

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 October 2015

**Public Authority:** One Education Ltd  
**Address:** Universal Square  
Devonshire Street North  
Manchester  
Greater Manchester  
M12 6JH

#### Decision (including any steps ordered)

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1. The complainant has made a request to One Education Ltd ("the authority") for the handwritten notes or draft minutes of a meeting. The authority refused the request under section 22 of the Freedom of Information Act ("the FOIA"), which the complainant disputed.
2. The Commissioner's decision is that the authority has correctly refused the request under the exemption provided by section 22. However, in failing to provide a valid refusal notice within the time for compliance, the authority breached the requirement of section 17(1).
3. The Commissioner does not require any steps to be taken.

#### Request and response

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4. On 16 January 2015 the complainant wrote to the authority and requested the following in respect of a meeting held on 8 January 2015 by the governing body of Parris Wood High School:

*"...a copy of the draft minutes of that meeting. If draft minutes have not been prepared may I please have a copy of your hand written notes?"*

5. Following protracted correspondence between the two parties, the authority responded under the terms of the FOIA on 25 March 2015, and refused the request under section 14(1) (in respect of the hand written notes) and section 22 (in respect of the draft minutes).

6. The complainant sought an internal review of this response on 7 April 2015.
7. On 29 April 2015 the authority provided the outcome of its internal review. It confirmed that it was relying on section 22 to withhold all held information.

## **Scope of the case**

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### *Background*

8. The Commissioner understands that the authority in this case is a public limited company owned by Manchester City Council, and which operates as an 'arms-length' organisation to provide a range of services to schools. One such service is to act as clerk to a school's governing body.
9. In this case the request made by the complainant seeks the notes or draft minutes associated with a meeting by the governing body of Parrs Wood High School.

### *The complaint to the Commissioner*

10. The complainant contacted the Commissioner on 17 April 2015 to contest the authority's refusal of the request. The complainant also brought a complaint under section 77, which has been considered and concluded separately by the Commissioner and does not form part of this decision.
11. During the course of the Commissioner's investigation, the authority provided submissions to clarify what information was being withheld. The authority also confirmed that in addition to withholding the held information under section 22, it also considered that the request was vexatious under section 14(1).
12. The authority also confirmed to the Commissioner on 18 June 2015 that it had provided a copy of the draft minutes to the complainant at the behest of the governing body in this matter, but that this was expressly outside the terms of the FOIA. In relation to this the complainant contacted the Commissioner on 7 September 2015 to dispute that he had not received these draft minutes.
13. The Commissioner's role is to consider whether the terms of the FOIA have been complied with. As such, the Commissioner considers it necessary to first clarify what information was held by the authority during the time for compliance, and second, whether this information has been correctly withheld under the terms of the FOIA. Any privileged

disclosure outside the terms of the FOIA (whether disputed or not) does not fall within the Commissioner's jurisdiction.

## **Reasons for decision**

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### **Section 1(1) – What information is held**

14. Section 1(1) states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.

*What information was held at the time of the request?*

15. In order to reach a decision on this matter, the Commissioner considers it necessary to ascertain what information was held in the time for compliance with the request. This is because the authority did not provide a valid response under the FOIA until after the time for compliance had elapsed. In such situations, the Commissioner considers that a public authority should consider the application of section 1 within the period between the date of the request and the end date for compliance.
16. The Commissioner therefore wrote to the authority on 26 May 2015 to request its submissions in respect of this aspect.
17. The authority has responded that the hardcopy handwritten notes were held only until approximately 21 - 22 January 2015, when they were destroyed following the completion of the electronic draft minutes. The authority's position is that the handwritten notes no longer served a business purpose, and that such notes (which are handwritten by a member of the authority's staff attending the meeting) are routinely destroyed once the draft minutes have been created. The authority has further confirmed that there is no statutory obligation upon it to retain these handwritten notes.

*The Commissioner's conclusion*

18. The Commissioner must decide on the balance of probabilities what information is likely to be held by the authority that would fall within the scope of the request.
19. Having considered the authority's submission, the Commissioner has concluded that whilst the handwritten notes were held at the date of request, this document was destroyed upon the electronic draft minutes being completed. In the absence of any business or statutory need to

retain these handwritten notes, the Commissioner must conclude that their destruction represents the ordinary course of business, and that the draft minutes were the only recorded information held by the end of the time for compliance.

20. In any event, it is clear from the wording of the request that it only seeks the handwritten notes if draft minutes have not been created. Having identified that the draft minutes had been created and were held, the Commissioner considers that would cancel the request for the handwritten notes.
21. Having concluded that the draft minutes were the only recorded information held by the end of the time for compliance, and that this was the information specified by the request, the Commissioner must conclude that no further information is held besides the draft minutes.

## **Section 22 – Information intended for future publication**

22. Section 22 states:

*“(1) Information is exempt information if—*

*(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),*

*(b) the information was already held with a view to such publication at the time when the request for information was made, and*

*(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”*

23. The authority has advised the Commissioner that it fulfils the role of 'Clerk to the Governing Body' under the terms of the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013. Under these regulations, the clerk is responsible for providing the minutes of the previous meeting to be signed on the next meeting of the governing body. The regulations also require the governing body to make signed minutes publically available, which it does by publishing these on its website.
24. The authority has confirmed that on the date of the request, which was made eight days after the date of the meeting, there was a clear intention that the draft minutes would be published once signed by the governing body, for which a meeting was scheduled to be held on 26 March 2015.

*The public interest test*

25. The Commissioner is aware from the authority's submissions that it acknowledges the importance of public authorities operating in an open and transparent manner, and that this is a factor that has been considered as part of its public interest reasoning. The complainant has also advised that the disclosure of the information is necessary in order for him to bring a complaint to the Department of Education.
26. In opposition to these factors, the authority considers that the disclosure of the draft minutes into the public domain would be damaging to the process of ensuring that minutes are correct, and could result in a false impression of the content of the meeting due to error or the omission of detail. Such disclosure could even lead to formal action against the governing body. This is particularly so in that the held draft minutes were found to potentially contain personal data, and that this is the reason why the minutes have not yet been signed and readied for publication as of the date of the authority's submission.
27. The authority acknowledges the complainant's intention to make a complaint to the Department of Education, but it considers that there remains clear public interest in ensuring that the minutes are only signed once they are agreed to be both a proper record of the meeting and suitable for publication as minutes.
28. Whilst the Commissioner has considered the detailed context to the request provided by the complainant, it is evident that his intention to submit a complaint to the Department of Education relates to a personal rather than public interest. It has also clear that the process of signing minutes is to ensure that a proper public record is issued, and there is public interest in ensuring that this process is completed. This is particularly so in the context of this request, as the Commissioner understands that the draft minutes may unintentionally contain personal data that is not suitable for publication.
29. As part of the Commissioner's investigation, he has also identified that prior signed minutes are publically available through the webpages of Parrs Wood High School, and that whilst in the circumstances of this request the minutes have been delayed in being signed, there is still a clear mechanism by which they are expected to be published once signed. Additional to this, the Commissioner notes that the signed minutes will also be publically available from the governing body itself through the access regime provided by the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013.

30. On the basis of the above factors, the Commissioner has concluded that at the time of the request the authority was correct to withhold the information under the exemption provided by section 22.
31. Having concluded that the draft minutes have been correctly withheld by the authority under section 22, the Commissioner does not consider it necessary to determine whether the request is vexatious under section 14(1).

### **Section 17 – Refusal notice**

32. Under section 1(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."*

33. Section 10(1) requires a public authority to comply with section 1(1) within 20 working days.

34. Section 17(1) states:

*"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-  
(a) states that fact,  
(b) specifies the exemption in question, and  
(c) states (if that would not otherwise be apparent) why the exemption applies."*

35. In this instance, the authority did not issue a valid refusal notice within the 20 working day time for compliance. As such the authority breached section 17(1).

## Right of appeal

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

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

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**