



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2013/0044

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50465822
Dated: 13 February 2013**

Appellant: MR NICK INNES
Respondent: INFORMATION COMMISSIONER
On the papers: 11 JULY 2013
Date of decision: 12 AUGUST 2013

Before

ROBIN CALLENDER SMITH
Judge

and

SUZANNE COSGRAVE and ROGER CREEDON
Tribunal Members

REPRESENTATIONS:

For the Appellant: Mr Nick Innes
For the Respondent: Ms Helen Davenport, Solicitor for the Information
Commissioner

Subject matter: FOIA

Absolute Exemptions

- Personal data s.40

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal allows the appeal to the limited extent set out below and substitutes the following decision notice in place of the decision notice dated 13 February 2013.

SUBSTITUTED DECISION NOTICE

Dated: 12 AUGUST 2013

Public authority: Bedgrove Junior School

Address of Public authority: Ingram Avenue
Aylesbury
Buckinghamshire
HP21 9DN

Name of Complainant: Mr Nick Innes

The Substituted Decision For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal in part and substitutes the following decision notice in place of the decision notice dated 13 February 2013.

Action Required Within 28 days of service of this Substituted Decision Notice the Public Authority should provide the information identified to be disclosed in this notice.

Robin Callender Smith

Judge

12 August 2013

REASONS FOR DECISION

Introduction

1. The Appellant requested information from Bedgrove Junior School about the prolonged absence of a Head teacher from the school. The requests for information included details about the reasons for the absence, dates of departure and likely return, details of any disciplinary proceedings or complaints made against the Head teacher, copies of correspondence dealing with the absence, and whether a salary was being paid in absence.
2. The School provided some of the requested information. It relied upon Section 40(2) of FOIA in relation to the majority of the remaining requested information. It stated that the information was personal data and its release would infringe the Data Protection Principles as the release of it would be unfair. The first principle states that personal data must be processed fairly and lawfully.

The request for information

3. On 11 July 2012 the Appellant requested information from the school as follows:

Request 1. The date of [name redacted] departure.

Request 2. The reason for [redacted] departure.

Request 3. The details and outcome of any disciplinary proceedings which were on going or completed against [name redacted] in the period leading up to [redacted] departure.

Request 4. Copies of all communications concerning this departure to pupils/parents/members of staff/Governing body and external

organisations e.g. the LEA, both before departure took place and since.

Request 5. Whether [name redacted] is expected to return and when?

4. On 13 July 2012 the School responded and advised that the Head teacher was absent for personal reasons and that they were unable to give a date for his return. On the same date the Appellant requested that the School treat the request as a request for information under the FOIA.
5. On 16 July 2012 the School provided the Appellant with a response to the request. Answers were given to requests 1 and 2, copy correspondence in the public domain was provided in respect of request 4 and in respect of request 5 it repeated that the Head teacher was absent for personal reasons and that a date for his return was unknown. The School advised that it considered any further information requested was the personal data of the Head teacher, concluding that this information was exempt from disclosure under section 40(2) of the FOIA.
6. On 17 July 2012 the Appellant indicated that the response was not satisfactory and raised 3 further matters:

Request 6. The school complaints log for the last two academic years - 2010 to 2011 and 2011 to 2012.

Request 7. The details and outcome of any complaints procedures which were ongoing or completed against [name redacted] in the lead up to his departure/ absence.

Request 8. Whether [name redacted] is still being paid?

7. On 22 July 2012 the School provided the Appellant with the date from which the Head teacher was absent from the School (request 1). It said that the School did not maintain a complaints log (request 6) but that recorded comments and complaints were filed. In respect of this and other requests it indicated that it was relying on section 40(2) FOIA and would

not provide data which is considered to be personal and which it believed would contravene its obligations under the Data Protection Act 1998.

The complaint to the Information Commissioner

8. The Appellant contacted the Information Commissioner on 19 September 2012. At an early stage it was accepted that Request 1 been dealt with. The scope of the complaint related to Requests 2 – 8.
9. The Information Commissioner noted [16] in the Decision Notice that the school had explained that the Head teacher was absent for “personal reasons”. The School had provided further details to the Information Commissioner. Having considered that information, the Information Commissioner was satisfied that the information was of a personal nature. Given the nature of the requests, the requested information would all relate to reasons behind the absence of the individual. Because of the nature of the information provided to him by the school the Commissioner did not provide any further detail in the Decision Notice. However the IC considered it reasonable to say that the circumstances which lead to an employee being absent from a post for some time was likely to relate to that individual’s private life as much as their professional or public life. On that basis the Information Commissioner was satisfied that the disclosure of the information would be likely to result in an invasion of the Head teacher’s privacy.
10. The School also provided evidence that none of the withheld information was in the public domain (to its knowledge). It believed that the release of the information would cause distress and be an unwarranted intrusion. The Information Commissioner concluded that the reasonable expectations of the Head teacher would be for the information to remain confidential. The Information Commissioner accepted the point made by the Appellant that the post of a Head teacher of a primary school would attract greater responsibility and accountability than the position of other

members of staff and a prolonged absence would be of concern to parents and explanations could reasonably be expected.

11. Having considered all the arguments, the Information Commissioner believed the balance lay in favour of protecting the rights and freedoms of the individual and that it would not be fair for the requested information to be released.

The appeal to the Tribunal

12. The Appellant did not dispute that the information requested related to personal information. He referred, however, to the absence in the Decision Notice of any reference to the Information Commissioner's guidance notes in respect of personal information and guidance about access to information about public authorities' employees.
13. In relation to Request 2, the Appellant accepted that it might well be the case that the reason for the absence of the Head teacher was genuinely personal and related to his private life but, if so, he considered the Decision Notice should have stated that explicitly. In relation to Request 3, the Information Commissioner did not appear to have overtly applied the guidance notes. In relation to Request 4, it might well be that the information contained in the communications related to genuinely private matters as opposed matters related to the Head teacher's professional duties. If that was the case, the Appellant did not require the information.
14. However he believed that the summary way in which all the information requested had been judged to be covered by the Data Protection Act principles was not satisfactory and gave rise to doubt as to its general applicability.

15. In relation to Request 5, whether or not the Head teacher intended to return – and when that was likely to be – related purely to his professional duties as the head of a public authority. The Appellant queried whether anyone in such a position could have a reasonable expectation that such information should not be divulged when requested. In relation to Request 6, complaints or “comments” related to the Head teacher would be recorded in relation to the individual’s professional duties and not about his personal life. In relation to Request 7, complaints procedures would be related to his public duties. In relation to Request 8 the Appellant believed that would be a reasonable expectation that, on taking leave of absence of personal reasons, the salary payment status should be clarified publicly.

Evidence

16. The Tribunal has had the opportunity of considering a closed bundle of documents which contained un-redacted information in relation to the information requests made by the Appellant.

17. On 31 May 2013, the Chamber President, Upper Tribunal Judge NJ Warren, reviewed a Case Management decision made by the Tribunal Registrar on 22 May 2013.

18. That followed an email from the Appellant dated 22 May 2013 complaining that the Registrar had accepted a proposal from the Information Commissioner that the Tribunal should reach its decision without seeing all the requested information.

19. The Chamber President looked at the Closed Material and was satisfied that the letter from the School in that bundle gave a sufficient account of the disputed information to enable the Tribunal to reach a fair decision. He was satisfied that to demand any more material “at this stage at any rate” would be disproportionate.

20. He also considered the Registrar's decision concerning those parts of the letter which should be redacted. In his judgement the information in that letter had been fairly redacted on the basis of what was necessary in order not to defeat the purpose of proceedings.

21. The Tribunal itself does not believe it is necessary to see any further or additional closed or confidential material before reaching its decision.

Conclusion and remedy

22. It is clear that the Decision Notice was drafted to make certain that it did not reveal the contents of, or information which could go to reveal some of, the withheld information.

23. The Tribunal, having reviewed all the material before it both open and closed, has concluded that in relation to Request 8 the information about whether the named individual was still being paid at the time of the information request is one that should be revealed to the Appellant.

24. As Head teacher the individual in question occupied a senior position of responsibility at the school. He was no longer performing an active function at the school and whether or not he was being paid from public funds during the period of absence and inactivity is a legitimate matter of public interest and one which outweighs the right of privacy of the individual.

25. In relation to all the other information requests, namely those from 2 to 7, the Tribunal agrees that there was a reasonable expectation that release of the information in question would cause distress and would result in unwarranted intrusion.

26. In all the circumstances there was a reasonable expectation on the part of the Head teacher that the information in Requests 2 - 7 would remain

confidential. It would not be fair on the individual to release that requested information. The Tribunal supports the IC's view that the balance of public interest in relation to those requests lies in favour of protecting the rights and freedoms of the individual.

27. We are therefore satisfied that releasing the information would be in breach of the first data protection principle and such information is accordingly exempt from disclosure under s.40(2) of FOIA.

28. Our decision is unanimous.

29. There is no order as to costs.

Robin Callender Smith

Judge

12 August 2013