

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 July 2011

Public Authority: The Governing Body of Tidemill Primary School
Address: Tidemill Primary School
Frankham Street
Deptford
London
SE8 4RN

Summary

The complainant submitted requests to the governing body of Tidemill Primary School ('the governing body') for information from meetings. The complainant specified that she wished to receive this information electronically. The governing body provided some information, but stated that it would not provide the remaining information in the complainant's preferred format. The Commissioner has investigated and found that the governing body was entitled to refuse to comply with the part of the complainant's request to receive information electronically. However, in relation to another part of the request, it has breached section 11(1)(a) of the Act by failing to provide the information electronically. It has also breached section 1(1)(a) of the Act by failing to confirm it did not hold information, and section 10(1) by failing to comply with section 1(1) within the statutory time for compliance. The Commissioner requires the governing body to disclose some further information to the complainant electronically.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 20 July 2010, the complainant submitted a request to the governing body for the following information:

"...copies of the minutes of the governors' meetings from the last two years, including any subcommittees on finance and head teacher remuneration"

3. On 28 July 2010, the school sent copies of minutes from some governors' meetings to the complainant via email. On 30 July, copies of minutes from 2008 were disclosed. However, the school stated that information about salaries was "confidential" and consequently, it needed to check which documents from the Finance Committee could be disclosed.
4. On 30 July 2010, the complainant emailed the school to make a request for the minutes of governing board from 2007 – 2008. The complainant also stated that a draft version of the minutes from the October 2009 meeting had been sent to her, and requested a final version. She also submitted a supplementary request for:

"...minutes from the Finance Committee...[and] the Performance Management and Senior Appointments Panel...from the period 2007 to 2010".

The complainant asked that this information was sent to her via email.

5. On 30 July the school emailed the complainant to confirm that the final version of the minutes from October 2009 had already been sent to her, but that the footer of the document had not been changed to show this. A scanned version of the hard copy document was sent.
6. On 4 August 2010 the complainant emailed the governing body to ask that the 'missing' minutes from meetings on the following dates were disclosed to her:
 - o 12 February 2008
 - o 18 March 2008
 - o 8 April 2008
 - o 2 May 2008
 - o Missing pages from minutes of 8 May 2008
 - o 2 October 2008

7. On 10 August 2010, the complainant emailed the governing body and reiterated her request of 4 August for the outstanding minutes, and her request of 30 July for minutes of the Finance Committee and the Performance Management and Senior Appointments Panel. The complainant also made new requests for:
 - signed and numbered versions of minutes for a number of other dates; and
 - "Agenda for every meeting...any report or other paper considered at any GB meeting for the dates above".
8. On 24 August 2010 the governing body emailed the complainant and stated that all of the requested minutes were now available for inspection at the School. The governing body offered two dates that the complainant could come in to inspect the documents and stated that it would arrange for a member of the Governor Services team at the LEA to be present. The complainant responded on the same day and requested an internal review of the way that her request had been handled. She also asked that the governing body specify the exemption it relied upon to withhold information.
9. The governing body responded on 30 September 2010. This response stated that it had sought guidance from 'Governor Services' at the LEA, who had advised that the governing body did not need to explain which exemption it had placed upon the requested information.
10. During the course of the investigation, the governing body disclosed copies of the minutes of the meetings of the Finance Committee to the complainant via email. After receiving a schedule of the information that was held, the complainant specifically requested copies of the school's finance and pay policies, and the governing board also disclosed these documents.

The Investigation

Scope of the case

11. On 24 October 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled.
12. The Commissioner clarified the scope of the investigation with the complainant on 4 April 2011. During the course of the investigation,

the governing body disclosed some further information to the complainant. The Commissioner has identified the following outstanding issues for consideration:

- i. Does the governing body hold any information within the scope of the complainant's request for minutes from the Performance Management and Senior Appointments Panel?
- ii. Was the governing body correct to refuse to provide the information in the complainant's preferred format?
- iii. Whether the governing body had complied with the time limits for compliance set out in the Act

Chronology

13. The Commissioner wrote to the governing body on 6 April 2011 with some queries about the way it had handled the complainant's request. The governing body responded on 18 May 2011. The Commissioner wrote to the governing body on 24 and 26 May with some further queries. The governing body responded on 15 June 2011.

Analysis

Substantive Procedural Matters

Section 1

14. Section 1(1)(a) provides that a public authority in receipt of a request will confirm whether it holds the requested information. Section 1(1)(b) provides that if the information is held, the public authority will provide it to the applicant.

Is any information within the scope of the complainant's request for minutes of the Performance Management / Remuneration Committee?

15. Where there is a dispute about whether information within the scope of a request is held, the Commissioner will make a decision using the civil standard of the balance of probabilities test.
16. The complainant's original request of 20 July was for "copies of minutes of the governor's meetings...including any subcommittees on...headteacher remuneration". On 30 July 2010, the complainant requested "...minutes from the ...Performance Management and Senior Appointments Panel...from the period 2007 to 2010". The complainant

explained that she sought this information in order to determine the headteacher's salary, stating that

"...whilst I accept that salaries, bonuses and other payments are considered private matters in most arenas - unfortunately the genie is now out of the bottle and I think as parents, we should have some accounting of what the actual figures were and where they came from".

17. In its response of 30 July 2010, the school stated that:

"The headteacher's performance management and anything relating to salaries is confidential information. I have asked Governor Services to confirm which of the Finance Committee meeting documents can therefore be released as public information."

18. During the course of the investigation, the governing body disclosed copies of the minutes of the finance committee to the complainant. However, these did not contain any details of the headteacher's salary or remuneration. The governing body further confirms that it does not have a 'Performance Management and Senior Appointments Panel', and so no information was held regarding this part of the complainant's request. The Commissioner therefore made further enquiries about whether any meetings were held to discuss the headteacher's salary, as this would be likely to fall within the scope of the complainant's request for minutes from subcommittees that discussed the headteacher's salary.
19. The governing body has confirmed to the Commissioner that there was no formal committee or procedure established to discuss the headmaster's pay. Instead, the matter was decided by a "...select group of governors charged with dealing with the issue". No records were created or minutes taken as a result of these discussions.
20. The Commissioner is satisfied that on the balance of probabilities, the governing body does not hold information that falls within the scope of this part of the complainant's request. This is because the governing body has confirmed that there was not any formal process or committee for determining the headteacher's salary, and consequently that it did not records or minutes regarding its discussions. The Commissioner has seen no evidence to suggest that this is not the case.
21. The Commissioner notes that during the course of the governing body's correspondence with the complainant, it did not confirm that it did not hold any information regarding her request for minutes of committees

that discussed the headteacher's pay. Indeed, it implied in its response of 30 July 2010 that this information was held but would not be disclosed. As the governing body failed to confirm that it did not hold information relevant to this part of the request, the Commissioner finds that it breached section 1(1)(a) of the Act.

Section 11

Was the Governing Body correct to refuse to provide information via email?

22. The complainant requested "...agenda for every meeting...any report or other paper considered at any GB meeting for the dates above". The complainant specified that she wished this information to be emailed to her. The governing body stated that it would make this information available for the complainant to inspect at the school, and that she would be able to take photocopies of any documents she found. However the complainant was not amenable to this suggestion.
23. Section 11(1)(a) of the Act provides that where an applicant expresses a preference to receive information in a particular form, a public authority should give effect to that preference "so far as is reasonably practicable." The Commissioner has therefore considered whether in this case it is 'reasonably practicable' for the governing body to provide the information in the complainant's preferred format.

Agendas

24. The governing body has explained to the Commissioner that the "there are electronic copies of the agendas for the full governing body meetings as these are provided by the clerk to governors". The Commissioner's view is that it would therefore be reasonably practicable for these documents to be emailed directly to the complainant, as the process of printing and scanning a hard copy would be unnecessary.
25. The Commissioner therefore finds that the governing body has breached section 11(1)(a) by failing to provide this part of the requested information in the complainant's preferred format.

Documents and reports

26. Although agendas for each meeting are held in electronic format, the governing body states that "reports and other papers" considered at meetings are held in paper hard copies within the school.

27. The Governing Body has provided the Commissioner with a schedule of these documents for the meetings over the relevant time period, which it has produced by reviewing the minutes of meetings and noting the documents considered. The Commissioner has reviewed this schedule and notes that excluding the agendas, there are in excess of 1500 A4 pages of documents. The governing body explains that these would need to be scanned, saved electronically and emailed to the complainant in order to comply with her request to receive the information electronically. It states that completing this task would occupy a member of staff for several days. The Commissioner accepts that because of the large number of documents that fall within the scope of the complainant's request, it would not be reasonably practicable for the information to be provided in the requested format. This is particularly the case because of the limited nature of the technological and staffing resources available to the public authority.
28. In a conversation with the Commissioner, the governing body explained that although many of these documents were created using computers, it only holds easily accessible hard copy versions. This is because the documents considered at the meetings originate from a range of sources. For example, some are produced by third parties such as the LEA, and handed round as hard copies at the meeting. The governing body explains that other documents are produced by attendees and are usually distributed in hard copy. However, it concedes that some of these are emailed to other attendees prior to the meeting. It is therefore possible that some of the documents might be held on the PCs of members of the governing body, or in their email accounts. However, given the large number of documents and the range of sources for these documents, it would be difficult and time-consuming to determine which have been held or retained electronically.
29. The Commissioner's view is that the Council was therefore entitled to refuse to provide information electronically because the volume of the requested information was so great that this would not be practical. The Commissioner consequently concludes that the governing body has complied with section 11 in relation to the complainant's request for "...any report or other paper..." considered at governing body meetings.

Section 10

30. Section 10(1) provides that a public authority will comply with section 1(1) within 20 working days.

The finance committee minutes

31. Following the intervention of the Commissioner, the Governing Body disclosed the minutes of the Finance Committee to the complainant on 27 May 2011. The complainant's original request for these minutes was made on 20 July 2010. This is significantly in excess of the period of 20 working days for compliance with section 1(1)(b) set out in the Act, and consequently the Commissioner finds that the Governing Body has breached section 10(1) in relation to this part of the request.

Minutes of the Performance Management / Remuneration Committee

32. As set out in paragraph 20, the Commissioner accepts that the Governing Body does not hold any information within the scope of this request. The Governing Body failed to comply with section 1(1)(a) of the Act and confirm it did not hold this information. Consequently it has also breached section 10(1) which requires a public authority to comply with section 1(1)(a) within 20 working days.

The Decision

33. The Commissioner's decision is that the Governing Body of Tidemill Primary School did not deal with the complainant's request in accordance with the Freedom of Information Act. The Commissioner finds that the governing body
 - o breached section 1(1)(a) by failing to confirm that it did not hold information within the scope of the complainant's request for minutes of the performance management / remuneration committee;
 - o breached section 11 by failing to provide agendas for each meeting to the complainant electronically; and
 - o breached section 10(1) by failing to comply with section 1(1) within the statutory time for compliance.

Steps Required

34. The Commissioner requires the Governing Body to disclose the agendas for each meeting to the complainant via email.
35. The Governing Body must take the steps required within 35 calendar days of this notice.

Failure to comply

36. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

37. Although they do not form part of this decision notice, the Commissioner wishes to highlight the following matters of concern.
38. As detailed in paragraph 9, the Governing Body appears to have been advised that there is no need to indicate the exemptions it relies on when refusing a request for information. The Commissioner emphasises that section 17(1)(b) places a duty on a public authority to specify which exemptions it relies upon when issuing a refusal notice. Further information is available in the Commissioner's publicly available guidance, '[Writing a refusal notice](#)'.

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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 28th day of July 2011

Signed

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

Legal Annex

The Freedom of Information Act 2000

General Right of Access

Section 1(1) provides 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."

Time for Compliance

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Means by which communication can be made

Section 11(1) provides that –

"Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference."