

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 August 2017

**Public Authority:** Thomas Tallis School  
**Address:** Kidbrooke Park Road  
London  
SE3 9PX

#### Decision (including any steps ordered)

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1. The complainant has requested from Thomas Tallis School (the 'School') information in respect of an individual and the health and safety actions taken relating to pupils at this school.
2. The Commissioner's decision is that the School has correctly applied section 40(5) of the FOIA to part 1 of the request.
3. In regards to the remaining parts of the request, the Commissioner's decision is that, on the balance of probabilities, the School does not hold recorded information falling within the scope of the request. Therefore, the Commissioner does not require the School to take any steps.

#### Request and response

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4. On 29 August 2016 the complainant wrote to the School and requested information in the following terms:

*"1) In relation to the pupil (whom I mentioned in my email of 12/02/16 to the member of school staff [named individual]) who has serious health problems and who jumps over the school fence every day around 1pm thus leaving the school unaccompanied and without authorisation/permission:*

*a) Please disclose whether the aforementioned pupil is still at Thomas Tallis school? If not, please disclose the date on which he left Thomas Tallis school and the reason why he was discharged from the school.*

*b) Please specify how is the school supporting the special needs of the aforementioned pupil?*

*c) Please specify whether there were any changes/improvements introduced by the school regarding his care/support since 12/02/2016?*

*d) Please specify the type (or types) of funding allocated for the support of the special needs of the aforementioned pupil?*

*e) Please specify the amount of EHC plan personal budget or any other kind of funding which was allocated for the support of needs of the aforementioned pupil.*

*f) Please specify the details of how the aforementioned EHC plan personal budget or any other kind of funding was spent on supporting the needs of the aforementioned pupil.*

*g) Please specify details of agreed goals ('outcomes') which were set for the aforementioned pupil.*

*h) Please specify details of how the school will ensure that aforementioned pupil reaches his agreed goals ('outcomes') as set out in an Education Health and Care (EHC) plan.*

*2) What actions did the school take in order to ensure that conditions at LSU improve (curtain pole should be inaccessible to pupils, both pupils and staff should not be exposed to extreme temperatures.*

*3) What actions did the school take in order to ensure that the staff at LSU/school are properly trained in order to provide quality care of vulnerable pupils with special needs?*

*4) What actions did the Children's Services take in order to ensure that the school addressed the above issues?*

*5) Were there any new measures introduced by Children's Services at LSU/school after 12/02/2016 in order to improve health and safety/safeguarding of pupils?*

*6) Is there any monitoring system in place (introduced by Children's Services) in order to verify that the school conforms to legislation relating to health and safety/safeguarding of pupils?"*

5. The complainant wrote to the Information Commissioner and expressed his dissatisfaction with the School for not responding to his information request.

6. Further to the Commissioner's investigation to the case, on 14 December 2016 the School responded and provided the complainant with its response to the request. The School refused to confirm or deny that it held relevant information under the exemptions provided by section 40(5) of the FOIA to part 1 of the request.
7. The School addressed the remaining questions of the request. It provided information relating to questions 3 and 6 and it stated that it does not hold information to questions 2, 4 and 5.
8. On 15 December 2016 the complainant wrote to the School and expressed his dissatisfaction about the length of time it had taken the School to respond to his request.
9. On 11 January 2017 the School responded to the complainant and provided some information to parts of his request. The School advised the complainant that it considered this matter closed, that the School would not respond to him and suggested the complainant write to the Chair of Governors should he wish to correspond further on the matter.

### **Scope of the case**

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10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The Commissioner considers the scope of the case is to determine whether the School has correctly applied section 40(5) of the FOIA to parts 1a – h of this request.
12. In regards to the remaining parts of the request (questions 2 – 6) the Commissioner will consider whether, on the balance of probabilities, the School holds information relevant to this request.

### **Reasons for decision**

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#### **Context**

13. The Commissioner understands that this request relates to a former pupil at the School. The complainant had raised concerns relating to the health of the pupil who he referred to in his FOIA request.

14. The matters raised by the complainant had already been the subject of investigation by Ofsted and other organisations. An investigation was also conducted on whether the curtain pole (question 2 of request) posed any safeguarding concerns.
15. This request seeks information relating to the care and support of a particular pupil and about actions taken within the School's Learning Support Unit regarding the complainant's health and safety concerns.

### **Section 40(5) – personal data**

16. Section 40(5) provides that:

*The duty to confirm or deny-*

- (a) *Does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and*
  - (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, or*
    - (ii) *by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (the data subject's right to be informed whether personal data being processed).*
17. In the circumstances of this case, the Commissioner recognises that the confirming or denying whether the information is held would communicate details relating to care and support needs of the individual. Section 40(5) of the FOIA provides an exemption from the duty to confirm or deny that information is held when doing so would disclose the personal data of third parties, and by this contravene any of the data protection principles provided by the Data Protection Act ("the DPA").

## Is the information personal data?

18. The definition of personal data is set out in section 1 of the DPA:

*"...data which relate to a living individual who can be identified*

*a) from those data, or*

*b) 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 intention of the data controller or any other person in respect of the individual."*

19. The two main elements of personal data are that the information must 'relate' to a living individual and the individual must be identifiable. Information will relate to an individual if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

20. The Commissioner considers that given the requested information relates to an individual and their care and support details, it is possible that the individual could be identified from it. Therefore, the Commissioner accepts that confirmation or denial as to whether any information is held would involve a disclosure of personal data.

## Sensitive personal data

21. Any consideration of fairness must first determine whether the requested information is defined as sensitive under the DPA. Section 2 of the DPA defines sensitive personal data as information which relates to an individual's:

- (a) racial or ethnic origin
- (b) political opinions
- (c) religious beliefs
- (d) trade union membership
- (e) physical or mental health
- (f) sexual life
- (g) criminal offences, sentences, proceedings or allegations.

21. The requested information in this case relates to personal data consisting of the individual's: (e) physical or mental health.

22. Information relating to physical or mental health carries a strong general expectation of privacy. If information of this kind was held by the School and disclosed to the world at large, it may lead to unwanted communications or pose a risk to the individual's emotional wellbeing.
23. The Commissioner is satisfied that the requested information (parts 1a – h) is sensitive personal data. This is because it relates to the individual's physical or mental health. If information was held and released, this would lead to insight of the individual's health and support details which are confidential and should not be made public.

### **First data protection principle**

24. The first data protection principle requires, amongst other things, that the processing of personal data is fair. In considering fairness the Commissioner will take into account the reasonable expectations of the data subjects, what would be the consequences of disclosure, and the legitimate interests in the disclosure of the information in question.

### **Reasonable expectations of the individuals**

25. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
26. The School considers that such disclosure (if held) would not be fair and taking into account the reasonable expectations of the individual concerned, the School set out its reasons.
27. The School considers that the student and/or their parent(s) would have a reasonable expectation that if held, the type of third party information sought would clearly attract a high level of expectation that it would not be disclosed.
28. The School reported that the requested information, if held, would consist of both personal and sensitive information. It said that the information would contravene the first data protection principle, which requires that personal data is processed fairly and lawfully.
29. The Commissioner accepts that the individual and their parent(s) would have no reasonable expectation that information concerning the individual's care and support would be disclosed to the world at large. She considers that if held, disclosure would potentially be an invasion of the individual's privacy and could be distressing.

## **Consequences of disclosure**

30. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the individuals.
31. The School explained the possible consequences of disclosure of the information (if held) on the individual concerned. The School considers that a request to ask the family for their consent to disclose the information is likely to increase unnecessary anxiety. It said that if the information was held and disclosed, the individual and their family members would suffer significant distress. The School added that it would be unfair and a breach of the individual's rights to disclose (if held) the information requested.
32. The School is of the view that the nature of the complainant's request is obvious that he is seeking personal and sensitive information. It believes that by answering his questions it would provide a clear insight into the individual's emotional, educational and psychological wellbeing. Therefore, in light of the sensitive nature of the information, the School has refused the request on the basis of section 40(5) of the FOIA.
33. The Commissioner considers the requested information is personal data and if held, disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. She accepts that if held, disclosure would cause significant distress to the individual and their family.

## **Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure**

34. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40 has been cited is in favour of protecting the privacy of the individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
35. The School considers that there is none or very little public interest value in the information the complainant is seeking.
36. The complainant disputed the School's view and argued that his request is in the public interest. He considers the information relates to *"the provision/quality of care and education for this highly vulnerable pupil"*.
37. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the individual and that it would not be fair to disclose the information if held, in this case. An individual has no expectations that their care and support details will be made public and there is very little value to the wider public in this.
38. The Commissioner upholds the School's application of the exemption provided at section 40(5) of the FOIA to this information. She notes that the information in this case falls under section 2 of the DPA as it relates to the individual's health and support details. As such, by its very nature, this has been deemed to be information that individuals regard as private information about themselves. Further, as disclosure of this type of information is likely to have a detrimental or distressing effect on the individual, the Commissioner considers that it would be unfair to disclose the requested information.



## Section 1 – information not held

39. 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.
40. 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.
41. 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 was held at the time of such a request).
42. The Commissioner has therefore asked the School to explain the searches it has carried out to determine that it does not hold the requested information.
43. The School explained that it had investigated concerns in regards to 'safe guarding officer' and that no action was necessary by the School. It confirmed that as far as it is aware, no information relevant to the scope of the request had been deleted or destroyed.
44. However, during the investigation, the Commissioner was made aware that the School had participated in training courses (offered to all schools as a traded service) and that this loosely covers staff training on vulnerable pupils and children with special educational needs.

## The School's response to the remaining questions

### 45. Question 3

The School had provided the complainant with information relating to this question.

### 46. Question 6

The School had provided the complainant with information relating to this question.

47. The Commissioner is satisfied that in regards to these two questions (3 and 6) the request has been fully complied with in accordance with the legislation. Regarding the remaining questions – 2, 4 and 5 of the request, the Commissioner asked for the answers to be clarified and the responses are as follows:

48. Question 2

The School stated that it does not hold information to this question in a recorded form. It confirmed that small fan heaters were placed within the School's Learning Support Unit and that a curtain pole had been removed.

49. Question 4

The School confirmed that it does not hold information to this question because no action was taken by Children's Services.

50. Question 5

The School confirmed that it does not hold information to this question because no action was taken by Children's Services.

51. The School also confirmed that it has not located any further information relevant to the scope of the request following these searches.

52. On review of the School's response to the Commissioner's enquiries, she is satisfied that it has carried out relevant searches for the requested information.

**The Commissioner's position**

53. The Commissioner's decision in this case, is that on the balance of probabilities, the School does not hold any additional recorded information falling within the scope of the request.

## Right of appeal

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

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

55. 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.
56. 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** .....

**Alun Johnson**  
**Team Manager**  
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