

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 2015

Public Authority: Firs Farm Primary School
Address: Rayleigh Road
Palmers Green
London
N13 5QP

Decision (including any steps ordered)

1. The complainant has requested information from Firs Farm Primary School ("the School").
2. The Commissioner's decision is that the School does not hold any further information within the scope of requests 4, 6 and 7. He has also determined that the School has incorrectly withheld the information sought in request 5. In addition to this, the School has breached section 10 of the FOIA as it failed to provide a substantive response to the complainant within 20 working days.
3. The Commissioner requires the School to take the following steps to ensure compliance with the legislation.
 - Disclose the first aid list as requested in request 5.
4. The School 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 15 July 2014, the complainant wrote to the School and requested the following information:
 1. *Governing Body Minutes of Meetings for the last 2 academic years*

- (2012-2013 and 2013-2014) in regards to Firs Farm Primary School
2. Overall figure of bullying incidents per term, reported to the Governing Body of Firs Farm Primary School for the last 2 academic years (2012-2013 and 2013-2014)
 3. Please confirm whether Firs Farm Primary School has CCTV facility in operation and if so, where the cameras are situated and who these cameras are monitored by.
 4. Please provide updated copies of the following:
 - School Brochure: Home –School Agreement Policy
 - Firs Farm Attendance Policy – A Summary Guide for Parents (full copy)
 5. On 03.12.13 we had requested the list of trained staff in First Aid at Firs Farm Primary School. This was due to the fact that the school's official web-site stated that this list was attached to the school's Health, Safety and Welfare Policy and therefore available to the public/school community. However, this was not the case and there was no attachment of such a list with said school policy, as stated therein. On 11.12.13 the school state in correspondence that this is exempt information as it constitutes third party data. The school subsequently replaced the previous Policy with a new Health and Safety Policy which states, "First Aiders-For an updated list please speak to the Health & Safety Officer". In light of this new information, can you please confirm if you are now able to disclose this information to us and as we had previously requested.
 6. Please provide the following information:
 - a) Firs Farm Primary School Policy on children's glasses when children are expected to remove same during P.E./sports events;
 - b) Firs Farm Primary School Policy on children's stud ear-rings when children are expected to remove same during P.E./sports events;
 - c) what is the school's Policy when such items (personal items) are lost and/or damaged and is this covered by the school's insurance policy?;
 - d) if the school's insurance policy covers personal items/belongings when lost or damaged when children are required to leave same in the classroom, can you please provide full details of the school's insurance policy.
 7. Please confirm if any individual who has had knowledge and/or any direct or indirect involvement in regards to our matter with Firs Farm Primary School, whether in its entirety or in part, at any time that the school is aware of, had;
 - any interest/vested interest in regards to the school and/or in regards to any member of staff at the school;
 - any connection to any other individual who is, or was involved in this matter which would constituted a conflict of interest.

6. The School responded on 23 July 2014 and disclosed some information that fell within the scope of the requests.
7. The complainant subsequently asked for an internal review on 8 October 2014. They expressed dissatisfaction with the response they had received and asked the School to reconsider its handling of the request.
8. The School responded on 10 October 2014 and advised that it would not be responding further on the matter.

Scope of the case

9. The Commissioner accepted a complaint from the complainant on 16 April 2015.
10. The complainant was dissatisfied with the way in which the School had handled their requests and the lack of information that had been disclosed. Specifically, they believed further information was held within the scope of all of the requests.
11. In light of this, the Commissioner's investigation focused on whether the School held further information within the scope of requests 1, 2, 3, 4, 5, 6 and 7.
12. During his investigation, the School applied section 40 of the FOIA to request 5. It also disclosed further information to the complainant. As a consequence of this, requests 1, 2 and 3 have been removed from the scope of the case.
13. This decision notice will consider whether the School was correct to apply section 40 of the FOIA to request 5. It will also consider whether the School holds any further information within the scope of requests 4, 6 and 7.
14. The Commissioner will also consider whether the School has complied with section 10 of the FOIA.

Reasons for decision

Section 40 of the FOIA – request 5

15. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the

data protection principles. The first principle of the Data Protection Act 1998 (the "DPA") states that personal data must be processed fairly and lawfully.

16. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.
17. The withheld information consists of a list of individuals who are trained first aiders.
18. The Commissioner is satisfied that the withheld information is personal data as defined in section 1(1) of the DPA.

Would complying with section 1(1)(b) contravene the first data protection principle?

19. The first principle of the DPA states that personal data must be processed fairly and lawfully.
20. In considering whether it would be unfair to provide the requested names and whether this would therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
 - the consequences of disclosure;
 - the data subjects' reasonable expectations of what would happen to their personal data; and
 - the balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

Reasonable expectations

21. The School did not provide any submissions regarding the individual's reasonable expectations.

Consequences of disclosure

22. The School explained that the complainant has a long standing complaint with the School and this has caused distress to members of staff. It was therefore the School's view that the release of the first aid list would cause further distress to staff.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

23. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
24. The Commissioner considers that information about an employee's action or decisions in carrying out their job is still personal data about that employee, but given the need for accountability and transparency about public authorities, there must be some expectation of disclosure.
25. The Commissioner is of the view that it is reasonable to consider that the names of the individuals on the first aid list would be common knowledge within the School and to pupils and parents. There would therefore be a reasonable expectation that this information would be made available to the public.
26. In the context of the case the Commissioner believes that the names of members of staff at the School that are trained in first aid could be disclosed without any particular damage or distress caused to them. The Commissioner is aware that the School believes damage and distress would be caused to the individual's concerned. However the Commissioner considers that the names on the list would simply reveal who is trained in first aid at the School.
27. With reference to the arguments presented above, the Commissioner considers that in this instance, it is fair and lawful for the information sought in request 5 to be disclosed.
28. As the Commissioner has considered that it would be fair for the information to be disclosed, he must consider whether there is a condition with schedule 2 of the DPA which will allow a disclosure of the first aid list.

Schedule 2 conditions

29. Where disclosure of the information would be fair and lawful then the next question is whether there is a criterion within schedule 2 of the DPA for that information to be disclosed.
30. The Commissioner is satisfied that in this case, the 6 criterion is applicable. This states:

6(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom

the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedom or legitimate interests of the data subject.

31. The Commissioner is satisfied that there is a legitimate public interest in the individuals that have been allocated first aid roles at the School and it is important that these individuals can be identified in case they were needed in an emergency. As explained in paragraph 25, the Commissioner considers that this information would be freely available within the School. Further to this there is no good reason why this information should not be disseminated.
32. The Commissioner therefore considers that a disclosure of the information is warranted for the purposes of the schedule 2 condition 6 in this situation.
33. The Commissioner has therefore decided that the School incorrectly withheld the first aid list under section 40(2) of the FOIA.

Section 1 – is further information held

34. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
35. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

Request 4

36. The complainant was provided with a hard copy of the School's Brochure and the School's Attendance policy. The School explained that as far as it was aware, these two documents had not been updated/amended since the request was received. The School explained that it has no way of determining whether the documents have been updated/amended since the request was received as it deletes past policies when the new updated ones become live. The School advised the Commissioner that this is normal practice to avoid confusion for the number and staff and parents who have access to them.
37. On the balance of probabilities, the Commissioner is satisfied that the complainant has been provided with all the information falling within the scope of request 4 that the School held at the time the request was received.

Request 6

38. The School provided the complainant with information falling within the scope of requests 6a), b) and c). The School confirmed that information falling within the scope of these requests could be located on page 6 of the School's Brochure. The complainant argued that glasses and earrings do not fall under the term 'property'. The Commissioner returned to the School on this point and it confirmed that glasses and earrings do fall under 'property'.
39. The Commissioner is satisfied on the balance of probabilities that the complainant has been provided with all the information that they sought within the scope of requests 6 a), b) and c).
40. With reference to request 6d), the Commissioner would consider that this is a two stage request. In the first part of the request, the complainant is seeking confirmation as to whether the School's policy covers personal items/belongings. In the second part of the request, the complainant is seeking a copy of the insurance policy if it does cover personal items/belongings.
41. The School contacted its insurers and it confirmed that there is *no such cover for personal effects for families at school.*
42. The Commissioner is therefore satisfied that the information sought in request 6d) is not held by the School as personal items are not covered by the School's insurers.

Request 7

43. The School confirmed that it had no record of any conflicts of interests. The complainant disputed this.
44. The Commissioner subsequently returned to the School and asked it to confirm whether it has a record of any conflicts of interests. The School confirmed that it does not hold a record of any conflicts of interests that have been reported.
45. It is important to note that the FOIA only concerns *recorded* information held at the time the request was received. In this instance, the Commissioner considers that the School may be aware of a conflict of interest but it hasn't been recorded. Therefore the Commissioner is satisfied on the balance of probabilities that the School holds no information falling within the scope of request 7.

Section 10 of the FOIA – time for compliance

46. Section 10 of FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
47. In this case it is clear that the School did not provide the complainant with the requested information within the statutory time period.
48. The Commissioner's decision is that the School did not deal with the request for information in accordance with the FOIA. It has breached section 10(1) of the FOIA by failing to provide a substantive response to the request within the statutory timeframe of 20 working days.

Right of appeal

49. 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

50. 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.
51. 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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