

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2012

Public Authority: The Manchester College
Address: Ashton Old Road, Openshaw,
Manchester M11 2WH

Decision (including any steps ordered)

1. The complainant has requested information relating to the Principal of The Manchester College (the 'college').
2. The Commissioner's decision is that The Manchester College has not complied with section 1(1)(a) of the FOIA.
3. The Commissioner requires the college to take the following steps to ensure compliance with the legislation.
 - The college should confirm or deny that it holds the requested information.
 - If information is held, it must either provide it or issue a valid refusal notice as set out in the FOIA.
4. The public authority must take these steps 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. On 5 March 2012, the complainant wrote to the college and requested information in the following terms:

1. Principal [name redacted]'s salary

2. *The process by which occupational sick pay at the Manchester College is cut from full day's pay to half day's pay after 60 days absence*
3. *Whether occupational sick pay is cut by any automatic software*
4. *Whether [name redacted]'s pay was cut from full pay to half pay after 60 days absence*
5. *Whether any order was given to restore [name redacted]'s pay from half pay to full pay after the 60 day period. If so:*
 - a. *How soon the order was given after 60 days*
 - b. *Who gave the order*
 - c. *Who was the order given to*
 - d. *On what grounds the order was given*
 - e. *The college's HR department's response to the order*
 - f. *The eventual outcome*
 - g. *Any recorded correspondence between [name redacted] and [name redacted] relating to the above*
6. *[name redacted]'s total sick leave in 2011/12 up to the date of this request*
 - a. *If the above exceeded 120 days what happened to [name redacted]'s pay then*
7. *Whether [name redacted] lost any money from his salary due to absence in 2011/12*
 - a. *If so, how much money was lost*
8. *The total amount allocated to the Manchester College's occupational sick pay hardship fund in 2011/12*
9. *The total amount paid out from the college's hardship fund in 2011/12 and to how many individuals*
10. *Whether [name redacted] received payment from this fund in 2011/12 and if so how much*
11. *The criteria, if any, by which payments from the hardship fund are made by the college*

I would be interested in any information held by your organisation regarding my request. I understand that I do not have to specify

particular files or documents and that it is the department's responsibility to provide the information I require.

6. The college responded on 30 March 2012. It provided a response to questions 2, 3, 8, 9 and 11. With regard to the remainder the college confirmed it held the information requested in question 1, but that it was exempt under section 40 for the FOIA. With regard to questions 4,5,6,7 and 10, the college neither confirmed nor denied that it held the information specified. It further stated that the duty in section 1(1)(a) did not apply by virtue of section 40(2) of the FOIA.
7. Following an internal review the college wrote to the complainant on 1 May 2012. It provided a response to question 1. It maintained its position with regard to the rest of the information requested.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this request to be to determine whether the college was correct in failing to confirm or deny if the information requested at points 4,5,6,7 and 10 above is held on the basis that it considered to do so would breach one of the data protection principles.

Reasons for decision

10. Section 1 of the FOIA states:

General right of access to information held by public authorities.

(1) 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.

11. The Commissioner wrote to the college for further information to support its arguments that it was not obliged to confirm or deny if the requested information was held.
12. The college responded and stated that the information concerned personal information and if held, disclosing it would breach one of the data protection principles.

13. The college therefore believed that section 40(2) of the FOIA (Personal information) applied, consequently section 40(5)(b) also applied. Section 40(5)(b) states:

The duty to confirm or deny—

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded.

14. The college stated that it believed confirming or denying the requested information was held would contravene the data protection principles. It stated that the information concerned personal information relating directly or indirectly to the absence through sickness, and to payments in respect of that absence.
15. The Commissioner will give a public authority one opportunity to justify its position to him, before issuing a decision notice.
16. The Commissioner notes that at the time the complainant made his request the matter of the Principal having been on sick leave was already in the public domain. Therefore there would not appear to be any breach of the Data Protection Act (1998) by the college if it were to confirm or deny that it held information relating to that period of absence.
17. The college has indicated that the first data protection principle may potentially be breached but has not provided any supporting arguments. The college has merely stated that it does not consider it would be fair.
18. In the absence of any detailed arguments from the college the Commissioner is not satisfied that neither confirming nor denying it holds the information would contravene the first principle.
19. The Commissioner therefore considers that the college is in breach of section 1(1)(a) of the FOIA.

Right of appeal

20. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

21. 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.
22. 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, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF