

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 July 2018

Public Authority: The Governing Body of Ysgol Glannau Gwaun
Address: adminglannau@pembrokeshire.gov.uk

Decision (including any steps ordered)

1. The complainants have requested various information including a copy of an investigation report into the conduct of a senior member of staff at the school at which their son had been a pupil and which they believe contained details of an allegation concerning their son against the senior teacher. The Governing Body provided some information but initially maintained that it did not hold a copy of the requested investigation report. Following the Commissioner's investigation, the Governing Body confirmed that it held a copy of the report but refused to disclose it under section 40(2) of the FOIA. The Commissioner's decision is that the Governing Body has correctly relied on section 40(2) to withhold the information. The Commissioner also notes that the Governing Body breached section 17(1) and sections 17(7)(a) and (b) of the FOIA. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 2 February 2017, the complainant wrote to the Governing Body and requested the following information:

"...the school records held on our son, [named individual and date of birth]...

...a full explanation of the investigation's findings of an allegation that involved a member of staff and also involved our son, undertaken by the Staff Disciplinary Appeals Committee...

...a copy of the school's Safeguarding Policy and Staff Discipline Policy...

...In particular we would be grateful if you would provide us with a copy of all information held."

3. The Governing Body responded on 9 February 2017. It confirmed that the staff at the school would deal with the following information under the Data Protection Act 1998 ('the DPA')
 - The school's records held on the complainant's son.
 - The school's safeguarding policy.
 - The school's Staff Discipline Policy
4. With regards to the remaining parts of the request, the complainant was informed that a full explanation was not possible as the information was confidential, however it did not specify an exemption. The Governing Body has subsequently confirmed to the Commissioner that it is relying on section 40(2) in respect of the Investigation Report. The complainants were further informed that as the investigation did not arise as a result of a complaint from themselves, there was no reason to keep them updated.
5. From the records held by the Commissioner, it appears that the complainants contacted the Governing Body again on 13 March 2017 requesting the following information:

"A copy with a full explanation of the investigation's findings of the Professional abuse allegation on 13th November 2015 that involved our son [first name specified] by a senior member of staff."
6. The Governing Body sent a response on 19 May 2017 stating that having taken advice from Governors Support at County Hall that it considered its original response remained relevant, referring the complainants to a named individual at the school who would deal with their requests or contact the relevant people at County Hall.

Scope of the case

7. The complainant contacted the Commissioner on 22 June 2017 to complain about the way his request for information had been handled. The complainants considered that the Governing Body were in breach of both the Data Protection Act, 1998 and the Freedom of Information Act, 2000. They also stated that having contacted the named individual at the school they had attended two meetings on 9 June and 19 June respectively but that they were told they could not have information due to confidentiality.

8. The Commissioner considers that the scope of her investigation is to consider the information falling within the scope of the FOIA and is aware that the information falling under the DPA has been dealt with separately. The Commissioner also notes that all other information falling under the FOIA has been provided to the complainants therefore the focus of her investigation is solely in relation to the investigation report.

Reasons for decision

Section 40 – personal information

9. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles.
10. In order to reach a view regarding the application of this exemption, the Commissioner has firstly considered whether or not the requested information does in fact constitute personal data as defined by section 1(1) of the Data Protection Act 1998 ('the DPA').

Is the requested information personal data?

11. Personal data is defined at section 1(1) of the DPA as:

"personal data means data which relate to a living individual who can be identified-

(a) from those data,

(b) from those data and other information which is in the possession of, or 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."

12. When considering whether the information is personal data, the Commissioner has taken into consideration his published guidance: "*Determining what is personal data*".¹

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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf

13. On the basis of this guidance, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:
 - (i) *"Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?"*
 - (ii) *"Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?"*
 14. The Commissioner notes that the information withheld under this exemption concerns a report into the investigation of a senior member of staff at Ysgol Glannau Gwaun, contains witness statements from other members of staff and refers to four pupils or former pupils at the school and some of their parents. Whilst the senior teacher at the centre of the allegations is named in the report, neither the members of staff, the pupils, or their parents are identified by name. The members of staff are referred to as witnesses 1-4, the pupils are referred to via an alpha-numeric identifier, whilst the parents are referred to by their relationship to the child in question.
 15. Whilst the report specifically identifies the senior teacher subject to the allegations so there is no doubt that it contains his personal information, the Commissioner has considered whether the report also contains the personal information of the other individuals referred to within the report.
 16. The Commissioner considers that the starting point should be to determine what means are available to identify an individual and the extent to which such measures are readily available. The Commissioner would point out that consideration should not just be given to the means likely to be used by the ordinary person in the street, but used by a determined individual with a particular reason to want to identify individuals.
 17. The Commissioner notes that the members of staff are referred to as witnesses 1-4 and that their statements contain details of the date, time and location within the school the incidents are alleged to have occurred. The Commissioner considers that it is highly likely they would clearly be identifiable by other members of staff, and possibly by pupils
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of the school and their parents. She is therefore satisfied that the report contains their personal information.

18. In terms of the pupils, the Commissioner notes that the whilst the alpha-numeric codes do not in themselves identify the pupils, the information contained within the report including the date, time and location of the alleged incidents combined with details of the incidents themselves, make it highly likely they would be identifiable by members of staff and possibly other pupils of the school and their parents. She is therefore satisfied that the report contains their personal information.
19. The Governing Body considers that disclosure of the disputed information would breach the first data protection principle.

Would disclosure contravene the first data protection principle?

20. The first data protection principle requires that the processing of personal data be fair and lawful and,
 - 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 met.
21. In the case of personal data, both requirements (fair and lawful processing, and a schedule 2 condition) must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

Would disclosure be fair?

22. In his consideration of whether disclosure of the withheld information would be fair, the Commissioner has taken the following factors into account:
 - a. The reasonable expectations of the data subjects.
 - b. Consequences of disclosure.
 - c. The legitimate interests of the public

The reasonable expectations of the data subject

23. The Commissioner's guidance regarding section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the

information relates to the third party's public or private life.² Although the guidance acknowledges that there are no hard and fast rules it states that:

"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."

24. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). However, not all information relating to an individuals' professional or public role is automatically suitable for disclosure.
25. The Commissioner considers the seniority of the data subject is an important factor when considering their reasonable expectations, and in his view, the more senior a person is, the less likely it will be unfair to disclose information about him or her acting in an official capacity.
26. However, the Commissioner also recognises that there is a widespread and general expectation that details of a person's employment should be considered confidential.
27. In this particular case, the Commissioner notes that the report contains the personal information of the senior teacher, witness statements from other members of staff, references to four pupils or former pupils of the school and some of their parents.

Senior teacher

28. As stated in paragraph 24 of this notice, even though an individual may expect less protection in relation to their public life, there is a general expectation that information relating to their employment remains confidential.

Witnesses

²http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/PERSONAL_INFORMATION.ashx

29. The witnesses were all members of staff at the school and gave their statements in confidence and would have had no expectation that their comments would be in the public domain.

Pupils

30. The pupils or former pupils referred to in the report and their parents or guardians would have had no expectation that their information would be made public.

Consequences of disclosure –

31. The Commissioner's guidance regarding the disclosure of information about employees states that:

"Disclosure is unlikely to be fair if it would have unjustified adverse effects on the employees concerned. Although employees may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life."

32. The Commissioner acknowledges that there is a strong likelihood that disclosure of the report would cause all data subjects varying degrees of damage or distress. The investigation was part of a disciplinary process which resulted in the dismissal of the senior teacher, who some years later is probably attempting to rebuild his career. It is likely that the disclosure of this information would therefore result in considerable distress. The Commissioner is also mindful that given the nature of the investigation, the witnesses gave their statements in confidence and are highly likely to feel considerable distress that statements they gave in confidence have been made public. Finally, it is highly that the pupils referred to in the report and their parents or guardians would experience considerable distress if the contents of the report were made public.

The legitimate public interest in disclosure

33. Notwithstanding the data subjects' reasonable expectations, or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
34. The Commissioner notes that the complainants have a personal interest in obtaining this information as the parents of one of the pupils referred to in the report. The Commissioner also notes the general legitimate

public interest in the disclosure of details of an investigation into the conduct of a senior member of staff.

35. However, in weighing up the balance the Commissioner considers that the reasonable expectations of the data subjects combined with the consequences of disclosure are significantly stronger than any legitimate public interest in disclosure. Consequently, she is satisfied that the Governing Body appropriately withheld the disputed information on the basis of section 40(2) of the FOIA.

Section 17 – refusal of the request

36. Section 17 of the FOIA concerns the refusal of the request and section 17(1) states that:

"A public authority which, in relation to any request for information, is to any extent relying on a claim ... that information is exempt information must, within the time for complying with section 1(1) give the applicant a notice which-

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies."*

37. The Commissioner notes that the Governing Body's response did not contain any details of the exemption, merely stating that the information was confidential which represents a breach of section 17(1)(a) of the FOIA.
38. Section 17(7)(a) also requires a public authority to provide particulars of any procedure for dealing with complaints about the handling of requests for information, or state that it does not provide such a procedure, whilst section 17(7)(b) states that a refusal notice must contain particulars of the right conferred by section 50.
39. As the Governing Body's response of 9 February 2017 contained neither of these, it also breached sections 17(7)(a) and 17(7)(b) of the FOIA.

Other matters

Internal review

40. The Commissioner acknowledges that it is not a formal requirement for a public authority to conduct an internal review under the FOIA.

However, when communicating the outcome of its internal review to the requester, the public author is expected to provide particulars of the right conferred by section 50. However, the Commissioner notes that its further response dated 19 May 2017 did not contain these particulars.

The Governing Body's general understanding of FOIA

41. Whilst the Commissioner accepts that the Governing Body has very limited knowledge and experience of FOIA, it is a public authority for the purposes of FOIA and is therefore required to respond to FOIA requests in accordance with the requirements of the legislation. The breaches of section 17 referred to in paragraph 39 of this notice, combined with the format of its response dated 19 May 2017 are not indicative of an acceptable level of understanding of the legislation.
42. Additionally, the Commissioner is concerned that it took considerable tenacity on her part before she was able to obtain a copy of the investigation report and establish that it was being withheld on the basis of section 40(2) of the FOIA. The Governing Body and members of staff at the school maintained on a number of occasions that it did not hold a copy of the report before it was finally referred to the Governing Body's contact at Pembrokeshire County Council who acts as Clerk to the school in respect of FOIA and holds a copy of the report on behalf of the Governing Body.

Right of appeal

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

Website: 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

**Catherine Dickenson
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