

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 March 2023

**Public Authority:** The Governing Body of Mount Grace School  
**Address:** Church Road  
Potters Bar  
Hertfordshire  
EN6 1EZ

#### **Decision (including any steps ordered)**

---

1. The Commissioner's decision is that, on the balance of probabilities, Mount Grace School ('the School') does not hold information within scope of parts 2 and 4 complainant's request about personnel matters; the School complied with section 1(1)(a) of FOIA in respect of those parts.
2. In respect of parts 1 and 3 of the request, the Commissioner has decided that the fees notice that the School issued to the complainant under section 13(1) of FOIA was not valid as it would not exceed the cost limit under section 12(1) to comply with those two parts.
3. The School must take the following step to ensure compliance with the legislation:
  - Either provide the complainant with a fresh response to parts 1 and 3 of the request that does not rely on section 12 of FOIA or issue the complainant with a fees notice that complies with section 9 of FOIA and regulation 6 of the Fees Regulations.
4. The School must take this step 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

---

5. The complainant made the following information request to the School on 5 August 2022:

"I also wish to make a freedom of information request in relation to the following:

- [1] [Was it disclosed by previous applicants on their application form that they had known / previously worked with anyone in School or a School governor during your time as School governor?
- [2] How many people have had offers retracted by the School since you have been a governor, because they failed to disclose they had worked with anyone (including Governors) in the School in a previous post, on their application form?
- [3] How many staff have been promoted internally by the School since you have been a governor?
- [4] Of those who have been promoted internally since you have been a governor, how many disclosed on their application form that they have previously worked with anyone (including Governors) in the School in a professional capacity?]"

6. In its response to the request, the School disclosed some information for the period March 2021 to August 2022 that is within scope of part 3 of the request and advised it does not hold the remainder of the requested information.

7. At internal review, the reviewer upheld the position with regard to parts 1, 2 and 4. With regard to part 3, the reviewer advised that more information could be held but that it would take a significant amount of time to comply fully with this part. This work would incur a cost and the complainant could be asked if they wanted to accept this cost and proceed. The School issued the complainant with a fees notice on 5 October 2022.

8. The complainant subsequently submitted a request to the School that was focussed on the School's current staff only but asked slightly different questions.

## Reasons for decision

---

9. The Commissioner is aware from their complaint that the complainant has wider concerns about the School. However, in line with the

Commissioner's role, this reasoning is focussed solely on the School's handling of the request of 5 August 2022 under FOIA; whether it holds the information requested in parts 1, 2 and 4 of the request, and whether section 12 is engaged in respect of part 1 and part 3. The School's internal review is considered under 'Other Matters'.

### **Section 1 – right of access to information held by public authorities**

10. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to them if it is held and is not exempt information.

11. The School has advised that it does not hold the information requested in parts 1, 2 and 4 of the request. The timeframe of these parts is from the date that a particular individual has been a governor to the date of the request, 5 August 2022.

12. Part 1 of the request is as follows:

“Was it disclosed by previous applicants on their application form that they had known / previously worked with anyone in School or a School governor during your time as School governor?”

13. In its response to this part and internal review the School advised that it does not keep application forms for unsuccessful candidates beyond six months of their application. This is in line with the General Data Protection Regulation Records Retention Schedule for Academies (June 2021).

14. The School conducted at least one recruitment campaign in the six months prior to the request. And it has told the Commissioner that eight staff members joined the School between 5 February 2022 and 5 August 2022 (but has not told the Commissioner when it ran the associated recruitment processes).

15. The School received the request in August 2022, responded to it in October 2022 and provided an internal review in November 2022. At each of those points the School could have still held unsuccessful applicants' forms – for example if it had run a recruitment process in June 2022 it would hold unsuccessful applicants' forms until December 2022. However the School confirmed to the Commissioner on 14 March 2023 that it had destroyed the forms in line with its retention schedule. The Commissioner notes that the School was not made aware that the Commissioner had accepted this complaint for investigation until 14 January 2023. The Commissioner cannot say for certain whether the School held any unsuccessful applicant's forms at the point it should have responded to the request. All he can say is that, on the balance of

probabilities, it holds no such information (that would have been in scope) at the date of the decision notice.

16. However, part 1 of the request concerns **any** applications the School received within the requested time period, not only unsuccessful applications.
17. In response to subsequent further questions from the Commissioner, the School confirmed to the Commissioner that the governor in question had been a governor since 2006 ie for 16.5 years at the time of the request. The School also confirmed that it had recruited new staff in that period.
18. The School would therefore still hold the application forms of those individuals recruited since 2006 who were still working at the School at the time of the request. The School would possibly still hold application forms of successful applicants who had formerly been employed by the School since 2006 but who had left at the time of the request. (As it explains in its discussion of part 3 of the request later in this notice, the School keeps personnel records of former staff for six years.) It is not apparent that the School's response to part 1 considered the application forms of successful applicants, past or present.
19. The Commissioner is therefore not satisfied that the School does not hold any information within scope of part 1 of the request in relation to successful applicants since 2006. The School has therefore not complied with section 1(1)(a) of FOIA with regard to this part, but he will consider part 1 again in his discussion of section 13 below.
20. With regard to part 2 the School advised that it does not hold this information as it has no business need to record such information. With regard to part 4 the School advised that internal applicants must submit an application letter, but not an application form. As such, it does not hold the information requested in part 4.
21. The Commissioner considers the School's response to parts 2 and 4 of the request, with the associated explanation, is credible. In the absence of any evidence from the complainant that the School does hold this information, the Commissioner is satisfied, on the balance of probabilities, that the School does not hold information within scope of parts 2 and 4 of the request and the School's response to those two parts therefore complied with section 1(1)(a) of FOIA.

**Section 12 – Cost exceeds the appropriate limit / Section 13 – fees for disclosure where cost of compliance exceeds the appropriate limit**

22. In part 3 of their request the complainant has requested:

“How many staff have been promoted internally by the School since you have been a governor?”

23. The School did not explicitly refer to section 12 in its response to part 3 of the request but indicated that to comply with this part would be time-consuming and costly. On 5 October 2022 the School issued the complainant with a fees notice.
24. The matter of appropriate cost and fees is set out in the [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004](#) SI No. 3244 ('the Fees Regulations').
25. Section 12(1) of FOIA states that a public authority is not obliged to comply with section 1(1) if the cost of doing so would exceed the appropriate limit. In line with the Fees Regulations this is £450 for non-Government departments such as the School (or 18 hours work).
26. Under section 13(1) of FOIA a public authority **may** charge to communicate any information in cases where the cost of complying with section 1(1) exceeds the limit provided under section 12(1).
27. Under section 13(2) any fee is not to exceed the maximum provided under section 12 and the fee is to be calculated in line with that prescribed by the Fees Regulations.
28. Regulation 7 of the Fees Regulations allows a public authority that considers that a request exceeds the appropriate limit to charge for the total sum of the following:
  - the costs incurred in identifying the information that falls within scope and in locating, retrieving or extracting that information.
  - the communication costs (including the costs of communicating whether or not the information is held even if it is not to be provided); and
  - staff time spent on communicating the information.
29. In its response to the request the School had advised that it does not hold records for the time period covered by the request. It provided information for March 2021 to August 2022.
30. At internal review the School acknowledged that, although there are no mechanisms for centrally recording this information for the period requested, the School could have explained in more detail the basis for the response.
31. The School said it had responded as it had on the basis that the then HR administrator only held records for the time that they had been in post and not prior to this. But the School said it could have informed the complainant that personnel files for staff are kept for six years after they leave and that it would be possible to find out how many staff currently

employed, or who left the School's employment no later than July 2016, were promoted internally. The School considered it would also have had to inform the complainant that to compile this data would require significant additional hours that might have carried an additional cost.

32. In the fees notice that the School then sent to the complainant on 5 October 2022, it explained that it does not hold any written records in a format which would enable it to give the complainant a response to the "detailed questions" raised. It said that the only way it could do this would be to go through the personnel records of every member of staff falling within the timeframe of the request. This would involve an intensive search of paper files, covering both current staff and those in the School's archive. The School first says in the fees notice that it estimated that this would take "in excess of 18 hours". Later in the fees notice that the School says that it estimated that complying would take "...24 hours of additional work" and the complainant could make a payment of £600 to cover this. Based on its fees notice, the Commissioner understands that the School's position is that it would take approximately 24 hours to comply with the request.
33. The Commissioner has considered part 1 of the request under his section 1 analysis. He considers that the School may hold application forms of successful applicants currently working at the School who were recruited during the period 2006 to 5 August 2022. The School may also hold the application forms of other successful applicants who had been recruited since 2006 but who had left the School since 2016.
34. Part 3 of the request is for the number of staff promoted internally during the same time frame: 2006 to 5 August 2022
35. To comply with part 1 of the request, for the period 2006 to 2022 the School would need to identify current staff recruited in that period who had been recruited externally, and former staff recruited in that period (whose records it still held) who had been recruited externally. The School would then need to review those staff members' personnel records and identify whether they had disclosed in their application forms that they had previously worked with anyone else in the School.
36. To comply with part 3, the School would need to review the personnel records of all current and former staff (whose records it still held) to identify if any had been promoted internally during the period 2006 to 2022.
37. In relation to both part 1 and part 3, from a quick review of the School's website at the date of this notice, the School was likely to have had approximately 80 members of staff at 5 August 2022. The School would need to review each current staff member's personnel records to identify if they had been recruited externally since 2006 and, if so, if they had

made such a disclosure in their application form. The School would also need to review whether any of those current staff had been promoted internally since 2006.

38. The data the School released suggests internal promotions are not common and so that could theoretically reduce the number of relevant staff records that would need to be reviewed, with regard to part 3. However any staff promoted internally could also have been recruited externally originally, and so all the staff records would still have to be reviewed. In addition the request concerns applications generally, it is not focussed only on teachers' applications.
39. It might reasonably take, in the Commissioner's view, five minutes per record. That work, for current staff, could therefore take approximately seven hours.
40. But as noted, the School keeps the records of former staff for six years. Therefore, also potentially caught by the request are the records of any former staff for the period 2016 to 2022 who were recruited externally (part 1) and any former staff who were promoted internally for the same period (part 3). If there are more than 206 such records, the School's 24-hour time figure would be exceeded.
41. The Commissioner considers it unlikely that that volume of staff left the School in the six years up to 5 August 2022, and the number who meet the specifics of the request would be fewer.
42. From its correspondence to the complainant and submission to him, the Commissioner has not been convinced that it would take the School more than 24 hours to comply with parts 1 and 3 of the request. Nor has the School made a compelling case that it would take more than 18 hours to comply with the two parts. As such, he does not consider that the fees notice the School issued to the complainant is an accurate reflection of the costs the School is likely to incur in complying with the two parts of the request.
43. The Commissioner does not consider that it would exceed 18 hours to comply with part 1 and part 3 of the request. He therefore finds that the request would not engage section 12(1) of FOIA which means that the fees notice that the School issued under section 13 is not valid.
44. The School must now either issue a fresh response to the request, which does not rely on section 12 of FOIA, or it must issue a fresh fees notice.
45. If the School chooses to issue a fresh fees notice, that notice must comply with section 9 of FOIA and regulation 6 of the Fees Regulations. The School should note that the costs it may charge a fee for under this section are much more restrictive.

## **Other matters**

---

46. Provision of an internal review is not a formal requirement of FOIA but is a matter of good practice. The Commissioner expects an internal review to be provided within 20 working days of a request for one. In the most complex cases only, a review should be provided within no more than 40 working days.
47. In this case the complainant requested an internal review on 15 September 2022. The School provided one on 16 November 2022. This was within the maximum 40 working day requirement when the School's half term closure in October is taken into account.
48. In its submission to the Commissioner the School has explained the circumstances around providing the review and the Commissioner notes that the School did keep the complainant updated on the review's progress. In the circumstances of this case the Commissioner considers that the School's handling of the internal review, including its timeliness, was satisfactory.

## **Right of appeal**

---

49. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

50. 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.
51. 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**

**Cressida Woodall**  
**Senior Case Officer`**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**