

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2017

Public Authority: St John the Baptist Primary School
Address: Church Street
Ruyton XI Towns
Shropshire
SY4 1LA

Decision (including any steps ordered)

1. The complainant has requested information relating to Governor's and Committee meetings, and reports and papers considered at those meetings.
2. The Commissioner's decision is that St John the Baptist Primary School (the school) has correctly applied regulation 12(4)(e) (internal communications) to the majority of the withheld information and regulation 13 (personal data) to the redacted information.
3. However, the Commissioner also finds that part of the withheld information does not engage the exception at 12(4)(e).
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information in document foi1, pages 6 -13, aside from the redactions outlined in paragraph 58 of this decision notice.
5. 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

6. On 20 May 2016, the complainant wrote to the school and requested information in the following terms:

All agendas and minutes of all Governor's and Committee meetings since September 2015;

Any reports and papers considered at those meetings in accordance with sections 15 and 26 of the School Governance (Roles, Procedures and Allowances)(England) Regulations 2013.

7. The school responded on 24 May 2016 and advised it was taking legal advice on the matter.
8. As the complainant had not received any response by 20 June 2016 she made a request for the same information under the FOIA.
9. The school responded on 20 July 2016. The complainant requested an internal review on 6 November 2016 as she considered some information had not been provided, namely:
- i. Agendas
 - ii. Minutes of Finance Committee meetings of 2 February 2016 and 17 May 2016;
 - iii. Minutes of Premises Committee meetings of 18 April 2016
 - iv. Minutes of Governors meetings of 9 November 2015 and 16 June 2016;
 - v. All reports or papers considered at those meetings;
 - vi. Background papers referred to in the Governors meeting of 3 December 2015
 - vii. Emails sent between Governors referred to in the Governors meeting of 3 December 2015
10. Following an internal review the school wrote to the complainant on 24 November 2016 and provided copies of the agendas. It also explained that the Finance Committee meeting of 2 February 2016 did not take place so there were no minutes. Furthermore, the minutes from the meeting of 17 May 2016 had not been signed off at the time of the request. Similarly the minutes of the Premises Committee meeting had not been signed off at the time of the request.

11. The school went on to explain that there were a number of meetings in the Autumn term and that some minutes had been missed when photocopying. It apologised for the omission.
12. With regard to the information requested at points v) to vii), the school refused to provide it and cited regulation 12(4)(e) (internal communications) of the EIR as its basis for doing so. It further stated that the redactions made to the disclosed information had been done so by virtue of section 40(2) (third party information) of the FOIA.

Scope of the case

13. The complainant contacted the Commissioner on 26 April 2017 to complain about the way her request for information had been handled.
14. The Commissioner considers the scope of this case to determine if the school has correctly withheld information by virtue of regulation 12(4)(e) of the EIR. Having reviewed all the information the Commissioner also considers that the school incorrectly cited section 40(2) of the FOIA to redact some information, where it should have cited regulation 13 of the EIR. In either case the exemption or regulation both relate to withholding personal data.

Reasons for decision

Regulation 12(4)(e) – internal communications

15. Regulation 12(4)(e) of the EIR states:

“For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that..

(e) the request involves the disclosure of internal communications.”

16. Regulation 12(4)(e) is a class based exception so it is not necessary to demonstrate prejudice or harm to any particular interest in order for its engagement.
17. The information withheld under this exception consists of various emails between Governors, the head teacher and the local authority relating to a boundary dispute. At the date of this decision notice the Commissioner is not aware that this matter has been settled.
18. There is no definition of what is meant by 'internal' contained in the EIR. In the absence of one, therefore, a judgment on what is an internal

communication must be made by considering the relationship between a sender and recipient, the particular circumstances of the case and the nature of the information in question. Typically, however, communications sent between officials within a single organisation are the clearest example of records that will be covered by the exception.

19. Essentially, an internal communication is a communication that stays within one public authority. Once a communication has been sent to someone outside the authority, it will generally no longer be internal.
20. The Commissioner considers that the underlying rationale behind the exception is that public authorities should have the necessary space to think in private. The original European Commission proposal for the Directive (COM(2000)0402) explained the rationale as follows:

*"It should also be acknowledged that public authorities should have the necessary space to think in private. To this end, public authorities will be entitled to refuse access if the request concerns [...] internal communications."*¹
21. Although a wide range of internal information might be caught by the exception, the Commissioner is of the opinion that, following the above European Commission proposal (which the EIR are intended to implement), public interest arguments should be focussed on the protection of internal deliberation and decision making processes.
22. Communications between other public authorities (eg between central government and a local authority, or between two local authorities) will not constitute internal communications.
23. In this case part of the withheld information is correspondence between the governors. However, part of the withheld information is emails between the school and the local authority, specifically, in the document labelled foi1, pages 6 – 13 and therefore cannot be viewed as 'internal' communications and the exception is not engaged.
24. The remaining information in foi1 does fall under the category of internal communications and therefore the exception is engaged. The public interest test does not include consideration of pages 6 – 13 of the document foi1.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0402:FIN:EN:PDF>

Public interest in disclosure

25. There is no automatic or inherent public interest in withholding an internal communication. Arguments should relate to the particular circumstances of the case and the content and sensitivity of the specific information in question.
26. The Commissioner acknowledges the presumption in favour of disclosure inherent in regulation 12(2) of the EIR. She also accepts that there is an inherent public interest in the openness and transparency of public authorities and their decision making process.
27. The school acknowledges that there is a public interest in promoting public debate, furthering the understanding of issues under consideration and allowing individuals to better understand decision making. It also recognises that there is a general public interest in disclosing information to promote accountability and transparency in decision making.

Public interest in maintaining the exception

28. The school has explained that, at the time of the request, there was an on-going dispute relating to a boundary of the school. It had been in the process of determining who the appropriate body was to deal with the issue and what steps it may need to take.
29. The school considered it must be allowed a protected space in which to discuss and debate such issues without the fear that these will be used against it in any subsequent dispute. It therefore considered that the public interest in maintaining such a safe space was very strong.

Balance of the public interest

30. The Commissioner accepts that there is a general public interest in public engagement in decision making processes, particularly where they relate to the use of land. However, except in cases where there are specific concerns that a process is not being correctly followed, where sufficient information is not being made available or where there is evidence of malpractice, the Commissioner does not consider that this general interest justifies disclosures made outside of any negotiation process.
31. In reaching a decision on where the balance of the public interest lies in this case, the Commissioner has attached particular weight to the fact that the dispute was on-going at the time of the request, and the lack of compelling public interest arguments in favour of disclosure.

32. The Commissioner considers that the need for a safe space will be strongest when an issue is still "live". Once a public authority has made a decision, a safe space for deliberation will no longer be required and the public interest is more likely to favour disclosure.
33. Whilst the Commissioner accepts that disclosure of information might well aid transparency, in this case it is an issue relating to the boundary between one property and the school and there is no detriment to the general public whatever the outcome of the dispute.
34. The Commissioner acknowledges that the complainant has a valid interest in accessing the information, however, the public interest in the context of the EIR relates to the broader public interest rather than to the interests of individuals or specific business.
35. For the reasons set out above the Commissioner considers that, in all the circumstances of the case, the public interest in maintaining the exception set out in regulation 12(4)(e) outweighs the public interest in disclosure and she therefore accepts that the internal communications in question should be withheld.
36. The Commissioner has next gone on to consider the application of regulation 13 of the EIR to the redacted information.

Regulation 13 – Third party personal data

37. Regulation 13 of the EIR states that a public authority shall not disclose information if it constitutes the personal data of a third party and the disclosure of that information would breach any of the data protection principles outlined in the Data Protection Act 1998 (DPA).

Is the withheld information personal data

38. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
39. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
40. The school considers the information redacted from the meeting minutes is personal data and therefore exempt from disclosure.
41. The Commissioner is satisfied that the redacted information is information from which living data subjects would be identifiable.

Would disclosure breach the Data Protection Principles?

42. 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.
43. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individuals, the potential consequences of the disclosure and whether there is a legitimate public interest in the disclosure of the information in question.

Reasonable expectations

44. Whether an individual might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to an employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public facing role.
45. The information in question concerns the identity of school governors and staff that attended meetings. Whilst the minutes have in the most part been disclosed certain identifying details such as attendees' initials have been redacted.
46. The Commissioner is satisfied that in the context of this case the individuals would have no reasonable expectation that this information would be disclosed.

Consequences of disclosure/damage and distress

47. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the named individuals.
48. The school argued that disclosure of the withheld information could cause distress for some of the individuals as the school is in a small village and it was concerned that there may be some repercussions if their identity was known.
49. The Commissioner has reviewed the withheld information and is satisfied that the consequences of disclosure could be distressing for the individuals concerned.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

50. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where regulation 13 has been cited is in favour of protecting the privacy of the individuals. 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.
51. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the individuals named within the correspondence and that it would not be fair to disclose the requested information in this case.

Conclusion

52. The Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. The Commissioner upholds the school's application of the exception provided at regulation 13 of the EIR.

Remaining withheld information

53. The school has not presented any arguments with regard to the information contained in document foi1, pages 6 – 13 as it considered that it was internal communications.
54. Given the Commissioner's findings above, that it is not an internal communication, this information should now be disclosed to the complainant. However, in her dual role as both regulator of the EIR and the DPA it would be inappropriate for the Commissioner to order the disclosure of information which could breach the data protection principles. She has therefore proactively considered whether any of the information which she has found not to be exempt under regulation 12(5)(e) is exempt under regulation 13(1).
55. As detailed above (paragraph 35 onwards) the Commissioner has considered the same factors with regard to the disclosure of the name of the council correspondent, together with the contact details such as direct phone number and email address.
56. In doing so she is satisfied that the information is third party personal data. She is also satisfied that the council employee would have no reasonable expectation that this information would be provided in response to a request for information. In addition, disclosure of this information could lead to an unwarranted disruption of their professional

lives. As such the disclosure would be unfair. The school is entitled to redact this information.

Conclusion

57. The Commissioner finds that the information contained in pages 6 – 13 of the document foi1 should be disclosed aside from the name, email address and telephone number of the council correspondent. To disclose that third party personal data would be unfair and therefore in breach of the first principle of the DPA.

Right of appeal

58. 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

59. 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.
60. 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

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