

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2023

Public Authority: Education Authority Northern Ireland

Address: 40 Academy Street
Belfast
BT1 2NQ

Decision (including any steps ordered)

1. The complainant has requested information relating to the employment of an acting principal role.
2. The Commissioner's decision is that, on the balance of probabilities, the Education Authority Northern Ireland (EA) does not hold the requested information.
3. The Commissioner does not require the public authority to take any further action.

Request and response

4. On 17 February 2021, the complainant wrote to the EA and requested information in the following terms:

"You have trawled through 18 months of minutes of governors meetings (at point 3 above) yet you state that you don't hold minutes of the most senior appointment in a school. Again, I find this astounding. If the minutes are not stored in your office/electronically, I request that you retrieve them from the school while maintaining my anonymity. Therefore, I request again:

In relation to the very recent post of acting principal as per my letter dated 26 November 2020, please provide me with the following information:

- date of advertisement for the post of acting principal;

- the advertisement for the post of acting principal;
 - job description for the post of acting principal;
 - members of the Board of Governors who:
 - (i) were present when the job description was written;
 - (ii) were present at shortlisting;
 - (iii) were present at interview; and
 - (iv) minutes of the recruitment and selection meetings for points (i) to (iii) inclusive above; and
 - the name(s) of the EA officer(s) in attendance at each stage of the recruitment and selection process listed at points (i) to (iii) inclusive above.”
5. The EA responded on 11 March 2021. It stated that it did not hold information within the scope of the request and any documentation regarding the acting principal post would be held by the school.
6. Following an internal review, the EA wrote to the complainant on 26 April 2022. It stated that it did hold some information within the scope of the request and that it had been provided to the complainant in response to a further request.

Scope of the case

7. The complainant contacted the Commissioner on 24 May 2022 to complain about the way his request for information had been handled.
8. The Commissioner considers whether, on the balance of probabilities, the EA holds further information within the scope of the request.

Reasons for decision

9. 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.

10. In scenarios such as this, where there is some dispute between the public authority and the complainant about the amount of information that 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.
11. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
12. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. He will also consider, where applicable, the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, he will consider any other information or explanation offered by the public authority which is relevant to his determination.
13. The Commissioner's role is not to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it.
14. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no further relevant information.
15. In his guidance, the Commissioner recognises that FOIA only applies to information that a public authority already holds in recorded form at the time of a request.

The complainant's position

16. The complainant advises that in the EA's internal review, it advised that information within the scope of the request was held. The complainant advised that this showed that the EA did hold information within the scope of the request.
17. The complainant advised that in a different request, the EA provided information within the scope of this request, the complainant advised that this information should have been provided in the initial request or the internal review rather than being disclosed in a further request.

The EA's position

18. The EA advised that it checked with Human Resources for the requested information, who explained the process for the principal and the EA's involvement in the matter. The EA confirmed that the school managed the process internally and it did not hold any further information other than the two emails it disclosed in a different request.
19. The EA advised the complainant and the Commissioner that the document relating to the appointment of an acting principal is held by the school. The EA has directed the complainant to the school for further information relating to this request.

The Commissioner's position

20. The Commissioner is satisfied that, on the balance of probabilities, the EA does not hold the requested information.
21. The EA did fail to locate relevant emails within the scope of the request the first three times they provided responses to similar requests for information. However, they ultimately provided these emails in a different request and apologised for this oversight.
22. The complainant seemed to accept and acknowledge that the EA did not hold the requested information, but requested it further gathered the information from the relevant school.
23. The Commissioner does not require the EA to take any further action as he is satisfied, that on the balance of probabilities, it does not hold the requested information.

Other matters

24. The Commissioner wishes to remind both the complainant and the EA that repeated requests do not have to be complied with unless a reasonable period has elapsed between those requests. In this case no reasonable period had elapsed and the request should have been dealt with within a response to the initial request rather than over multiple requests and responses.
25. The Commissioner would advise the complainant, that when advised an alternative public authority holds the requested information, they should address this directly with that public authority.
26. The Commissioner also notes the submission from the EA is not up to the standard he would usually expect. In future the EA should ensure all responses are to a higher standard.

Right of appeal

27. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

Catherine Fletcher
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