

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 September 2015

Public Authority: St Ronan's Primary School
Address: Ashgrove Avenue
Newry, Co Down
BT34 1PR

Decision (including any steps ordered)

1. The complainant has requested information from St Ronan's Primary School ("the School") in relation to Board of Governors meetings and policies. The School provided him with some information, however he complained to the Commissioner as he believed that more information within the scope of his request should have been held by the School.
2. The Commissioner's decision is that, on the balance of probabilities, the School does not hold any further information within the scope of the complainant's request other than that which has already been provided to him. Therefore, the School has not breached section 1(1) of FOIA. However, the Commissioner finds that the School has breached section 10(1) of FOIA as it failed to respond to the complainant's request within the 20 working day statutory time limit.
3. Since the complainant has now been provided with the information which the School does hold, the Commissioner does not order any steps to be taken.

Request and response

4. On 9 February 2015, the complainant wrote to the School and requested information under both the Data Protection Act 1998 (DPA) and FOIA. His request for information under FOIA was in the following terms:

- (5) "I am requesting the minutes of the Board of Governors meeting for the period that covers the 6th March 2009. I am specifically seeking the minutes where the Board of Governors recorded issues pertaining to me which supported the principal's union the NAHT which advised the principal not to enter into any communication with me, written or verbal until this matter is resolved. These minutes should include any arrangement that the Governors made as to who I was to liaise with and bring any concerns that I might have in carrying out my professional duties as a classroom teacher during the undesignated period referred to in the principal's communication to me dated the 06 March 2009 [document 4].
 - (6) I am seeking the Board of Governors minutes that record the request and approval for all members of staff who went on out of school trips unrelated to school business during the school year 2008. I am seeking how the decision making process is made and records of the decisions made in this regard covering the period 2007/2008.
 - (7) I am seeking the Board of Governors minutes that record its endorsement and approval for the principal to approach prospective candidates who the principal considered to have suitable CVs to fill the vacant teaching posts for St Ronan's school for the period covering 2009/10 as outlined by the principal to all teaching members of staff at a Finance Meeting on the 20th April 2009. I am also requesting the policies and procedures for the recruitment of staff and how these are managed by the Board of Governors.
 - (8) I am seeking clarification through policies, procedures or actions taken how the Board of Governors deal with complaints that are made against the school or members of staff, either anonymously or unsigned written complaints or verbally and not in keeping with the school's complaints policy which was agreed with all members of staff.
5. The complainant, not having received a response to his request, contacted the Commissioner to make a complaint. The Commissioner wrote to the complainant on 22 April 2015 and explained that his complaint contained 2 separate elements –Data Protection and Freedom of Information-and as such was being divided into 2 separate cases This Decision Notice solely addresses the Freedom of Information element of the complaint.
6. On 28 May 2015 the School wrote to the Commissioner, stating that section 14 of FOIA applied to the FOIA element of the complainant's request.

7. The Commissioner wrote to the School on 9 June 2015 asking it to explain its application of section 14 of FOIA to the complainant's request. On the same date, the School, via its solicitors, wrote to the complainant enclosing information relevant to parts (5) and (8) of his request. It stated that it did not hold information relevant to parts 6 and 7 of that request.
8. The Commissioner wrote to the School on 24 June 2015 asking for an explanation as to the searches carried out by the School in order to ascertain that it did not hold the above information relevant to parts 6 and 7 of the complainant's request.
9. The School responded to the Commissioner on 24 July 2015, reiterating that it did not hold information relevant to parts 6 and 7 of the complainant's request.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The Commissioner has considered whether the School holds further information within the scope of the complainant's request which it has not disclosed to him.

Reasons for decision

Section 1(1) information not held

12. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
13. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

14. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any recorded information falling within the scope of a request (or did hold it at the time of such a request). Without evidence to suggest that the public authority holds further information, this argument cannot carry weight.

The complainant's position

15. The complainant has disputed the School's argument that it does not hold further information falling within the scope of his request.
16. The complainant believes that further information is held by the School in relation to parts 6 and 7 of his request.
17. With regard to part 6, which was a request for documentation for year 2008 regarding requests or approval for staff for leave not connected to school business, the complainant believes that there would be an expectation that not only would this situation be recorded but that the Board of Governors would have sought advice from the employing authority CCMS regarding any leave for members of staff during this period.
18. With regard to part 7, seeking documentation authorising approach to teachers for any vacant post in 2009/10, the School asserts that no such document exists, again the complainant believes that there would be an expectation that not only would this situation be recorded but that advice and approval for recruiting teachers in this way would have been sought and given by the employing authority the CCMS. He further believes that written records of a directive of this nature from the Board of Governors to a principal would be recorded as this approach for the recruitment of teachers is not in keeping with CCMS recruitment policy.

The School's position

19. In reaching a decision as to whether the requested information is held, the Commissioner asked the School to explain what searches were carried out for information falling within the scope of this request and why these searches would have been likely to retrieve any relevant information.
20. The School states that it keeps records of all Board of Governors' meetings in the interest of good governance and in accordance with the requirement for the Board of Governors to maintain such information. It confirms that all records relevant to the complainant's request are manual. It has carried out an extensive search of those

manual records for information within the scope of the complainant's request.

21. The School states that no further recorded information relevant to the complainant's request is held within the School.
22. As regards the documentation relating to the recruitment of teachers, the School has confirmed to the Commissioner that it carries out all such recruitment in accordance with CCMS' recruitment policy. As regards documentation relating to staff leave, the School states that, contrary to what the complainant believes, such documentation does not, and never has, existed.

The Commissioner's position

23. The Commissioner considered whether the School had any reason or motive to conceal the requested information but he has not seen any evidence of this. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the School's position that it does not hold any further information relevant to this request.
24. The Commissioner acknowledges that the complainant considers the School's response to his information request is inaccurate. However, the Commissioner reiterates the point which had previously been made to the complainant. This is that he can only consider whether the School holds any recorded information that falls within the scope of his request and not look at accuracy.
25. The Commissioner appreciates the complainant's arguments that he would expect the School to hold information relevant to parts 6 and 7 of his request. However, the Commissioner acknowledges that there can be a difference between what a complainant believes should be held and what is actually held.
26. The Commissioner has accepted the School's submissions regarding its searches for the information requested and the evidence submitted relating to its position. He is therefore satisfied that on the balance of probabilities, the School does not hold any further recorded information which is relevant to the request (or held it at the time of the request). Accordingly, the Commissioner does not consider that there was any evidence of a breach of section 1(1) of the FOIA.

Section 10(1) of the FOIA

27. Under section 10 of the FOIA, public authorities should respond to a

request for information promptly and by the twentieth working day following the date of receipt of the request. In this case, the complainant submitted his request on 9 February 2015 and received a response from the School on 9 June 2015. This is a clear breach of section 10 of FOIA.

Other matters

28. The Commissioner has noted the School's handling of the complainant's request in this case, and its engagement with him during his subsequent investigation. Both fell below the expected standard and this resulted in unnecessary delays in resolving the complaint. The Commissioner considers that the School's performance could have been improved if:
- it had responded to the complainant's original request within 20 working days
 - the response it eventually provided had been accurate and clear
 - it had considered more carefully what, if any, sections of FOIA applied to particular information that it held at the time it received the request, rather than applying, and withdrawing, section 14 of FOIA during the investigation
 - it had responded to the Commissioner's correspondence in a timely manner and kept him updated on any delays.

Right of appeal

29. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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
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