

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

### **Decision notice**

**Date:** 23 April 2014

**Public Authority:** St Louise's Comprehensive College

**Address:** 468 Falls Road

Belfast

BT12 6EN

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

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The complainant had submitted a request to St Louise's Comprehensive College ("the College") under the Freedom of Information Act 2000 ("FOIA") for information about the College's revised management structure for support staff and details of various meetings held at the College. The Commissioner investigated the complaint and found that the College had failed to provide the complainant with the information she requested or to issue a valid refusal notice within the statutory timeframe of 20 working days as set out in section 10(1) of FOIA. The Commissioner required the College to either disclose the requested information to the complainant or apply an exemption under FOIA as a basis for non-disclosure. The College disclosed some further information to the complainant, however it refused to disclose the remainder, citing section 40(2) of FOIA by virtue of section 40(3)(a)(i) as a basis for non-disclosure. The Commissioner is satisfied that the information has been correctly withheld under the above exemption and therefore orders no steps to be taken.

### **Request and response**

1. The details of the request and response are all set out in the Commissioner's previous decision notice.<sup>1</sup>

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<sup>1</sup> FS50496583

## Scope of the case

2. The complainant received some further information from the College on foot of the previous decision notice. She contacted the Commissioner on 3 August 2013 to complain that she was still not satisfied with the information she had received from the College.
3. Following the Commissioner's intervention, the College forwarded some further information to the complainant, however she contacted the Commissioner again to state that she believed that several items of information were still outstanding.
4. A representative of the Commissioner attended at the College on 2 occasions in order to inspect the information held by the College. Following this, the College forwarded some further information to the complainant, making it clear that the information was exempt from disclosure under section 40(1) of FOIA as it constituted the complainant's personal data. The complainant has been advised by that Commissioner that that information falls outside of FOIA and that, if she has any issues with same, she should make a complaint under the Data Protection Act 1998 (DPA). The College also redacted some items of information citing section 40(2) of FOIA as a basis for non-disclosure.
5. The complainant contacted the Commissioner on 26 March 2014 to complain about the College's application of the section 40(2) exemption and to state that she still believed that the College held some outstanding information in relation to her request.
6. In response to the Commissioner's further intervention, the College forwarded some further information to the complainant and provided a list of the information it held and did not hold which was relevant to her request. Having inspected the requested information and perused the list, the Commissioner is satisfied that the complainant has now received all information held by the College pertaining to her request, other than that which was redacted under section 40(2) of FOIA.
7. The Commissioner has considered the College's handling of the complainant's request, in particular the application of the above exemption.

## Reasons for decision

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### Section 40(2) of FOIA

8. Section 40(2) of the FOIA provides that information is exempt from

disclosure if it constitutes personal data and either the first or the second condition in section 40(3) is satisfied. The first condition in section 40(3) states that the disclosure of personal data would (i) contravene any of the data protection principles, or (ii) section 10 of the DPA. In this case the College has explained that it considers disclosing the remaining withheld information contained within the meeting minutes would be unfair and would breach the first data protection principle.

### **Personal data**

9. The Commissioner has first considered whether the withheld information is personal data. Personal data is defined in section 1(1) of the Data Protection Act 1998 as:-

*"data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is 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."*

10. The Commissioner's guidance on the exemption for personal data contained within the FOIA expands on what constitutes personal data:

*"The two main elements of personal data are that information must 'relate to' a living person, and that person must be identifiable. Information will 'relate to' a person if it is:*

- *about them;*
- *is linked to them;*
- *has some biographical significance for them;*
- *is used to inform decisions affecting them;*
  
- *has them as its main focus; or*
- *impacts on them in any way."*

### **Does the information relate to living persons?**

11. The College has argued that the withheld information is the personal data of more than one data subject in that it relates to annual leave, pay, sickness records, investigations and other staffing matters as well as matters pertaining to pupils.
12. Having inspected the withheld information the Commissioner considers

that it relates to living individuals.

### **Does the information identify living individuals?**

13. The Commissioner considers that the withheld information clearly identifies living individuals who are referred to by name. Therefore he considers that the withheld information is personal data.

### **Sensitive personal data**

14. The Commissioner has gone on to consider whether any of the information is sensitive personal data. Section 2 of the DPA defines sensitive personal data as personal data as to:
- (a) the racial or ethnic origin of the data subject,
  - (b) his political opinions,
  - (c) his religious beliefs or other beliefs of a similar nature,
  - (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
  - (e) his physical or mental health or condition,
  - (f) his sexual life,
  - (g) the commission or alleged commission by him of any offence; or
  - (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.
15. Having viewed the withheld information the Commissioner considers that some of it does contain sensitive personal data.

### **Would disclosure of the withheld information contravene any of the data protection principles?**

16. The first data protection principle states:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless*

- 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 also met.'*

17. In considering whether disclosure of the information would be fair to the individuals concerned, the Commissioner has, in this instance, taken the following factors into account:

- the individuals' reasonable expectations as to what would happen

to their personal information

- balancing the rights and freedoms of the data subjects with legitimate interests.

### **Reasonable expectations**

18. The College has argued to the Commissioner that disclosure of the information would not be in the reasonable expectations of the data subjects. Specifically, it has explained that the data subjects would reasonably expect information related to annual leave, sick leave, career breaks, investigations and other staffing and wider school matters to remain undisclosed to the world at large.
19. The Commissioner has noted above that some of the information requested is sensitive personal data. Sensitive personal data is that which by its very nature, has been deemed to be information that individuals regard as the most private information about themselves. Individuals would not usually expect such information to be disclosed to the world at large, as is a disclosure under the FOIA. Due to the sensitivity of this type of information the Commissioner considers that it is generally unlikely that disclosure of such information would be fair. Having viewed the withheld information the Commissioner is of the view that some of the information is sensitive personal data, which it would be unfair to disclose in this case.
20. Where the information is not sensitive personal data the College has argued that it still would not be in the individuals' reasonable expectations for their personal data to be disclosed. It relates to such things as requests for career breaks and annual leave. The College has argued that those individuals would expect their employer to keep such details confidential and not disclose them to the wider public. The Commissioner considers that disclosure of personal and sensitive personal information relating to employees has the potential for causing distress and harm to data subjects (for example to future career prospects or within an individual's private life). Taking into account the circumstances of the case, the Commissioner does not consider it within the reasonable expectations of the data subjects for their personal information to be disclosed where that relates to identifiable individuals.

### **Legitimate interests of the public and rights and freedoms of the data subjects**

21. The Commissioner has considered the legitimate interests of the public in regard to transparency and accountability. However, he does not

consider that the legitimate interests of the public outweigh the expectation of privacy of the data subjects in this case.

22. After having inspected the requested information, the Commissioner can categorically state that he is aware of no personal information which relates to the complainant and is contained in the minutes which has not already been provided to the complainant, save that information which is so closely intertwined with the personal information of third parties that it could not be disclosed without disclosing the personal information of those third parties.

### **Other matters**

23. The Commissioner notes that the information which could be provided to the complainant was provided in a piecemeal fashion and it took several occasions of intervention by the Commissioner before this was provided. Having met with the College and provided general advice and assistance regarding its obligations under FOIA, the Commissioner trusts that the College will in the future be mindful of those obligations and deal with requests for information appropriately and promptly under the legislation.

## Right of appeal

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24. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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 .....**

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