

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2013

Public Authority: The Governing Body of The Coseley School

Address: Henne Drive
Ivyhouse Lane
Coseley
Bilston
West Midlands
WV14 9JW

Decision (including any steps ordered)

1. The complainant has requested copies of The Coseley School's ("the School") development plans for the last three academic years, Headteacher teacher's objectives and evaluation of achievement against the objectives. The School provided the development plans but the remaining information was withheld as it constituted the personal data of the Headteacher (section 40(2)), the information was confidential (section 41) and disclosure would be likely to prejudice the effective conduct of the School (section 36).
2. The Commissioner's decision is that the information is personal data and section 40(2) has been correctly applied to withhold this from disclosure.

Request and response

3. On 5 November 2012, the complainant wrote to the School and requested information in the following terms:

"1. School Development (or Improvement) Plan: Please can you supply me with plans covering the last three academic years. I request that you send me initial and updated copies of these documents. I also request Governing Body minutes where these plans have been

discussed/reviewed, together with any papers or other documents presented, at these meetings.

2. Headteacher Objectives: I presume that some of the objectives in these plans are the specific responsibility of the Headteacher. Please therefore supply me with information concerning the objectives of the Headteacher at this school for the last three years. If Headteacher objectives are not part of the above development plans then please provide me with the additional details. Specifically, I wish you to supply me with any and all recorded information concerning:

- 1. The Objectives and Success Criteria specified by the Governing Body (and/or any subcommittees) for the Headteacher*
- 2. Any summary of the tasks completed and evidence of impact*
- 3. Any initial evaluation recorded by Governors*
- 4. The evaluation provided by the External Adviser in reviewing these objectives*
- 5. The final opinion of Governors concerning the achievement of said objectives"*

4. The School responded on 30 November 2012. It provided the School Improvement Plans (SIPs) for the last three academic years and the Governing Body minutes where the SIPs were discussed. In terms of the second part of the request the School stated that the Headteacher's objectives were clearly denoted in the SIPs.
5. The complainant responded on 30 November 2012 and confirmed he was satisfied with the response to the first part of his request but did not consider the School had properly addressed the 5 points in the second part of the request. In particular the complainant was concerned that the School had not confirmed or denied if the information was held and in relation to point 4 the complainant understood this information should be held as it was a statutory requirement.
6. Following an internal review the School wrote to the complainant on 7 January 2013 regarding its response to the second part of the request. The School stated it had interpreted the request as only requiring the provision of the Headteacher's objectives if they were not in the SIP which they were. However, with reference to the request for the evaluation of the external advisor of the Headteacher's objectives the School now considered this information to be exempt on the basis of section 40(2), 41 and 36(2).

Scope of the case

7. The complainant contacted the Commissioner on 10 January 2013 to complain about the way his request for information had been handled.
8. In particular the complainant was satisfied the first part of his request for SIPs had been met however he did not consider that the SIPs he had been provided with contained the full Headteacher objectives. The complainant therefore still required the information requested in the second part of his request and did not consider the exemptions prevented disclosure when there is a public interest in the information being disclosed so the School can be accountable.
9. The complainant did state he was not seeking access to personal information and if there was any information within the objectives related to bonus payments linked to the objectives he expected this to be redacted.
10. The Commissioner considers the scope of his investigation to be to determine what information is held within the scope of the second part of the request which is not already included in the SIPs. The Commissioner will then consider the application of the exemptions cited by the School.

Reasons for decision

11. The School when corresponding with the Commissioner has confirmed that the withheld information constitutes the personal objectives of the Headteacher and bullet points from the review and evaluation of the Headteacher's objectives which takes place annually.

Section 40 – personal information

12. Section 40(2) of the FOIA provides that information which is the personal data of a third party is exempt if a disclosure of the information would breach any of the data protection principles.
13. The first question which the Commissioner has considered is whether the information is personal data for the purposes of the Data Protection Act 1998 (DPA). Personal data is defined in the DPA as:

"data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.”

14. The Commissioner notes that the withheld information consists of a specific individual's performance objectives and statements from the Governing Body on performance against the previous year's objectives. The objectives also include professional development and training requirements. In this case, the Commissioner is satisfied that the information relates to a living individual, specifically as it relates to a Headteacher whose identity is publicly known. The Commissioner accepts that the information is personal data as defined by the DPA.
15. Having decided that the information is personal data, the next question which the Commissioner must consider is whether a disclosure of that information would breach any of the data protection principles.
16. The most relevant data protection principle in this case would be the first data protection principle. This requires that information is processed 'fairly and lawfully'. The Commissioner must therefore decide whether a disclosure of the information would be 'fair'.
17. In considering whether disclosure would be fair the Commissioner takes into account the following factors:
 - Whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
 - The individual's reasonable expectations of what would happen to their information; and
 - Balancing the rights and freedoms of the data subject with legitimate interests.
18. The Commissioner has considered the requested information and the arguments presented by the School that the Headteacher would have had no reasonable expectation that her objectives and evaluation would be made publicly available. To support this the School has explained that it has adopted the Dudley MBC Performance Management Policy¹ which contains a section on confidentiality, specifically in reference to Headteacher's performance management:

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[http://www.edu.dudley.gov.uk/cpd/Documents/Performance%20Management%20Model%20Policy%20for%20Schools%20\(D-36%20Final%20April%202007\).doc](http://www.edu.dudley.gov.uk/cpd/Documents/Performance%20Management%20Model%20Policy%20for%20Schools%20(D-36%20Final%20April%202007).doc)

"The outcomes of the performance management review should remain confidential to members of the Governing Body delegated to conduct the performance management and pay reviews of the Headteacher. The whole performance management process and the statements generated under it, in particular, will be treated with strict confidentiality at all times."

19. The Commissioner has considered whether there would be an accompanying expectation that this sort of information would be made available. The Commissioner considers that the way the objectives are phrased makes them fairly generic. The arguments concerning privacy surrounding them are therefore less convincing. In addition the targets have been fixed and it is the performance against them which may be expected to be protected more. However, the statement above shows that the individual's expectation in this case is that the information will not be disclosed.
20. The Commissioner accepts that Headteachers would therefore be likely to have an expectation that information about their performance will not be disclosed but this does not necessarily mean that this expectation is reasonable.
21. The Commissioner's view is that when considering what information individuals should expect to have disclosed about them a distinction should be drawn as to whether the information relates to the individual's public or private life. The Commissioner considers that public sector employees should expect some information about their roles to be disclosed especially when they are in a senior position. He notes that the School in this case did disclose the SIPs and some of the objectives included in these as it recognised there was a need to be transparent about its governance.
22. The information requested in this case is the personal information of the Headteacher at the School and the Commissioner therefore considers it reasonable that as the most senior member of staff she would expect some details about her role to be placed in the public domain but it is also reasonable to assume she would not expect her specific personal performance objectives and statements of evaluation against these objectives to be placed in the public domain.
23. The Commissioner has considered the submissions of the public authority and in particular whether it felt that the release of the information would cause unnecessary or unjustified harm to the individual involved. When considering this the Commissioner notes that the Headteacher was approached to ask for her consent to disclose and refused this. The School has been placed in Special Measures and is in the midst of a difficult transitional period; as such there is increased

scrutiny and pressure on teachers and governors. Disclosure of any teacher's specific personal performance objectives and their evaluations at this time is likely to increase the scrutiny they are under and it is not unreasonable to consider that this would cause the individual unwarranted distress or unjustified damage.

24. In relation to the final factor, the legitimate interest in the public knowing this information, the Commissioner and School considers the public will have an interest in any information which will further understanding of and participation in public debate around issues within the School and also in creating accountability and transparency.
25. The School also accepts that parents and the wider public have a right to be involved in the decision making process particularly where those decisions affect matters such as the schooling of children. The School also acknowledges that being placed into Special Measures has increased scrutiny in the governance of the School but that the disclosure of the SIPs is sufficient to satisfy the legitimate public interest in understanding how the School is run and the expectations on its staff.
26. The School is of the opinion that disclosure of the specific objectives and evaluation would cause disruption at a time when it is important to maintain stability. The complainant does not agree that there would be any adverse effect on the School if the information were to be disclosed.
27. In making his decision the Commissioner has considered whether disclosure of the information would lead to a greater infringement of the individual's legitimate right to privacy than is outweighed by the legitimate interest in disclosure. The Commissioner accepts that the SIPs provide information on how the School is governed and the decisions being made to improve the School and that release of this information allows for increased public scrutiny. He is not aware of the Headteacher being under any more or less scrutiny than any other member of staff and, whilst the Commissioner is aware the Headteacher has overall responsibility for ensuring the School is run properly, he has not been convinced there is a legitimate public interest in seeing an individual's performance objectives which would override their right and expectation that personal information of this type will remain confidential.
28. The Commissioner therefore considers that disclosure of this information would be unfair and in breach of the first data protection principle. As such, section 40(2) is engaged and the information is therefore exempt from disclosure.

Right of appeal

29. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.
31. 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

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF