

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2017

Public Authority: South Wilts Grammar School for Girls
Address: Stratford Road
Salisbury
Wiltshire
SP1 3JJ

Decision (including any steps ordered)

1. The complainant requested information relating to student referrals made to external mental health care providers over a 10 year period and also a named counsellor's qualifications and contact details.
2. The Commissioner's decision is that South Wilts Grammar School for Girls (the school) correctly applied the exemption at section 40(2) of the FOIA (personal data) to the withheld information.
3. The Commissioner also finds that, on the balance of probabilities, no further information is held (beyond that which has already been provided) falling within the scope of the request. She however notes that, the school failed to confirm or deny holding some of the requested information and has breached section 1(1) of the FOIA.
4. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

5. On 28 December 2016, the complainant wrote to the school and requested information in the following terms:

"Under the Freedom of Information Act I want you to tell me when you took up the services of Kooth? I want to know exactly what [redacted]"

qualifications are, what she is currently studying and what her contact details are.

I also want to know how many students you have referred on for further mental health care outside of the school over the past 10 years and what ages they were."

6. On 23 January 2017 the school responded and provided the date it engaged the services of Kooth and information about the number of student referrals it made. The school withheld the counsellor's contact details and information about their qualifications, citing section 40(2) of the FOIA (third party personal data) as its basis for doing so. The school also said that it does not hold information about studies undertaken by the counsellor at the time of the request.
7. On 1 February 2017 the complainant replied to the school and asked it to provide a breakdown of the student referral information by year. She also requested the duration of the students treatment under the external mental health care providers.
8. On 6 February 2017 the school responded and provided a breakdown of the number of the student referrals it made in 2009 and between 2011 and 2016. It also said that it was unable to comment on the duration of each student's treatment because this information had not been shared with it.
9. As the school does not have an internal review procedure it advised the complainant to contact the Information Commissioner (the Commissioner) if she was dissatisfied with its handling of the request.

Scope of the case

10. The complainant contacted the Commissioner on 31 January 2017 to complain about the way her request for information was handled.
11. The Commissioner considers that the matters to be decided are:
 - to determine whether, on the balance of probabilities, the school has provided all student referral information falling within the scope of the request;
 - to determine whether, on the balance of probabilities, the school holds information about the duration of the students' treatment under the external mental health care providers and information about studies undertaken by the counsellor, and;

- whether the school is correct to withhold the counsellor's contact details and information about their qualifications under section 40(2) of the FOIA.

Reasons for decision

Section 1: Information not held

12. Section 1 of the FOIA provides that:

“(1) 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”*

13. In cases where there is some dispute between the amount of information provided by the public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-Tier Tribunal decisions, applies the civil standard of the balance of probabilities.

Student referral information (between 2006 – 2008 and in 2010)

14. The Commissioner notes that although the school provided the complainant with a breakdown of the student referrals it made in 2009 and between 2011 – 2016, it did not provide any student referral information for the years between 2006 – 2008 and in 2010, which also fall within the scope of the request (10 years period). The school has explained to the Commissioner that this is because it did not make any student referrals to external mental health care providers in these years and therefore no information is held. The school has confirmed that it has undertaken searches of individual student files (electronic and manual files) and found that no student referrals were made for these years. The Commissioner is therefore satisfied that reasonable searches have been conducted by the school.

15. Having taken into account the explanation provided by the school and that there is no evidence of student referrals being made between 2006 – 2008 and in 2010, the Commissioner considers that, on the balance of probabilities, the school does not hold information (about student referrals) further to that already provided.

16. However, although the school told the complainant on 6 February 2017 that the referral information it provided is 'accurate', the Commissioner notes that there is no evidence of the complainant specifically being informed that no referral information is held for the years between 2006 – 2008 and in 2010, and therefore her decision is that the school has breached section 1 of the FOIA by failing to confirm or deny holding some of the requested information.
17. The school should note that if any requests are received in the future it should ensure, where appropriate, that it confirms or denies whether the information is held.

Information about the duration of student treatment and studies undertaken by the counsellor

14. The school has confirmed to the Commissioner that it does not hold any information in relation to the duration of students' treatment under the external mental health care providers. It has explained that as these services are provided by external agencies that are not outsourced on behalf of the school but are entirely separate from it, there is no business purpose for the school to hold this information, nor do the agencies hold such information on its behalf. It also says that because of the confidential nature of treatment information the school would not be 'privy' to it.
15. In regards to information relating to studies undertaken by the counsellor at the time of the request, the school informed the Commissioner that if it held this information, it would be held in both manual and electronic records. However, it has undertaken searches of its personnel files and IT management system and confirmed that no information is held. Moreover, the school has explained that there are no mandatory qualifications necessary to become a school counsellor, and so any studies undertaken by the counsellor after they were employed by the school would have been their own personal choice, rather than required by it or law. Therefore, there is no mandatory requirement or business purpose for the school to hold this information.
16. Having taken into account the explanations provided by the school, the searches it has conducted and that there is no evidence of information being held relating to the duration of treatment or studies undertaken by the counsellor, the Commissioner considers that, on the balance of probabilities, the school does not hold the requested information.

Section 40 (2) – third party personal data

The school counsellor's contact details and qualifications

17. Section 40(2)(3)(a)(i) of the FOIA provides that:

“(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition below is satisfied.*

(3) The first condition is-

- (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public or otherwise than under this Act would contravene—*
 - (i) any of the data protection principles”*

18. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (DPA).
19. Personal data is defined under section 1 (1) of the DPA as any information relating to a living and identifiable individual. It is the Commissioner’s view that a named counsellor’s qualification(s) and contact details relate to and may also identify them and is therefore personal data.

Would disclosure breach the Data Protection Principles?

20. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner’s considerations below have focused on the issue of fairness.
21. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

22. In regards to the counsellor’s ‘contact details’, the complainant has clarified to the Commissioner that they are seeking the counsellor’s work related contacted details and the school has confirmed that it has engaged section 40(2)(3)(a)(i) of the FOIA to withhold this information.
23. The school says:

- this information is not already in the public domain;
 - as a matter of policy, it does not disclose staff work contact details to parents or members of the public. Although the school says that internal telephone numbers can be used to receive external calls, it explains that it provides a general telephone number on the school's website via which members of staff may be contacted. Therefore, the counsellor would not expect her specific contact information to be shared with the parent(s) of former students and the world at large;
 - it provides staff with the following privacy notice that is referred to in its publication scheme about its use of their personal data:

"We will not give information about you to anyone outside the school or Local Authority (LA) without your consent unless the law and our rules allows us to...", and;
 - the model scheme for schools approved by the Commissioner and Department for Education does not require staff qualifications or their contact details to be published (made public).
24. The school has informed the Commissioner that the counsellor is self-employed. The counsellor sent the complainant an email from her work email address on 2 May 2017. The Commissioner notes that the purpose of this email was a response to questions asked directly to the counsellor by the complainant via an earlier email sent to the school. Therefore, the Commissioner does not consider the counsellor's email to be sent on behalf of the school as a response to the complainant's request for their contact details.
25. In regards to the counsellor's qualifications, the school repeats its arguments above and also says:
- this information was provided by the counsellor when she began working at the school (as did other members of staff who provided their qualifications when they began at the school) and disclosure would therefore place them in a different situation to the other staff;
 - this information is held in the counsellor's personnel file and access to it is restricted to the school's senior management and HR team;
 - this information is not shared with other members of staff, parents or the public and therefore the counsellor would not expect it to be shared with the parent(s) of former students and the world at large and;

- there are no mandatory qualifications for school counsellors to complete. Therefore the qualifications were obtained out of choice by the counsellor for their own personal development prior to the commencement of their employment with the school.
26. The Commissioner also notes that there are no formal qualification requirements to work as a counsellor in England. Where a counsellor may be registered with the British Association for Counselling and Psychotherapy (BACP), it cannot be inferred from this registration alone what qualifications they hold.
27. The view of the Commissioner is that as a self-employed, non-senior member of school staff, the counsellor has an expectation that her work contact details and information about her qualifications will remain private, will only be accessed and used by specific individuals and will only be shared outside the school with her consent or when required by law. To specifically disclose her personal data would put her in a different position to other members of staff that also provided information about their qualifications to the School and whose work contact details remain private and so would be unfair. The Commissioner accepts the school's argument that the counsellor would expect her personal data to be treated fairly. It would be reasonable for her to have an expectation of privacy that would extend to the school refusing to disclose the information that has been requested.

Consequences of disclosure

28. The school says that disclosure of the withheld information under the FOIA to the world at large would be contrary to the counsellor's expectations and an invasion of her privacy and so would be unfair and may cause her distress.
29. The school has not asked the counsellor if she is willing to consent to disclosure of the information because, the complainant has previously asked for information from the counsellor directly and it was not provided. The school says that this strongly suggests that she will not consent to disclosure of the requested information.
30. The school says that the complainant could use the information to make verbal allegations directly to the counsellor and also potentially damage their professional reputation and that this could impact on her livelihood and would be distressing for her.
31. The school says that there are no qualification requirements to become a school counsellor and the information held relates to qualification(s) the counsellor decided to obtain, disclosure of the information could therefore place the counsellor under public scrutiny in relation to her qualifications and this would go beyond what is required by law.

32. In addition to the detriment of the breach of personal privacy that would occur from disclosure of the information, the Commissioner notes that the information relates to the counsellor's professional life and she has therefore considered their position, e.g., that there are no qualification requirements to become a counsellor, that they are not a senior member of staff, they are not in a public facing role, and they are not responsible for making policy decisions. The Commissioner has also considered whether there would be any further detriment to the counsellor should the information be disclosed.
33. It is clear from the complainant's communications with the Commissioner that other channels are being explored. The Commissioner does not consider that public disclosure of this information is necessary to meet the complainant's private interests. Furthermore disclosure could have potential adverse effects on the counsellor as outlined above.
34. The Commissioner considers that the counsellor would be likely to feel a degree of distress if the school disclosed the information. In conclusion, the Commissioner finds that disclosing the counsellor's work contact details and information about her qualifications would be unfair and thus contravene the first data protection principle. The Commissioner finds that the school was entitled to refuse the request on the basis of section 40(2)(3)(a)(i) of the FOIA. This is an absolute exemption and therefore is not subject to the public interest test.
35. As the Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on —to consider whether any of the schedule 2 and 3 conditions of the DPA are met.

Right of appeal

36. 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

37. 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.
38. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF