

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 February 2011

Public Authority: Seven Kings High School
Address: Ley Street
Ilford
Essex
IG2 7BT

Summary

The complainant requested information relating to a former employee of the School. The School originally refused the request under section 14(1) of the Act on the grounds that it was vexatious. However, following clarification of the request, the School advised that it did not in fact hold any relevant information. The Commissioner finds that, on the balance of probabilities, the School does not hold the requested information. The Commissioner requires no steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act). This Notice sets out his decision.

The Request

2. On 11 January 2010 the complainant requested the following information from Seven Kings High School (the School):

"'Salary' paid to Sir Alan Steer for the period 2008/2009, range £45000 - £50000

- a) *Information should include full details of the services provided to the school by Sir Alan Steer, recompensed as above;*
 - b) *Would you also provide me with entire details of Sir Alan Steer's status of employment by the school during the above period;*
 - c) *I would like precise information regarding Sir Alan Steer's role and duties and the process undertaken by the Governors in deciding to retain his services;*
 - d) *Please provide me with dates that Sir Alan Steer was in the employ of Seven Kings High School in 2008/2009, eg start and end dates; and*
 - e) *Information created by Sir Alan whilst employed during the above period."*
3. The School responded to the complainant on 27 January 2010. The School advised the complainant of its view that her request was
- "part of a determined and personal campaign to seek to embarrass or humiliate Sir Alan Steer despite there being no sound or rational reason for you to do so".*
4. The School was of the view that the complainant's request was vexatious within the meaning of section 14(1) of the Act. Despite this, the School advised that it wished to assist the complainant, and to this end provided the information at parts a) – d) of the request. In relation to part e) of the request the School advised that the cost of compliance would exceed the cost limit at section 12 of the Act.
5. The complainant requested an internal review on 1 February 2010. The complainant was dissatisfied with the way the School had handled her request, and argued that her request was not vexatious. The complainant also disputed the School's claim that section 12 was engaged in relation to part e) of the request.
6. The School responded to the complainant on 3 March 2010. The School advised that it had completed the internal review and remained of the view that the request was vexatious. The School also upheld its decision that to comply with part e) of the request would exceed the cost limit at section 12 of the Act.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 5 March 2010 to complain about the School's refusal to provide her with all the information she requested. The complainant asked the Commissioner to consider the following points:
 - The School did not conduct the internal review within 20 days.
 - There was no evidence that the complainant's request was vexatious.
 - The complainant had valid reasons for making her request.
 - The School did not try to "streamline" the request.
8. The Act does not specify a time limit for conducting internal reviews, therefore the Commissioner has dealt with this part of the complaint in Other Matters below.
9. The Commissioner notes that, although the School claimed that the whole of the request was vexatious, it did provide the complainant with the information requested at parts a)-d). Therefore the Commissioner's investigation was limited to the School's refusal to provide "*Information created by Sir Alan Steer whilst employed during [2008/2009].*"

Chronology

10. Unfortunately, owing to the volume of complaints received there was a delay in allocating the complaint to a case officer. On 8 September 2010 the Commissioner wrote to the School to request full details of its handling of the complainant's request. On 1 October 2010 the School responded to the Commissioner.
11. On 16 September 2010 the complainant provided the Commissioner with detailed arguments as to why she considered that her request was not vexatious. The complainant also telephoned the Commissioner on a number of occasions to set out her views.
12. The Commissioner wrote to the School on 11 October 2010 to seek clarification of some of its arguments in relation to section 14(1). The School responded to the Commissioner on 22 October 2010.
13. During the course of the investigation the complainant requested sight of the School's submissions, so that she could comment and respond to

any arguments put forward. The School subsequently made a similar request to the Commissioner. The Commissioner would note that his normal approach will be to offer both complainant and public authority one opportunity to provide their submissions, after which he might at his own discretion revert to them for clarification about their response.

14. However, in this case it transpired that there was an issue regarding interpretation of the complainant's request. On 29 November 2010 the complainant confirmed that part e) of the request, "*Information created by Sir Alan Steer whilst employed during [2008/2009]*", referred to the school year 2008/2009, which began in September 2008. Until this point the Commissioner had interpreted the time period as being the financial year (ie from April 2008), as Sir Alan had retired from the School in August 2008.
15. The complainant argued to the Commissioner that Sir Alan had not in fact ceased to be employed by the School on 31 August 2008. The complainant referred the Commissioner to a letter she had received from a solicitor acting for the School dated 17 December 2009, in which the School provided information in relation to a previous information request:

"The Headteacher's salary is calculated by reference to academic years, not calendar years. The salary paid was within the following bands for the years set out below

*2004/5 - £90,000 - £95,000
2005/6 - £100,000 - £105,000
2006/7 - £100,000 - £105,000
2007/8 - £105,000 - £110,000
2008/9 - £45,000 - £50,000".*

16. The complainant interpreted this to indicate that Sir Alan was paid £45-50,000 for the 2008/9 academic year, ie September 2008 – July 2009. Therefore, the complainant concluded that Sir Alan was in fact employed by the School during this period, and that it was reasonable to expect that he had generated information during this time.
17. On 30 November 2010 the Commissioner contacted the School to clarify the apparent discrepancy. The School wrote to the Commissioner on 1 December 2010 to confirm that Sir Alan was not employed by the School after 31 August 2008, and he did not generate any information after this date. Therefore the School maintained that it did not hold any information relevant to part e) of the complainant's request.

18. At this point the complainant submitted a service complaint, and the handling of the section 50 complaint was delayed while the service complaint was investigated.
19. On 11 January 2011 the Commissioner wrote to the School to obtain its final submission. The School responded to the Commissioner on 18 January 2011.

Analysis

Substantive Procedural Matters

Section 1: information not held

20. Section 1 provides that any person making a request for information to a public authority is entitled (a) to be informed in writing by the public authority whether it holds information of the description specified in the request and (b) if that is the case to have that information communicated to him.
21. Although the School initially claimed that the complainant's request was vexatious, it subsequently argued that it did not hold the information as none was generated. The complainant disputes this and believes she has provided evidence that the School does in fact hold information relevant to her request.
22. In *Linda Bromley & Others v Information Commissioner and Environment Agency* [EA/2006/0072], the Information Tribunal confirmed that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities. The standard of proof has been recently confirmed by the Tribunal decision of *Innes v Information Commissioner* [EA/2009/0046].
23. In light of the above, the Commissioner considered whether or not it is likely that the School does hold the information requested, ie, information generated by Sir Alan while employed by the School during the academic year commencing 1 September 2008.
24. The School's position is that Sir Alan was not employed by the School during this time, therefore he could not have generated any information. The Commissioner spoke with one of the School's Governors, who confirmed with the School's payroll provider that no

money had been paid to Sir Alan and he had not been employed in any capacity after 31 August 2008.

25. The Commissioner asked the School to explain the information provided to the complainant which led her to believe that it did employ Sir Alan after 31 August 2008 (see paragraph 15 above). The School accepted that its letter was not clear, as it explained that Sir Alan's salary was *calculated* by reference to *academic*, rather than calendar years. However, the School maintained that the figures provided to the complainant related to the amount *paid* to Sir Alan in each *financial* year.
26. The Commissioner agrees that the information provided to the complainant was not entirely clear, and he understands how confusion may have arisen. However the Commissioner considers the School's explanation to be reasonable and the Commissioner has not seen any evidence to indicate that the School has provided him with inaccurate information.
27. In light of the above the Commissioner accepts that Sir Alan Steer was not employed by the School after 31 August 2008, and it follows that he would not have generated any information after this time. Therefore the Commissioner is satisfied, on the balance of probabilities, that the School did not hold any information relevant to part e) of the complainant's request.
28. The Commissioner notes that the complainant's request was not interpreted by the School as the complainant intended. Therefore the School breached section 1(1)(a) of the Act in failing to advise that it did not hold the requested information, and section 10(1) in failing to do this within the statutory time limit of twenty working days.

The Decision

29. The Commissioner's decision is that the School dealt with the request for information in accordance with the Act in that it did not hold the requested information. However, it breached sections 1(1)(a) and 10(1) of the Act in failing to advise the complainant of this within the statutory time limit.

Other matters

30. Although it does not form part of this Decision Notice the Commissioner notes the complainant's concern about the time taken to conduct the internal review. The Act does not provide a timescale for conducting internal reviews, but the Commissioner has produced guidance on what he considers reasonable. The Commissioner is of the view that public authorities should generally complete internal reviews within 20 working days, although he recognises that in exceptionally complex cases this may take up to 40 days.
31. In this case the complainant requested an internal review on 1 February 2010. The School acknowledged this on 8 February and advised that it would respond within the prescribed 20 school days. The School advised the complainant of the outcome of the internal review on 3 March 2010. It appears that the School gave the complainant an incorrect expectation as to the timescales involved, but there was no breach of any of the requirements of the Act and the Commissioner is satisfied that the internal review was conducted promptly.

Right of Appeal

32. 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
Arnhem House
31, Waterloo Way
LEICESTER
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 15th day of February 2011

Signed

**Lisa Adshead
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 14

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”