

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2016

Public Authority: St Bartholomew's School
Address: Andover Road
Newbury
Berkshire
RG14 6JP

Decision (including any steps ordered)

1. The complainant has requested information from St Bartholomew's School ("the School") relating to IQ and dyslexia profiles of children at the School.
2. The Commissioner's decision is that the School does not hold some of the information that has been requested. With respect to the remaining information, the Commissioner considers that this is exempt under section 12 of the FOIA. However, the Commissioner has determined that the School has breached section 10 of the FOIA as it failed to provide the complainant with a response within 20 working days.
3. The Commissioner requires the School to take no steps.

Request and response

4. On 24 January 2015, the complainant wrote to the School and requested information in the following terms:

"I will make a request. If as you say IQ does not affect the diagnosis of dyslexia then there ought to be proportionately just as many pupils with dyslexia in the high IQ and genius IQ categories as there are in the high average, average and low IQ ranges. Hence I would if you would care to back up your statement by supply a table charting the IQ profile v dyslexia profile of children at St Barts? A Chart illustrating a consistent proportion of dyslexia across all IQ bands will silence me on this point

and further receive my praise and encouragement, anything else simply confirms my concerns".

5. The School responded on 6 February 2015 and advised the complainant that it would look into his request.
6. The School responded on 2 April 2015 and confirmed that the requested information was not held.
7. The complainant subsequently contacted the School on 4 April 2015 and disputed its claim that the information he requested was not held. The School addressed this concern on 26 April 2015 and maintained its position that the requested information was not held.
8. On 11 August 2015 the complainant contacted the School further and provided clarification of the information he sought. He followed this up on 8 September 2015 and advised the School that he had still not received a response.
9. The School responded on 11 September 2015 and confirmed that the information was held by the School. However, it explained that the cost to comply with the request would exceed the appropriate limit. It therefore cited section 12 of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 13 September 2015 to complain about the way his request for information had been handled.
11. The Commissioner has had to consider whether the School holds the requested information and if so, whether this information can be withheld under section 12.
12. The Commissioner has also had to consider whether the School handled the request in accordance with section 10.

Reasons for decision

Section 1 – is the requested information held?

13. Section 1(1) of FOIA states 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”.*
14. 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.
 15. 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).
 16. In its response to the Commissioner, the School confirmed that it does not hold information regarding screening for dyslexic students as this is not something the School does when applying a range of tests which is collectively known as ‘screening’. The School advised the Commissioner that the purpose of the screening process is to look at difficulties of word order, memory, processing and other barriers to learning. The School stated that this does not constitute a dyslexia assessment.
 17. The School confirmed to the Commissioner that the request relates to students being assessed for dyslexia which is not what the School does in applying any assessment/screening procedures.
 18. The Commissioner is aware that the complainant strongly disagrees with the School’s position that information relating to dyslexia assessments is not held by the School. To support his position that this information is held, he provided the Commissioner with a copy of an email from the School which was titled ‘[redacted name’s] *Dyslexia Assessment*’. He also argued that the School has repeatedly corresponded with him about dyslexia assessments and he explained that the School *“have claimed that they do not need to fund my getting independent ‘dyslexia assessments’ done outside the school because their staff have already done just such assessments...”*.
 19. The Commissioner has acknowledged the arguments raised by the complainant. However, based on the submissions provided by the School and on the balance of probabilities, the Commissioner is satisfied that the information requested for dyslexia profiles is not held by the School.

Section 12 – Cost of compliance exceed the appropriate limit

20. The School confirmed that to locate and retrieve information relating to student IQ and information relating to any students who had been screened for a range of purposes, it would require searches through student files of a population in excess of 1600 files. It therefore sought to rely upon section 12.
21. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations.)
22. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.
23. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - a. determining whether it holds the information;
 - b. locating a document containing the information;
 - c. retrieving a document containing the information; and
 - d. extracting the information from a document containing it.
24. The four activities are sequential, covering the retrieval process of the information by the public authority.
25. As explained above, the School explained that it would have to carry out a search through student files in a population in excess of 1600 files.
26. The School estimated that it has approximately 143 students who have been screened for learning difficulties. However it does not keep a central list of these students and so would have to rely on memory and physical searches through paper and electronic files to locate, retrieve and extract the information. The School confirmed that the information is stored differently depending upon the purpose for which it was initially actioned and in many cases both aspects of storage are used.
27. The School explained that it was difficult to provide an estimate of the time it would take to determine whether the information was held and

then to locate, retrieve and extract the information. However it considered that it would take in excess of 10 minutes per file. With approximately 143 files that the School would need to checked, it considered that it would cost £595 to comply with the request.

28. The Commissioner considers that it is reasonable to assume that the School may not be able to identify all of the students who have been screened from memory. The Commissioner therefore considers that it would be likely that the School would have to locate all student files and review the files in order to retrieve and extract the relevant information. The Commissioner considers that even if it took the School one minute to review 1600 files and then retrieve and extract the relevant information, it would take over 26 hours and therefore it exceeds the appropriate cost limit of compliance.
29. The Commissioner further considers that if the School is aware from memory that 100 students have been screened, based on the estimate that it would take one minute to review a file, it would take the School 25 hours to review the remaining 1500 files and still exceed the appropriate limit.
30. The Commissioner is satisfied that the School has correctly applied section 12 to withhold the information sought on student IQ and other information relating to students who have been screened for a range of purposes.

Section 10 – time for compliance

31. 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”*.
32. From the information provided to the Commissioner in this case, it is evident that the School did not respond to the request within the statutory timeframe of 20 working days. The School has therefore breached section 10 of the FOIA.

Right of appeal

33. 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

34. 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.
35. 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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