

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 March 2012

**Public Authority:** Southern Education and Library Board  
(‘the SELB’)

**Address:** 3 Charlemont Place  
The Mall  
Armagh  
BT61 9AX

#### Decision (including any steps ordered)

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1. The complainant requested under FOIA the minutes of a meeting that occurred on 5 May 2011. This meeting concerned an individual making allegations about their treatment at a school.
2. The Southern Education and Library Board (‘the SLB’) refused to provide the information applying section 40 [personal data]. It maintained its view at internal review.
3. It also privately provided the complainant with his own personal data, which were extracts of the said minutes. The complainant referred the case to the Information Commissioner (‘the Commissioner’).
4. The Commissioner finds that section 40(1) [first party personal data] was appropriately applied to the complainant’s own personal data and that section 40(2) [third party personal data] was appropriately applied to the rest of the information which was someone else’s personal data. He has found procedural breaches of sections 17(1), 17(1)(b) and 17(1)(c) but requires no remedial steps to be taken.

#### Request and response

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5. On 16 September 2011, the complainant requested the following:

*‘I am writing to you under the freedom of information act to seek the release of the minutes of May 5<sup>th</sup> – [named redacted], especially those elements that pertain to myself.’*

6. The meeting concerned an individual making allegations about their treatment at a school and the requestor was the headmaster of the school.
7. The Southern Education and Library Board ('the SLB') responded on 18 October 2011. It stated that it could not provide the minutes under FOIA because it was third party personal data and its disclosure would breach the Data Protection Act 1998 ('the DPA'). It explained that it considered that the information could be withheld under section 40 of FOIA.
8. The complainant requested an internal review on 21 October 2011. He confirmed that he had already received a synopsis version of the information, explained that he had good reason to have the minutes and stated that he considered redacted versions could be released.
9. The SLB communicated the results of its internal review. It upheld its original decision that the information should be withheld because it was third party personal data. It was therefore applying section 40. It didn't provide any further rationale about its position.

### **Scope of the case**

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10. On 20 December 2011, the complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular, he considered that the information was withheld incorrectly by virtue of section 40(2).
11. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of FOIA. In particular, the Commissioner is not the forum to consider whether the SLB's actions in dealing with the complaint it received was correct.
12. Finally, it must be noted that it is important to note that any disclosure under FOIA amounts to a disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under FOIA it should be prepared to disclose the information to anyone else who asks for it.

### **Reasons for decision**

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13. The Commissioner considers that the information can be usefully divided into two categories in this case:
  - \* Information that is the complainant's own personal data; and

- \* The information that is the individual who made the complaint's personal data.

14. Information needs only to be withheld under one exemption for it not to be provided under FOIA. The Commissioner has therefore considered the complainant's own personal data first under section 40(1), before considering the residue of the report under section 40(2).

### **Information that is the complainant's own personal data**

15. Section 40(1) of FOIA states that:

*'Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.'*

16. This exemption is absolute. Its purpose is to ensure that an individual receives their own personal data privately through the DPA, so that they can choose whether or not they publicise it as they see fit.

17. What constitutes personal data is defined by section 1(1) of the DPA. Some of the information does constitute the complainant's own personal data because it comprises of allegations about his conduct.

18. The complainant received the same information privately from the SLB.

19. The Commissioner considers that this information is absolutely exempt by virtue of section 40(1).

### **Information that is third party personal data**

20. Section 40(2) of FOIA states that:

*'Any information to which a request for information relates is also exempt information if –*

*(a) It constitutes personal data which do not fall within subsection 40(1); and*

*(b) Either the first or the second condition below is satisfied.'*

21. In summary, the conditions specified are either that disclosure would contravene one or more data protection principles, or that the information would not be available to the data subject if he made a Subject Access request under the Data Protection Act ('DPA') for it.

*Is all the information third party personal data?*

22. As noted above, 'personal data' is defined by section 1(1) of the DPA. The minutes focus on one matter which is the allegations of a certain individual about what happened to them in their workplace. In the Commissioner's view, all the information contained in the minutes constitutes third party personal data in this case and the information that is not the complainant's own personal data is solely the personal data of the individual who made the allegations.
23. Some of the information also constitutes sensitive personal information which is defined by section 2 of the DPA. The definition includes information about an individual's trade union membership and some of the withheld information discusses it. The Commissioner has therefore found that some of what was requested constituted sensitive personal data.
24. In relation to section 40(2)(b) the SLB's main arguments focussed on why disclosure would contravene the first data protection principle and the Commissioner has considered this first.

*Would disclosure of this information to the public contravene the first data protection principle?*

25. For personal data, the first data protection principle has three components. They are that the disclosure of the information to the public must be:
  - fair to the data subjects;
  - in accordance with one or more conditions in Schedule 2 of the DPA; and
  - lawful to the data subjects.
26. Every relevant condition must be satisfied for the first data protection principle not to be contravened and the exemption not to apply. If even one condition is not satisfied, the first data protection principle would be contravened and the exemption would be applied correctly.
27. For the information that constitutes sensitive personal data, processing must **also** be in accord with one or more conditions found in Schedule 3 of the DPA.

*Is the disclosure of the information to the public unfair to the data subject?*

28. In accordance with his decision issued in **FS50286813** (Stroud District Council), the Commissioner has looked to balance the consequences of

any release of personal data and the reasonable expectations of the data subject with general principles of accountability and transparency.

29. To do so, he has considered each category in turn and specifically borne in mind the following factors:
- Why the SLB holds the information;
  - The individual's reasonable expectations of what would happen to their personal data;
  - Whether disclosure would cause any unnecessary or unjustified damage to the individual; and
  - The legitimate interests of the public in knowing these details weighed against the effects of disclosure on the data subject.
30. The SLB holds this information because it is the employer of the individual that made the allegations and thus is obliged through employment law to hear and consider grievances that the employee has formally made. The SLB organised the meeting to get all the facts to make a decision about the issue.
31. The Commissioner considers that generally an employee would expect that information raised in a grievance would remain private between them, their employer and the accused. The function of a grievance is to attempt to address matters of concern privately to ensure that employment continues while those matters are addressed. If the grievance is not addressed, then the next stage would be the public forum of the Employment Tribunal, but by then the employment relationship is likely to have broken down and the consequences of disclosure may be less severe.
32. This view is supported by the SLB's actions in this particular case. It assured the individual that the identities of any witness mentioned in the report would be kept anonymous, although those witnesses would be interviewed to enable the individual's allegations to be tested. It was also clear from the meeting's context that the reasonable expectation of the individual who made the allegations was that the information would only be used for the purposes of considering and addressing the grievance.
33. He also notes that the individual in question does not hold a very senior grade. Therefore he considers that the individual would be less likely than a more senior individual to have any expectation that the public would be told about the nature of their grievances.

34. The Commissioner has also considered the likely impact of disclosure on the individual concerned and notes that the information on a specific grievance includes sensitive details such as the effect that the events relating to a particular grievance have had on the individual. Disclosure under FOIA is often described as 'disclosure to the world' and the Commissioner considers that this would be distressful to the individual concerned when there would be little legitimate interest in the information being made publicly available.
35. The Commissioner is also mindful of the fact that the grievance featured in the withheld information is still recent and therefore any distress caused by disclosure is likely to be more severe. This is particularly so in the current case where as far as the Commissioner knows the person who made the allegation is still working at the same school. Furthermore, the Commissioner considers that the disclosure of the information into the public domain could potentially lead there to be a breakdown in the individual's 'trust and confidence' in their employer (the SLB in this case), since the disclosure of this private information could cause a great deal of distress to them.
36. When assessing the legitimate interests of the public, the Commissioner considers that members of the public will have a natural, and legitimate, interest in knowing how the SLB deals with a grievance including how it establishes the facts and the actions that it takes. However, he does not consider that the weight of these legitimate interests come close to outweighing the prejudice that the data subject would experience from the disclosure.
37. Furthermore, the Commissioner understands that there is a public interest in accountability and transparency. Indeed these concepts form the cornerstones of FOIA. However, the disclosure of this data would not increase transparency and accountability to a great degree in this case because there is only very limited public interest in the disclosure of the information.
38. The Commissioner has carefully considered the withheld information, and while he does appreciate that the disclosure may assist the complainant privately, he does not consider on the facts of this case that the complainant's private interest amounts to a public interest in ensuring the transparency of the requested information. He considers the majority of the withheld information to be benign and only of great importance to the data subject rather than the public at large.
39. Overall, the Commissioner considers that the disclosure of this information to the public would amount to an unwarranted and unjustified disclosure of the personal data of the individual who made the allegations. In the Commissioner's view the disclosure of this

information would be unfair and contravene the first data protection principle. As this is so, the SLB was entitled to withhold it under section 40(2).

40. Additionally, for the sensitive personal data, the Commissioner does not consider that any of the conditions in Schedule 3 of the DPA could be satisfied in disclosing this information to the public. For this information, this point alone means that the exemption was applied appropriately.

## **Procedural matters**

### ***Section 17(1)(b)***

41. Section 17(1)(b) requires a public authority to state what exemption it is relying on when it refuses a request for information. The Commissioner considers that this means that the exemption should be cited down to its subsection. The SLB failed to state the subsection of the exemption it was relying on and breached section 17(1)(b).

### ***Section 17(1)(c)***

42. Section 17(1)(c) requires a public authority to explain why it is applying an exemption when it is not obvious. In the Commissioner's view, the application of the exemption was far from obvious in this case and the SLB offered too little explanation. The SLB therefore also breached section 17(1)(c).

### ***Section 17(1)***

43. Section 17(1) requires a compliant refusal notice to be issued as soon as possible and in 20 working days in any event. The SLB's refusal notice didn't comply with section 17(1)(b) or 17(1)(c) and therefore also breached section 17(1).
44. The Commissioner does not consider that any remedial steps are required in this case because this decision notice explains what exemption is being applied and why it was applied appropriately.

## Right of appeal

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45. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

46. 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.
47. 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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