently resigned.
4. Thereafter, a member of the public made a FOIA request to B&NES for this specific information. B&NES provided this information subject to redactions and a copy of the information sent to the member of the public was also provided to the School.
5. The complainant was provided with the information sent to the School by B&NES as part of the FOIA request dated 26 September 2013. However, the complainant is not satisfied that the information received by the present governing body is the full data set and maintains that the information held on the personal computer of the ex- Chair of governors should be obtained.

## Request and Response

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6. On 26 September 2013 the complainant requested information of the following description from the School:

*"Could you please confirm that what has been released by B&NES under FOI and forwarded to school/GB by B&NES and subsequently released by you, to me, is in fact the full document set originally and incorrectly forwarded to B&NES and without the knowledge or authority of the GB at St Johns?....."*

*4. My current understanding is that the document set originally forwarded to B&NES and without the knowledge or authority of the GB at St Johns remains and, is the property of the GB at St Johns and any such request under FOI to obtain access to the content of that document set should properly be addressed to the GB at St Johns as the data owner - who should following any such FOI request provide access to it. This email of itself would constitute a FOIA 2000 request to the GB at St Johns to view the full document set forwarded to B&NES....*

*.....please provide me with the following documents;*

- 5. The agenda document for each FGB meeting commencing the meeting 29/01/2013 and ending 02/07/2013 i.e. meetings 4, 5 & 6.*

*6. The minutes document for each FGB meeting commencing the meeting 29/01/2013 and ending 02/07/2013 i.e. meetings 4, 5 & 6.*

*7. Any personal statement/correspondence that was received and disclosed at each of the above FGB meetings referred to in 6 above."*

7. On 29 September 2013 the School provided a response. It provided some of the requested information and advised that it was not able to categorically answer whether the information released by Bath and North East Somerset Council (B&NES) in response to an FOIA request and also to the School Governing body was the full set of correspondence sent by the ex-Chair to B&NES.
8. On 7 October 2013 the complainant raised issues as to the completeness of the documentation provided and asked that the School confirm its position in relation to what information was sent by Bath and North East Somerset Council to the School.
9. On 9 October 2013 the complainant asked for the School to provide clarification as to whether the School had access to the original data set which had been sent to B&NES or not, and if it had to provide this.
10. On 15 October 2013 the School provided some additional documentation that had been identified and confirmed that as far as it was aware it had provided all the documents that it held. It also confirmed that it did not have access to archived records that related to the requested information, in so far as this related to the full document set that was originally sent by the previous School Chair of Governors to B&NES, as this had never been made available to the Governing body as a whole.
11. On 23 October 2013 the complainant indicated that he was not satisfied with the response received and asked for an Internal Review of the School's response to the request.
12. On 20 November 2013 the School contacted the complainant and provided additional documentation which it believed may not have been provided in the response to the original request. It also confirmed that the School's response to the request had been reconsidered and it had sent all of the information that it held.
13. On 13 December 2013 the complainant contacted the School and expressed dissatisfaction with the response provided by the School.
14. On 3 January 2014 the School confirmed its position in relation to the request and stated that it had provided all the information it held.

## Scope of the case

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15. On 18 February 2014 the complainant lodged a complaint with the Information Commissioner's Office stating that he was not satisfied with the response he had received to his request. He advised that whilst he accepted that he had received all the relevant information that had been provided to the Governing Body from Governor Services at B&NES, he could not be satisfied that this was the full data set sent to B&NES Governor Services by the ex-chair of governors of the School at the time issues of Governing body governance were raised in 2012. The complainant also raised issues in relation to the retention and management of governing body records on personal computers.
16. The scope of this case has been to consider whether any further relevant information is held and whether the School has complied with its obligations under the FOIA.

## Reasons for decision

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17. Section 1(1) of the FOIA states that:

*"Any person making a request for information to a public authority is entitled: –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

18. In situations where there is a dispute between a public authority and a complainant about whether the requested information is held, the Commissioner applies the civil standard of the balance of probabilities. The Commissioner must therefore decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches and other explanations offered as to why the information is not held.
19. The School has provided the Commissioner with a detailed overview of the way in which it handled the request for information. It explained that it had released all the information that it had received from B&NES in respect of the body of email correspondence which is the subject of the request. It confirmed that the original emails would have been held on the personal computer of the ex-chair of governors and that no additional copy was held elsewhere. Additionally it advised the

complainant at the time that it may be possible to locate the required information by way of a FOIA request to B&NES governor services as it was the recipient of the original emails sent by the ex-chair of the governing body.

20. The School advised that following the involvement of the Commissioner it had approached the ex-chair of governors to ask that a search be made of their personal computer to establish whether the information was available. The School was advised that the information was no longer available as the personal computer on which it was held had suffered a serious crash a few months after the emails were originally sent.
21. As part of his investigation the Commissioner has had to consider the nature and scope of the searches undertaken by the School to ensure that no further information is held.
22. In considering the obligations of the School under the FOIA the Commissioner is mindful that the civil standard of the balance of probabilities has to be applied. In this situation the requested information was held only by the ex-chair of the governing body who resigned from this position after the body of email correspondence was sent to B&NES and before the FOIA request dated 26 September 2013 was made. No further copy of the relevant email correspondence appears to have been retained by the governing body and no procedures appear to have been in place at the time of the emails for duplicate records to be made outside of the personal computers of governors.
23. The Commissioner has taken into account the explanations provided by the School. In this case he considers that information held on the personal computer of an ex-chair of Governors who has left the governing body some time previously cannot be considered information held on behalf of the School and Governing body. Whilst attempts were made to recover the required information the Commissioner accepts that a technical failure means that the information is not available.
24. The Commissioner is also of the view that the complainant could have submitted a FOIA request to the B&NES for this information and was advised to do so by both the School and the Commissioner. Having taken into account the explanations provided by the School and the arguments out forward by the complainant the Commissioner considers that on the balance of probabilities no further information is held.
25. The Commissioner is therefore satisfied that the School has met its obligations under the FOIA and requires no further action to be taken.

## **Other matters**

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26. The Commissioner notes that as a result of his involvement the School has taken steps to review its code of practice for Governors in relation to communications including school material held on personal computers of governors and also matters in relation to the School's approach to data protection and document retention.

## Right of appeal

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27. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

28. 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.
29. 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**