

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 July 2017

**Public Authority:** Delta Academies Trust  
(formerly School Partnership Trust Academies)

**Address:** Education House  
Spawd Bone Lane  
Knottingley  
WF11 0EP

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to meetings held in 2015.
2. The Commissioner's decision is that Delta Academies Trust (Delta) has correctly applied section 40(2) (personal data) to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### Request and response

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4. The complainant initially made an informal request for copies of minutes of meetings he had attended. On 16 January 2016 the complainant wrote to Delta and requested information in the following terms:  
*"the minutes as a director at the relevant time"*.
5. Delta responded on 24 March 2016. It provided some of the requested information but withheld part of the information by virtue of section 40(2).
6. It does not appear that an internal review was carried out.
7. In further correspondence with the complainant Delta also cited sections 31 and 43(2) of the FOIA.

## Scope of the case

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8. The complainant contacted the Commissioner on 9 September 2016 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine if Delta has correctly applied the exemptions it has cited to the 'personal statement', Board Meeting minutes, Member's Meeting minutes and the Recommendations. In the event that she finds one exemption is applicable to all the withheld information she will not go on to consider the other exemptions.

## Reasons for decision

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### Section 40(2) – personal data

10. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and, by virtue of section 40(3)(a)(i), its disclosure under the FOIA would breach any of the data protection principles of the Data Protection Act 1998 (DPA).
11. The Commissioner has therefore first considered whether the withheld information is the personal data of third parties.

*Is the withheld information personal data?*

12. Personal data is defined in section 1(1) of the DPA as:

*“data which relate to a living individual who can be identified –  
(i) from those data, or  
(ii) 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 intention of the data controller or any other person in respect of the individual.”*

13. 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, and has them as its main focus or impacts on them in any way.

14. The Commissioner has reviewed the withheld information and is satisfied that it relates to living individuals and that they would be identifiable if the information was disclosed. The Commissioner has gone on to consider whether any of the conditions under section 40(3) have been met.

15. Section 40(3)(a) says that personal data is exempt from release if disclosing it would contravene any of the data protection principles, or would cause damage or distress and so breach section 10 of the DPA.

*Would disclosure be fair?*

16. In its submission to the Commissioner, Delta stated that disclosing the withheld information would be unfair and so would breach the first data protection principle. The Commissioner agrees that the first data protection principle is relevant in this case which states:

*"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."*

17. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:

- the individual's reasonable expectations of what would happen to their information;
- the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
- any legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the individuals who are the data subjects.

*Reasonable expectations*

18. A key issue to consider in assessing fairness is whether the individual concerned has a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to his or her public or private life and the purpose for which they provided their personal data.

19. The Commissioner notes that the withheld information relates to an individual's public life in their roles with SPTA. It is not possible to

provide any more detail in this Notice about the nature of the information without risking disclosure of the information itself. Delta has confirmed that it has not sought consent for the personal data to be disclosed.

20. Delta argued that disclosure would not be fair, taking into account the reasonable expectations of the individual concerned, for the following reasons.
  - given the circumstances and the facts of this matter, the individual would reasonably expect that such information would be kept confidential and not disclosed to any third parties both at the time it was collected and in the future.
  - given the nature of the information and the potential consequences disclosure may have on the individual, the individual concerned would reasonably expect that the information would not be disclosed.
21. Delta also argued that it considered that disclosure would breach an implied duty of confidence. However, the Commissioner has not considered this aspect in making her decision as section 41 of the FOIA is a specific exemption for 'Information provided in confidence' which Delta have not cited.
22. However, Delta did acknowledge that where an individual carries out public functions, holds elective office or spends public funds, they must expect that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives.
23. Delta considered that, despite the position held by the individual at SPTA and his awareness that greater public scrutiny would apply in such a role, the individual would still not reasonably expect that personal data of this nature would be made publicly available.

*Consequences of disclosure*

24. Delta considers that the potential consequences disclosure could have on the individual concerned include:
  - damage to the individual's reputation;
  - damage to the individual's business interests and prospects in the future;
  - restricting and/or harming the individual's future employment prospects; and
  - having a negative and detrimental impact on the individual's family, as they are also referred to.

25. Delta also considers that disclosing even some of the information may identify the individual concerned. It noted that the complainant may be able to identify the individual even with the redactions.
26. Delta considers that given the nature of the information and the level of damage and/or distress that any disclosure may cause, disclosure of that information is likely to have unjustified adverse effects on the individual concerned, and therefore disclosure of the personal data would not be fair.

*The nature and/or content of the information*

27. Delta considers that, due the nature of the information and the likely consequences of such information being disclosed, the individual concerned will have a strong expectation that the information will not be disclosed.
28. The Commissioner has reviewed the withheld information and considers that the individual would have a reasonable expectation that this information would not be disclosed.
29. Delta also considers that if the roles the individual held at SPTA were disclosed, it would be possible for members of the public to identify who the individual is, on the basis of publicly available information. Delta therefore redacted this information along with information relating to the temporary appointments to such roles and the recruitment activities planned.

*Information already in the public domain*

30. There is a limited amount of information in the public domain, and no individual is named in that information.
31. The Commissioner's guidance on the application of section 40 FOIA states, at paragraph 55:

*"If there has merely been some public speculation about the information, for example on Twitter, or it has only appeared in a newspaper article, then the argument that it would be fair to disclose the same information under FOIA will carry less weight than if it had been confirmed in an official source".*

*Balancing rights and freedoms with legitimate interests*

32. Condition 6 of Schedule 2 of the DPA requires that:

*"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom*

*the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject".*

33. The Commissioner notes the complainant's comments that the nature of the concerns considered in the withheld information merit public scrutiny.
34. Delta acknowledges that, even if the reasonable expectations of individuals are that the personal data would not be disclosed, and that damage and/or distress may be caused by such disclosure, it may still be fair to disclose the personal data if there is an overriding legitimate interest in disclosure.
35. Delta has considered the following legitimate public interests in disclosing the personal data:
  - the general public interest in transparency of public bodies;
  - an informed and involved public helps to promote good decision making by public bodies;
  - the public interest in the issues that the information relates to;
  - the increasing public expectation of transparency regarding the expenditure of public funds and performance of public authorities, particularly relating to issues such as alleged mismanagement by senior staff in a public authority;
  - ensuring there is public trust and confidence in the governance and processes within Academy Trusts; and
  - the fact that the information relates (at least in part), to the spending of public funds.
36. Delta has already considered above whether there is a legitimate interest in disclosure of the personal data, and concluded that although there are legitimate interests for disclosure, those interests are outweighed by the unwarranted harm, damage and distress that may be caused to the interests of the individual concerned if that personal data was disclosed.

*The Commissioner's view*

37. As disclosure under the FOIA is considered to be disclosure to the public at large and not to the individual applicant, the interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest. The Commissioner must consider whether

or not it is appropriate for the requested information to be released to the general public.

38. Examples of a legitimate public interest in disclosure include the general public interest in transparency, public interest in the issue the information relates to and any public interest in disclosing the specific information. There may for example be occasions when the requirement to demonstrate accountability and transparency in the spending of public funds will outweigh the rights of the individuals.
39. The Commissioner accepts the legitimate interests in disclosure include the general public interest in transparency of public bodies, and in particular the expenditure of public money and performance of public bodies, including in relation to alleged mismanagement by senior staff. An informed and involved public helps to promote good decision making by public bodies and ensures trust and confidence in the governance and processes within those bodies.
40. The Commissioner has also taken into account her guidance with regard to balancing rights and freedoms with legitimate interests when dealing with a request for personal data about public authority staff and in particular notes that in the case of section 40(2) of the FOIA the general presumption in favour of disclosure is reversed so that a justification is needed for disclosure of personal data.
41. Having considered the withheld information and taken all the above factors into account the Commissioner has however concluded that to disclose the information would be unfair and in breach of the first principle of the DPA. The Commissioner therefore finds that Delta has correctly applied section 40(2) of the FOIA to the withheld information by virtue of section 40(3)(a)(i). Accordingly she does not require Delta to take any steps.
42. In view of her findings above, the Commissioner has not gone on to consider Delta's application of sections 31 and 43(2) of the FOIA to the withheld information.

## Right of appeal

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

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

44. 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.
45. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**