

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 November 2018

Public Authority: Archbishop Hutton's Primary School

Address: Back Lane
Carnforth
LA5 9QU

Decision (including any steps ordered)

1. The complainant has requested budget reports from Archbishop Hutton's Primary School ('the School') for particular years. The School advised it does not hold some information and released other information with some withheld under section 40(2) of the FOIA (third person personal data). In the alternative, the School has advised the Commissioner that it considers the complainant's request to be vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is as follows:
 - The School has correctly applied section 40(2) of the FOIA to the information it has withheld as it is the personal data of third persons.
 - The School breached section 10(1) of the FOIA as it did not provide an appropriate response to the complainant's request within the required timescale.
3. The Commissioner does not require the School to take any steps to ensure compliance with the legislation.

Request and response

4. On 1 February 2018 the complainant wrote to the School and requested information in the following terms:

"1. Please provide the "full budget reports" for Arch Bishop Hutton Primary School, Warton, Lancashire, between 01/04/07 to 31/03/17 with the exception of 2015/16 as I have previously been provided with this document. For the avoidance of doubt, I have enclosed a sample report of the information I require. To confirm I require the full reports for the years stated above with the only exception being 2015/16.

Please note I do not want "draft" reports as previously supplied."

5. On 15 May 2018 Lancashire County Council responded on behalf of the School. It confirmed that the School does not hold relevant information for the years prior to 2012. It released information related to 2012 – 2015 with some information redacted under section 40(2) of the FOIA.
6. The complainant requested an internal review of the School's response on 18 May 2018. He was not satisfied with how long it had taken the School to provide a response and the fact that it had withheld some information.
7. The School did not go on to provide a review and the matter was passed to the Commissioner.

Scope of the case

8. The complainant contacted the Commissioner on 19 March 2018 to complain about the way his request for information had been handled. As above, he was not satisfied with the length of time it took the School to respond to his request or that it had withheld some information.
9. During the Commissioner's investigation the School confirmed to her that its primary position is that the information it has withheld is the personal data of third persons and exempt information under section 40(2) of the FOIA. In the alternative, however, it told the Commissioner that it considered the request to be vexatious under section 14(1). On 31 October 2018, the Commissioner advised the School to communicate its revised position to the complainant.
10. Having liaised with the complainant, the Commissioner's investigation has first focussed on whether the section 40(2) exemption is engaged and on the School's compliance with section 10(1) of the FOIA. If

necessary she has been prepared to consider whether the complainant's request can be categorised as vexatious under section 14(1) of the FOIA.

Reasons for decision

Section 40 – personal data

11. The information withheld through redactions is contained in three budget reports, for the years 2012/13, 2013/14 and 2014/15. The information is particular financial 'Employee Expenses' information (with associated 'Comments') for all three years relating to *Teaching Staff* and *Education Support Staff* sub-headings. It also includes a 'Comment' under a separate *Staff Development and Training* sub-heading in the 2013/14 budget report. The 'Total £s' figures concluding each of these three sub-headings has been released.
12. In response to a separate request, the School had released to the complainant the budget report for 2015/16. The complainant provided the Commissioner with a copy of this document and she notes that it does not contain any redactions.
13. The School has explained that it is an extremely small, rural primary school with fewer than 20 full and part time members of staff. It says the withheld information in this case relates to the salary of the School's senior leader ie the Headteacher, including information associated with the Headteacher's performance related pay review. It also includes data that allows the Headteacher's salary to be identified separately from that of the other members of teaching staff. The comment under the *Staff Development and Training* sub-heading in the 2013/14 budget report concerns a separate, senior leader.
14. Section 40(2) of the FOIA says that information is exempt from disclosure if it is the personal data of third persons, ie someone other than the applicant, and a condition under either section 40(3) or 40(4) is also satisfied. The Commissioner has therefore first considered whether the information in question can be categorised as personal data.

Is the information the personal data of third persons?

15. The Data Protection Act 1998 (DPA), which was still in force at the time of the School's response to the complainant, says that for data to constitute personal data it must relate to a living individual and that individual must be identifiable.

16. Information will 'relate to' a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
17. The School says that the fact that the information is being requested over a period of years is significant. This is because it reveals whether or not the Headteacher was successful in their annual performance reviews. This determines whether they would move up the nationally agreed pay scales. Following the pay increase, or otherwise, across the budget reports over time ie from 2012 to 2016, allows those with this information to pinpoint years of success and failure against the Headteacher's agreed targets.
18. The School confirmed that it considers some of the withheld information is the Headteacher's personal data. It has provided the Commissioner with unredacted versions of the three budget reports in question and she has reviewed this material. She understands that the first line of the withheld information relating to the *Teaching Staff* sub-heading concerns one individual; the Headteacher. The complainant has requested more than one annual budget report and has previously been provided with an unredacted copy of the 2015/16 report. The Commissioner therefore agrees that releasing this particular information, including the associated 'Comments', would indicate whether or not, over time, the Headteacher had moved up nationally agreed pay scales. The Commissioner is therefore satisfied that this information – which concerns one Headteacher's performance – is that individual's personal data. That individual can be identified from this information and the information is about them and impacts on them.
19. The Commissioner has next considered the information on the second line under the *Teaching Staff* sub-heading. The School has explained that this line concerns the remaining teaching staff. The School has explained that, because it has released the 'Total £s' figure for the *Teaching Staff*, if it released the figure for the remaining staff it would be possible to work out how much had been spent on the Headteacher; by taking the remaining staff figure from the 'Total' figure.
20. The Commissioner is satisfied that the School is correct to withhold the information about the remaining teaching staff. While not necessarily personal data in and of itself, releasing this information would, in effect, release the Headteacher's personal data as it could be used with other information to evidence whether or not the Headteacher had moved up nationally agreed pay scales ie whether or not they had been successful in their annual performance reviews.

21. The Commissioner has next considered the information under the *Education Support Staff* sub-heading. There are four lines under this sub-heading in 2012/13 and three in the remaining two years. Again, the 'Total £s' figure has been released for each year.
22. The School has explained that each line concerns teaching Support Staff working at particular levels including the number at each level, and the amounts paid at each level. The School says that, given the very small size of the school, it would be possible to identify the members of staff from this information. People would know who these individuals were, what level of Support Staff they were and, because the withheld information indicates how many teaching Support Staff there are at particular levels, it would be possible to work out the total payment made to any particular individual member of Support Staff. The Commissioner agrees and is satisfied that the *Education Support Staff* information is individuals' personal data.
23. Finally, the Commissioner has considered the 'Comment' redacted from the *Staff Development and Training* sub-heading in 2013/14. The School has explained that this concerns a separate member of senior teaching staff. The Commissioner is satisfied that this information 'relates to' a particular individual and that that individual could be identified from the information, given the size of the school, its rural location and the year of the budget report in question.
24. The Commissioner finds that all the withheld information can be categorised as the personal data of third persons; namely, the Headteacher, the Support Staff, and a separate senior staff member. It is information that relates to those individuals' performance reviews, salary and associated payments, and training. She has gone on to consider the conditions under section 40(3).

Is a condition under section 40(3) met?

25. The condition under section 40(3A)a) of the FOIA is that disclosing the information would contravene any of the data protection principles. The School argues that disclosure would contravene the first data protection principle because it would not be fair to do so.
26. In assessing fairness, the Commissioner considers whether the information relates to the public or private life of the individual; whether the individual has consented to their personal data being released, their reasonable expectations about what will happen to their personal data and the consequence of disclosure on the individual concerned.
27. Although it relates to their professional life, given their level of seniority within the School, the Commissioner considers that the Support Staff

would have the reasonable expectation that their personal data would not be released to the world at large under the FOIA, and that releasing it would be likely to cause those individuals a degree of distress. She has not been presented with any public interest arguments that support overriding those individuals' rights and freedoms and therefore she is satisfied that it would not be fair to release the Support Staff's personal data.

28. The Commissioner has next considered the Headteacher's personal data. The information relates to the Headteacher's professional life but the School has told the Commissioner that the Headteacher has now left the School and so it has not been able to seek their consent with regard to disclosing this information.
29. The senior leader of a school might reasonably expect that some of their personal data might be put in the public domain – for example, some information about their salary. The Commissioner notes that broad financial information about the School is published on the GOV.UK website¹. In response to a separate request the School has released an unredacted copy of the 2015/16 budget report that shows, under the *Teaching Staff* sub-heading, the payment made to senior staff – albeit that particular figure may also include payment made to a Deputy Headteacher. In addition, information about Headteacher and school leader pay scales is also routinely published².
30. In this case, however, the personal data in question concerns whether or not a particular Headteacher had been successful in their performance reviews. In the Commissioner's view, the Headteacher would have the reasonable expectation that this information would not be placed into the public domain. Disclosing this information is therefore likely to cause that individual a degree of distress.
31. As has been suggested with regard to the Support Staff information, despite the above expectations the withheld information may still be disclosed if there is a compelling public interest in doing so that

¹ <https://schools-financial-benchmarking.service.gov.uk/school/detail?urn=119404>

² <https://www.naswt.org.uk/uploads/assets/uploaded/6319e9f3-9a9d-4c6a-b6feadae64abda7.pdf>

outweighs the legitimate interests of the data subject; that is, the Headteacher concerned in this instance.

32. The withheld information may be of interest to the complainant but he has not presented the Commissioner with any wider public interest arguments for the information's disclosure that would override the Headteacher's rights and freedoms. Consequently, the Commissioner remains satisfied that it would not be fair to release this information and would breach the first data protection principle.
33. Finally, for the reasons given above the Commissioner finds it would not be fair to release the personal information of the separate senior leader. The payment referred to in the *Staff Development and Training* comment does not relate to that individual's salary as such; it is not a particularly high figure, and the Commissioner considers that that individual would have the reasonable expectation that this information would not be put in the public domain. Again no public interest arguments have been put forward to support releasing this information in spite of that individual's reasonable expectations.
34. To summarise, the Commissioner is satisfied that the School was correct to withhold all the disputed information under section 40(2). It is the personal data of various third persons – the Headteacher, the Support Staff and a separate senior leader – and a condition under section 40(3) is satisfied because releasing this information would not be fair and would breach the first data protection principle.
35. Because a condition under section 40(3) has been met, it has not been necessary to consider the condition under section 40(4). Nor has it been necessary to consider whether the request is vexatious under section 14(1).

Section 10 – time for compliance

36. Section 1(1) of the FOIA places a duty of a public authority to confirm whether requested information is held and to communicate the information to the applicant if it is held, and is not exempt information.
37. Under section 10(1) of the FOIA a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
38. In this case, the complainant submitted his request on 1 February 2018 and the School did not comply with section 1(1) until 15 May 2018. Clearly, the School breached section 10(1) on this occasion.

Right of appeal

39. 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

40. 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.
41. 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

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