

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 February 2024

Public Authority: Thomas Coram School
Address: Swing Gate Lane, Birkhamsted
HP4 2RP

Decision (including any steps ordered)

1. The complainant has requested information about staffing and safeguarding procedures. Thomas Coram School ("the School") provided most of the information, but withheld part of it. During the course of the Commissioner's investigation, the School advised it considered the remaining information exempt under section 40(2) of FOIA.
2. The Commissioner's decision is that the School is only entitled to rely on section 40(2) to withhold some of the remaining information.
3. The Commissioner requires the School to take the following steps to ensure compliance with the legislation.
 - Disclose the salary ranges in £5,000 bands of the roles identified by the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 6 September 2023, the complainant wrote to the School and requested information in the following terms:

"Names, positions and salaries of all staff and time in role

Names positions and salaries of all staff who have specific safeguarding roles and time in role

Procedures/protocols for access to the school by individuals not on the school staff that were in place 11th June 2023

Procedures/protocols for access to the school by individuals not on the school staff that were put in place after 11th June 2023"

6. The School responded on 15 September 2023. It explained how most of the information could be found on its website and provided links to this, but did not provide the length of time staff members had been in their roles or salaries.
7. The complainant requested an internal review on 11 October 2023. The School did not conduct one, but did write to the complainant about the matter separately on 3 November 2023 as part of its own complaints process.
8. During the course of the Commissioner's investigation, the School revised its position to state it considered the remaining withheld information exempt under section 40(2) of FOIA.

Reasons for decision

9. Section 40(2) of FOIA allows a public authority to withhold information, that is the personal data of someone other than the requester, if disclosing the information would contravene any of the data protection principles set out under UK data protection law.
10. One of the requirements of the data protection principles is that there is a "lawful basis" for the processing of any personal data (in this case, the "processing" in question being the personal data's disclosure under FOIA). If there is no lawful basis under data protection law, the personal data cannot be disclosed.
11. The Commissioner is satisfied that the withheld information in this case constitutes personal data, as it relates to the employment history of staff members at the School. The information is therefore linked to identifiable individuals and is their personal data.
12. When information is disclosed under FOIA, it is considered to be disclosed to the world at large, rather than just to the individual requester. Therefore, when considering whether disclosure would

contravene the data protection principles, the Commissioner must consider whether publication of the personal data in question to the world at large would contravene the principles.

13. As the data subjects do not appear to have consented to the publication of their personal data, the Commissioner considers that the only lawful basis for publication would be if publication were necessary to satisfy a legitimate interest.
14. The Commissioner acknowledges the complainant is dissatisfied with the School and has a personal interest in receiving this information, as indicated by their complaints made separate to the FOIA. There is also a general public interest in promoting transparency and accountability in public bodies.
15. The Commissioner considers that the appropriate approach if dissatisfied with an employee's conduct is to follow the School's complaint procedure or complain to the relevant regulatory body or ombudsmen. The Commissioner does not consider that public knowledge of the staff members' levels of experience would aid in rectifying the complainant's dissatisfaction.
16. In view of this, and in view of the information and complaint responses that the School has already provided to the complainant, the Commissioner does not consider the disclosure of the staff members' personal data to be necessary to satisfy the legitimate interests pursued by the complainant. Disclosure is therefore not necessary.
17. In this case, the Commissioner is also satisfied that it would not be within the reasonable expectations of the individuals concerned for their personal data, that is, the experience levels, to be disclosed. This expectation may be influenced by a number of factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose which this personal information serves.
18. As disclosures under FOIA are considered to be to the whole world, and the limited wider legitimate interest in disclosure of the withheld information, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms .
19. As the Commissioner has concluded that disclosure would not be necessary or lawful under Article 6(1)(f) of the UK GDPR, he has not gone on to separately consider whether disclosure would be fair or transparent.

20. The Commissioner therefore considers the School are correct to withhold this information under section 40(2).
21. The Commissioner is however not persuaded that the salary ranges of staff would similarly fall under the exemption. In regards to the rights and freedoms of the individuals this concerns, the Commissioner considers salary ranges for public sector workers are regularly disclosed as part of a public authority's publication scheme, and staff members should reasonably expect a certain level of financial scrutiny.
22. The School should refer to the Commissioner's definition document for schools in England which states:

"As a minimum, include the details of senior staff salaries in bands of £5,000. For all other posts, identify levels of pay by salary range." (add the link in the email as a footnote.
23. As the Commissioner considers this would be both fair and transparent, the School should disclose the salary ranges requested.

Other matters

24. The Commissioner notes the School did reply further to the complainant about his request on 3 November 2023 as part of its own complaint process. However, this response did not meet the requirements for an internal review.
25. Under the FOIA, there is no obligation for an authority to provide a complaints process (also known as an 'internal review') if a requester is dissatisfied with the outcome to an information request. However, it is good practice (under the section 45 Code of Practice) and most public authorities choose to do so.
26. In future, the Commissioner would advise the School to refer to the following guidance to ensure their processes for handling internal review requests under FOIA: [Complaints \(internal reviews\) | ICO](#).

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

Susan Duffy
Senior Case Officer
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Wycliffe House
Water Lane
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Cheshire
SK9 5AF