

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2016

Public Authority: Chair of Governors
Address: Magherafelt Nursery School
32A Castledawson Road
Magherafelt
BT45 6PA

Decision (including any steps ordered)

1. Following the outcome of a complaint made to the Magherafelt Nursery School (the 'School'), the complainant requested copies of documents relevant to his complaint. The School provided the complainant's personal data under the Data Protection Act 1998 (the 'DPA') but refused to provide the remainder of the requested information under section 40(2) of the FOIA.
2. The Commissioner's decision is that the School has correctly applied section 40(2) in this case. No further action is required.

Request and response

3. On 7 December 2015, the complainant lodged an appeal against the outcome of his complaint made to the School and asked it for copies of:

'all documentation collated by the Board relevant to our complaint, including minutes of any meeting with [name redacted] and copies of the evidence submitted by [name redacted] that proper procedures were followed'.

4. On 14 December 2015, the School informed the complainant that the appeals meeting had been arranged for 8 January 2016. It explained the requested information could not be considered for release until the appeals process had been completed. It repeated this on 22 December 2015.

5. On 11 February 2016 the School informed the complainant that it had considered his request under the FOIA and the DPA. It provided the complainant with the minutes of a meeting held with him on 7 October 2015.
6. The School explained that the Board of Governors holds other information but that it was being withheld under section 7(4) of the DPA as it contained the personal data of third parties.
7. The School confirmed that further information which does not constitute the complainant's personal data was withheld under section 40(2) of the FOIA. It has since explained that this information was considered by the Complaints Investigation Sub-Committee of the Board of Governors.

Scope of the case

8. The complainant contacted the Commissioner on 16 February 2016 to complain about the way his request for information had been handled. He informed the Commissioner that all he had received was the minutes of the meeting he attended on 7 October 2015.
9. On 12 April 2016, the Commissioner provided the complainant with his assessment of his DPA concern (case reference number RFA0618368).
10. The Commissioner considers that this case is concerned with the School's application of section 40(2) of the FOIA to the remaining requested information which does not fall under the DPA.

Reasons for decision

11. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the DPA states that personal data must be processed fairly and lawfully.
12. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.
13. The Commissioner considers that the data the complainant has requested is clearly personal data as it relates to identifiable living individuals.

14. The withheld data concerns two parents of children at the School, an employee of the School, and the names and contact details of officers in the Claims and Legal Administration department of the local Education Authority (the 'EA officers'). This withheld personal data is contained in correspondence to and from the School, in other documentation regarding the children and parents, and in the minutes of the meeting of the Complaints Investigation Sub-Committee of the Board of Governors.
15. In determining whether disclosure of the requested information would contravene the requirements of the first data protection principle, the Commissioner has therefore considered whether providing the personal data of the individuals concerned would be fair. In his consideration of fairness the Commissioner has taken into account the following factors:
 - The individuals' reasonable expectations of what would happen to their information;
 - The consequences of disclosure, (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - The balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectations

16. With respect to the personal data requested, the complainant has requested the minutes of any meeting held with respect to his complaint. He requires information about the handling of his complaint and reassurance that the correct procedures were followed.
17. The Commissioner is satisfied that the individuals concerned in this case would have an expectation that their personal data would not be disclosed and placed in the public domain. The withheld information is confidential in nature and consent has not been obtained for disclosure.
18. As this matter concerns a complaint, it is potentially a staffing and personnel matter. The School therefore considers the relevant individual concerned has a reasonable expectation that her personal data will not be disclosed.
19. The School has also explained that it is its custom and practice in relation to information from and to parents in relation to their children and family circumstances that such information would always be kept private and confidential.
20. In addition, consent has not been obtained for the disclosure of the names and contact details of the EA officers.

21. The Commissioner is satisfied that all of the above individuals would have no expectation that the withheld personal data in this case would be placed into the public domain.

Would disclosure cause damage and distress?

22. The School has explained that it considers disclosure of the personal data would cause damage and distress to some of the individuals concerned.
23. The School has not argued that the disclosure of the personal data of the EA officers would cause damage and distress.
24. However it has argued that other withheld information is sensitive and personal and concerns children at the School. The Commissioner is satisfied that disclosure of the personal data of the parents and the children concerned would be likely to cause damage and distress.
25. With respect to the complaint made, the School has explained that the individual has declined to give consent for her information to be released in response to this request. It has explained that whilst the first stage of the complainant's complaint has been exhausted, and found not to be upheld, there remains a right of appeal.
26. In such circumstances, the investigations and appeal proceedings in this matter could lead to an investigation if the governors decided that there was a case to answer in terms of the actions taken. The School considers that the relevant personal data with respect to this matter should therefore remain confidential.
27. The Commissioner is therefore satisfied that in these circumstances, the disclosure of the personal data of the children and parents involved in this matter and that of its employee is likely to cause damage and distress.

The legitimate public interest

28. With respect to the application of section 40(2) of the FOIA to the personal data of third parties, the Commissioner must weigh the public's legitimate interests in the disclosure of the information against the prejudices to the rights, freedoms and legitimate interest of the individuals concerned. The Commissioner has therefore considered whether there is a legitimate interest in the public accessing the withheld information (as opposed to the complainant's private interest).
29. The School has argued that there is no legitimate interest in disclosure of the requested information to the public. It considers that only the complainant has a personal interest in the information.

30. The Commissioner considers that there is a legitimate interest in the public being reassured that School has followed correct procedures and that a complaint has been considered appropriately by the governing body.
31. However in this case, the Commissioner is aware that the first stage of the complaints procedure has not upheld the complaint. The Commissioner therefore does not consider that there is a legitimate interest in the full disclosure of the documents considered in this case. Furthermore, the complaints process has not yet been completed and the complainant still has the right to appeal this decision.
32. The Commissioner considers that the legitimate interests of the public are served by the complaints process which has been put in place by the governing body of the School. This is the correct mechanism by which complaints should be considered by the School and there is no suggestion that due process has not been followed.
33. There is no public interest in the publication of information concerning a complaint which has not been upheld.
34. In this case, the Commissioner therefore concludes that the reasonable expectations of all the individuals concerned are not outweighed by any legitimate public interest in disclosure, and he accepts that disclosure of the personal data in this case would be unfair and unnecessary in the circumstances.
35. The Commissioner therefore considers that the exemption of section 40(2) is engaged and that the School is correct not to disclose the withheld information.

Right of appeal

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

Website: 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

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