

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 01 December 2014

Public Authority: Hartismere School

Address: Castleton Way
Eye
Suffolk
IP23 7BL

Decision (including any steps ordered)

1. The complainant requested a granular breakdown of the 2011, 2012 and 2013 exam results, by subject, by grade (i.e. number of pupils achieving each grade by subject) and total entries to that subject. Hartismere School ('the School') argued that it did not hold the information and advised that even if it was found that it did hold the information section 12 would apply. This provision permits a public authority to refuse to comply with a request where the estimated cost of doing so would exceed the appropriate limit.
2. The Commissioner has found that although the information was not held in the specific format requested by the complainant the School was in possession of the raw data from which the information requested could be extracted. He therefore considers the information is held for the purposes of the FOIA. Furthermore, he has decided that section 12 of the FOIA is not engaged.
3. The Commissioner therefore requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response under the FOIA which doesn't state the information requested isn't held and doesn't rely on section 12 of the FOIA.
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 13 March 2014, the complainant made the following request for information to the School under the FOIA:

'The information requested is for a full granular breakdown of the 2013 final exam results, by subject, by grade (ie number of pupils achieving each grade by subject and total entries to that subject) as per the attached template. If reasonably achievable within the time constraints of a fee free request as outlined in the FOI Act, I would additionally like the results for the preceding 2 years (ie 2011 and 2012), however if this is not achievable 2013 will suffice'

6. On 1 April 2014, the School responded to the request and advised it did not hold the requested information in the format requested.

Scope of the case

7. On the 22 April 2014 the complainant lodged a complaint with the Information Commissioner's Office stating that he was not satisfied with the response he had received to his request.
8. The focus of the Commissioner's investigation has been to determine whether the School handled the complainant's request in accordance with the FOIA. The School argued as part of the investigation that it did not hold the information and advised that even if it did hold the information section 12 would apply. Consequently, the Commissioner's decision will address both parts of the School's position.

Reasons for decision

9. Section 1(1) of the 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 its response to the Commissioner's enquiries the School confirmed that it did hold information obtained from the exam board in respect of exams taken, consisting of pupil name, subject and grade.

11. Although the Commissioner accepts that the information requested by the complainant was not held in the specific format requested he also considered it likely that the School held the raw data, or building blocks, required to generate the information that would appear to satisfy the request. He therefore advised that if this was correct the School would be obliged to consider the information under the FOIA.
12. The School confirmed that it held the raw data from which the information requested by the complainant could be extracted. Nevertheless, it continued to dispute the Commissioner's position that the requested information would be held as result, although it has not provided any further evidence to support this view. It did however argue that it would take more than 18 hours to comply with the request in the event that the building blocks for producing the information were in fact held. This was in reference to the appropriate limit in section 12 of the FOIA.
13. Section 12 of the FOIA states that:
'Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.'
14. Regulation 3 of The Freedom of Information and Data protection (Appropriate Limit) and Fees Regulation 2004 ('the Fees Regulations') states that the appropriate limit for public authorities that are not covered by Part 1 of Schedule 1 of the FOIA is £450.
15. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
16. All public authorities should calculate the time spent on the permitted activities at the flat rate of £25 per person, per hour. This means that the appropriate limit will be exceeded if it would require more than 18 hours work.
17. The School did not provide the Commissioner with any tangible evidence demonstrating how it had reached its decision that it would take more

than 18 hours work to comply with the request other than stating that *'the rules governing how these count would have to be applied and due to recent changes we would have to research the rules in application in 2013 in some detail'*.

18. The Commissioner does not accept that the argument adequately demonstrates that the time required to comply with the requests would exceed the appropriate limit. The School was invited to provide further arguments to the Commissioner about how it calculates that the cost of complying with the request would exceed the fees limit but no further representations have been provided. The School did however advise the Commissioner that it intended to publish information relating to 2014 exam results before progressing through historical years but it intended to do this according to its own timetable over the course of the academic year. While acknowledging this intention the Commissioner considers it has no bearing on the application of section 12 of the FOIA.
19. For these reasons the Commissioner considers that the School has not provided sufficient evidence to support the application of section 12 in this case. Furthermore, from the Commissioner's viewpoint there is nothing in the request itself that would suggest that complying with the request would be particularly onerous and has therefore found it reasonable to conclude that it would not take more than 18 hours of time to extract the information from the raw data held by the School.
20. The Commissioner is therefore satisfied that the information requested by the complainant is held by the School and could be provided to the complainant within the cost limit.

Procedural Issues

21. In its refusal notice the School did not include details of any review procedure they may have as well as the individual's rights to complain to the Commissioner under section 50.
22. Section 17(7) of the FOIA states that:

'a notice under subsection (1), (3) or (5) must contain particulars of any procedure the authority has for dealing with complaints, or a statement that the authority does not have such a procedure, and must contain particulars of the right conferred by section 50 (application for a decision by the Commissioner).'
23. The Commissioner therefore finds the School in breach of s17 (7) and refers the School to his guidance on this matter.

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/refusing_a_request_writing_a_refusal_notice_foi.ashx

Other matters

24. During the course of the investigation the Commissioner identified that the School's published freedom of information policy contained incorrect information under the section on fees (section 4). The School stated that 'if your request will take more than 4 hours' worth of effort to satisfy, we may also pass on our operation costs that may run into hundreds of pounds.'

<http://www.hartismere.com/x/?m=waiter&p=KUCGby8dk7.pdf>

25. The Commissioner advised the School that under the FOIA the amount that a public authority may charge depends on whether the cost of complying with the request exceeds the appropriate limit and provided guidance on the application of section 12 of the FOIA.

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/costs_of_compliance_exceeds_appropriate_limit.pdf

26. The Commissioner advised that where it would not exceed the appropriate limit to comply with a request, which in the case of the School would be the cost equivalent of 18 hours work, a public authority can only charge a fee in relation to the costs it reasonably expects to incur in informing the requestor whether it holds the information and communicating that information to the requestor. The Commissioner similarly provided relevant guidance on the matter.

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/fees_cost_of_compliance_appropriate_limit.pdf

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Rachel Cragg
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SK9 5AF