

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 June 2014

Public Authority: Hounslow Heath Infant and Nursery School
Address: Martindale Road
Hounslow
TW4 7HE

Decision (including any steps ordered)

1. The complainant has made a request to Hounslow Heath Infant and Nursery School ("the School") for information broadly concerning the School's complaints procedure, School referrals and information relating to a child that attended the School.
2. The Commissioner's decision is that the School has correctly applied the exemption set out at section 40(5)(b)(i).
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 8 December 2013, the complainant wrote to the School and requested information in the following terms:

"I seek disclosure of all the data held electronically and manually and also please inform me of the following;

1. *Schools Complaints procedure*
2. *How many parents have you referred to Children's Social services & to the GP in the last three years for fabricating child's illnesses?*
3. *How many children have you referred to Staff Education Welfare in the last two years without following the schools attendance procedure?*

4. *Have you received the Child Protection Records from St Michael & St Martin School of [redacted name], your former student for the year 2011-2013*
 5. *How many Data protection have you received in the last 03 years and how many were breached?*
 6. *Which Organisation informed you about [redacted name] Child Protection referral and other issues happened in the St Martin & St Michael School?*
 7. *Please can you make a list of what documents you have sent to Orion Firm.*
 8. *Have you written any other letter to Orion apart from the attach letter of 05-12-2012.*
5. The School responded and provided the complainant with information within the scope of request 1, 2, 3 and 5. It withheld the information sought in request 4, 6, 7 and 8 under section 40(5)(b)(i) of FOIA.
 6. The complainant subsequently requested an internal review. In her internal review request the complainant disputed the School's application of section 40(5)(b)(i).
 7. The School responded to the internal review request on 21 March 2014. It upheld its previous decision.

Scope of the case

8. The complainant contacted the Commissioner 30 March 2014 to complain about the way her request for information had been handled. Specifically the complainant believed that the section relied upon by the School was irrelevant and wrongly applied.
9. The Commissioner has had to consider whether the School was correct to rely upon section 40(5)(b)(i) to withhold the requested information.

Reasons for decision

10. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities.

These are:

- the duty to inform the applicant whether or not requested information is held and, if so,
- the duty to communicate that information to the applicant.

11. Section 40(5)(b)(i) provides that:

"The duty to confirm or deny –

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection(1), and

(b) does not arise in relation to other information if or to the extent that either –

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or...."

12. Therefore, for the School to be correct in relying on section 40(5)(b)(i) to neither confirm nor deny whether it holds information falling within the scope of the complainant's request the following conditions must be met:

- Confirming or denying whether information is held would reveal personal data of a third party; and
- That to confirm or deny whether information is held would contravene one of the data protection principles.

13. Section 1(1) of the Data Protection Act 1998 ("DPA") defines personal data as: 'data which relate to a living individual who can be identified – (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual'.

14. The Commissioner considers that the way in which requests 4, 6, 7 and 8 are worded clearly indicates that the complainant is seeking personal information which can be linked with a named individual. The Commissioner is therefore satisfied that if the School confirmed the requested information is held, it would constitute disclosure of personal data of a third party.

Would confirming or denying that the requested information is held breach a data protection principle?

15. Any authority must process (i.e. in this case disclose) that information in line with the data protection principles of the DPA. The first data protection principle requires that the data is processed fairly and lawfully, and in particular that one of the conditions in schedule 2 of the Act applies. For sensitive personal data the authority must also show that one of the conditions in schedule 3 also applies. Any information in this case is likely to be sensitive personal data as it relates to child protection records of the individual concerned, and confirmation would inevitable put into the public domain information about the existence of child protection records relating to that particular individual. Such information would be sensitive personal data about that individual.
16. The Commissioner must consider whether confirming or denying whether relevant information is held would breach any of the data protection principles of the Data Protection Act 1998. The relevant principle in this case would be the first data protection principle.
17. The first data protection principle states that:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

 - (a) *at least one of the conditions in Schedule 2 is met, and*
 - (b) *in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*
18. When considering whether a disclosure of the information would be fair for the purposes of the first data protection principle the School would need to consider whether the individual would have any expectation that the information held about them would be disclosed. In this case the question is whether an individual would have an expectation that their child protection records would be disclosed in response to an FOI request.
19. When considering this it is important to note that when a request is received under the FOIA, a public authority must consider the request as if it has been received from any member of the public. It is not able to

take into account any private or personal reasons which the requester may have for requesting the information. Further to this, disclosures under the FOIA are intended to be global in nature and so the School must consider a disclosure to the whole world rather than to a specific requester.

20. Clearly the named individual would have no expectation whatsoever that their child protection records would be disclosed to any member of the public requesting that information.
21. Although the Commissioner has considered that it would be unfair to disclose the information, Schedule 3 of the DPA highlights a relevant condition which sensitive personal data can be disclosed under the FOIA. It is therefore relevant to consider whether the clear intention of the FOIA to allow disclosure of the sensitive information under certain circumstances might affect whether the disclosure of the information in this case is 'fair' for the purposes of the first data protection principle.
22. The relevant condition under Schedule 3 states that processing can be carried out where:

The processing –

- (a) Is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings)*
 - (b) Is necessary for the purpose of obtaining legal advice, or*
 - (c) Is otherwise necessary for the purposes of establishing, exercising or defending legal rights.*
23. The question which the Commissioner needs to consider is not whether it is necessary for the complainant to have this information but whether it is necessary for the whole world. Clearly it would not be.
 24. The Commissioner has also considered public's legitimate interests in the requested information against the prejudices to the rights, freedoms and legitimate interests of the data subject concerned. He has considered whether there is a legitimate interest in confirming whether the requested information is held. He has determined that there is no legitimate interest in confirming to the public whether the requested information is held.
 25. Due to the matters considered above and in all of the circumstances of this case the Commissioner is satisfied that it would be unfair to confirm or deny whether the requested information is held. To do so would disclose information about the data subject which would represent an unwarranted infringement by the School on the child's privacy. The

absolute exemption provided by section 40(5)(b)(i) is therefore engaged and the School is not required to confirm or deny whether it holds the requested information.

Other matters

26. Under Section 45 Code of Practice, the Commissioner's guidance states that a one-stage review should be completed in 20 working days, although in exceptional circumstances it could take up to 40 working days.
27. In this case, the complainant requested an internal review on 27 December 2014. The School responded on 21 March 2014 which is clearly outside of the recommended timescales set out by the Commissioner.

Right of appeal

28. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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
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