

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 September 2016

Public Authority: The Chair of Governors
Address: The Abbey Christian Brothers Grammar School
77A Ashgrove Road
Newry
County Down
BT34 1QN

Decision (including any steps ordered)

1. The complainant has requested information concerning the trustees of the pension scheme of the Abbey Christian Brothers Grammar School (the "School"). The School responded to the request and has informed the complainant that he has received all the information that it holds.
2. The Commissioner's decision is that on the balance of probabilities the School has provided all the requested information which it holds and has complied with its obligations under section 1(1)(a) and (b) of the FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 10 March 2016 with respect to the School's pension scheme (the "Scheme"), the complainant requested from the School the '*Names of the Trustees from the 1.1.2009 to 1.1.2016*'.
5. On 17 March 2016 he repeated the above request and also asked for a copy of the Trustee Deeds under the FOIA:

'The information that I require concerns the transfer of legal identity of the trustees involved in the transfer of the named Trustee in and around the period of 25 August 2015 (namely [name 1 redacted] to the 11th September 2015 (to [name 2 redacted])). I understand this transfer of the named trustee must be completed by a transfer deed form to meet legal requirements and I require a copy of these documents now'.

6. On 21 March 2016 the School informed the complainant that it had requested the Trustee Deeds from Friends Life and would forward them to him when it arrived. It explained that [name 1 redacted] was an individual trustee from commencement of the policy until 4 September 2015 when [name 2 redacted] became the designated signatory.
7. On 14 April 2016 the complainant asked the School to conduct an internal review.
8. On 22 April 2016 the School informed the complainant of the following:
 - it had requested the Trust Deeds from Friends Life but had been told that it was unable to locate a copy;
 - [name 2 redacted] is the current registered trustee of the Scheme; and
 - [name 1 redacted] was an individual trustee from commencement of the policy until 4 September 2015.
9. The School explained this information was contained in correspondence which had been provided to the complainant on 21 March 2016.
10. On 27 May 2016 the school informed the complainant that [name 1 redacted] had retired in January 2006.

Scope of the case

11. The complainant contacted the Commissioner 31 March 2016 to complain about the way his request for information had been handled.
12. The complainant explained that he disputes the dates given by the School and considers that there were no replacement trustees appointed when [name 1 redacted] retired in 2006.
13. The complainant has argued that there is no evidence that [name 1 redacted] was administering the Scheme as a Trustee in July/August 2015 or that [name 2 redacted] was authorised to act as a Trustee at this time.
14. The complainant has therefore argued the School has not provided him with all the information it holds with respect to this request and has misrepresented its position regarding the administration of the Scheme.

15. The scope of this case is therefore concerned with whether the School has provided the complainant with all the requested information which it holds.

Reasons for decision

Section 1 – information not held

16. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
17. In scenarios where there is some dispute about the information held by a public authority and information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
18. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or whether any information was held at the time of the request).
19. The School has now informed the Commissioner that:
 - [name 1 redacted] retired from employment at the School in January 2006.
 - In July 2015 Friends Life wrote to the School asking it to forward information which the complainant had requested onto him. The information was forwarded in July and August.
 - In August 2015 the Principal of the School informed the complainant that Friends Life would be able to help him with any pension matters.

- On 21 August 2015 [name 2 redacted] informed Friends Life that [name 1 redacted] was no longer employed as Bursar at the

School and that all correspondence should be addressed to her. This was communicated by letter.

20. The School has also confirmed the following:
- a) The Trustee Deeds are not held by the School or by Friends Life on behalf of the School.
 - b) The transfer of the trusteeship was communicated to Friends Life by the School in a letter posted on 21 August 2015.
 - c) The School holds no recorded information (other than the letter of August 2015) which identifies the trustees between January 2009 and January 2016.
 - d) The School has searched for the original Trustee Deed in its school records and archived files but it cannot find a copy. It has explained it considers it has never held a copy of the deeds or a list of current trustees between 2009 and 2016.
21. The complainant has argued that the School is required under trustee law to hold a copy of the Trust Deeds and that these have not been provided to him.
22. With respect to the letter of 21 August 2015, the complainant has argued that it refers to [name 2 redacted] as the new 'correspondent' and not as a trustee.
23. The complainant has argued that the School does hold recorded information other than the letter of 21 August 2015. He has explained that the School holds correspondence between it and Friends Life dated 3 and 4 September 2015 which discusses the trusteeship of the Scheme.
24. In this email exchange [name 2 redacted] asked Friends Life to confirm who the named trustee of the scheme was and whether the Scheme's correspondence details had been changed to reflect her name.
25. In its response Friends Life confirmed that [name 1 redacted] was the previous signed trustee. It explained that if no replacement trustee was appointed then he would still need to sign for any payment of benefits or assignment of benefits to the member. Friends Life also confirmed that the contact details for the Scheme had been updated as per the letter of 21 August 2015.
26. The complainant has also argued that on 11 September 2015 [name 2 redacted] recorded a telephone conversation with Friends Life which

confirmed her agreed appointment as the new trustee/signatory of benefits for the Scheme.

27. The Commissioner appreciates that the complainant has concerns about the administration of the Scheme and understands that he has referred this matter to the Pensions Ombudsman.
28. However the Commissioner is satisfied with the School's explanation that [name 1 redacted] was replaced as trustee by [name 2 redacted] and is satisfied that this information has been communicated to the complainant. He is concerned only with the provision of the requested information and is not concerned with any time gap between the appointment of the two trustees. He also considers that the further correspondence identified by the complainant simply confirms what the School has already informed him.
29. In view of the response of the School, the Commissioner is satisfied that on the balance of probabilities the School has provided the complainant with all the information it holds with respect to this request. He is satisfied that on the balance of probabilities, the School does not hold a copy of the Trustee Deeds and he is satisfied that the School does not hold any further information concerning the identification of the Scheme's trustees during the time period specified.

Right of appeal

30. 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

31. 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.
32. 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
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Wycliffe House
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