

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2023

Public Authority: The Governing body of the Hollins

Address: Hollins Lane

Accrington

Lancashire

BB5 2QY

Decision (including any steps ordered)

1. The complainant has requested information from The Hollins ("the school") in relation to policies and procedures, specifically around behaviour. The school provided some information, however, it withheld the remainder of the information citing section 12(1) of FOIA – cost of compliance exceeds the appropriate amount.
2. The Commissioner's decision is that the school was entitled to rely on section 12(1) of FOIA. He is also satisfied that the school complied with its requirements under section 16 of FOIA.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 27 March 2023, the complainant wrote to the school and requested information in the following terms:

"This is a freedom of information request,

- 1) Please provide me with a copy of the behaviour incident log for the school year to date, with PID redacted as necessary. Please include what sanctions were used in each case.

- 2) Please also provide a copy of the school's behaviour management policy.
 - 3) What consequences would school staff face if they did not abide by the behaviour management policy?
 - 4) How many cases of disciplinary action have been taken against school staff in the last five years academic years, broken down by category and by academic year (e.g. inappropriate attire, gross misconduct, misconduct, lateness etc.).
 - 5) I can see that the whistleblowing policy on the website does not include students as being able to raise a whistleblowing concern. Why is this the case? What would the whistleblowing process be for a student?"
5. The school responded on 11 April 2023. It stated that questions 1 and 4 were withheld as an individual could be identified from the information. Responses to questions 2,3 and 5 were provided.
 6. Following an internal review the school wrote to the complainant on 5 May 2023. For question 1, some information was provided, however, the remainder was withheld under section 12(2) of FOIA. For question 2, the response remained the same. For question 3, the school advised that it was not a valid request for information under FOIA. For question 4, the school advised that the information was withheld under section 40(2) of FOIA. For question 5, the response remained the same, however, it did explain to the complainant that this again was a request for a process rather than a policy.

Scope of the case

7. The complainant contacted the Commissioner on 21 May 2023, to complain about the way their request for information had been handled.
8. During the Commissioner's investigation, he asked the school to confirm whether it was relying on section 12(1) or section 12(2) of FOIA, as it had originally cited 12(2) but the further responses appeared as though it was relying on section 12(1). The school confirmed that it was relying on section 12(1) of FOIA.
9. The Commissioner considers that the scope of the investigation is to determine if the school is entitled to rely on section 12(1) of FOIA.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the school is £450.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the school.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost 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.
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.

16. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

Would the cost of compliance exceed the appropriate limit?

17. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the school to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
18. In its submission to the Commissioner the school initially stated that in relation to question 1 alone, there were over 29,000 entries into the behaviour incident log up to the date of the request. It advised that it would take approximately 5 minutes to redact and review each entry, and also advised that it would take significantly longer for any written reports.
19. The Commissioner contacted the school and advised that it could not consider the time to complete redactions. The school reviewed the original response and advised that it would take approximately 1 minute to review each entry, which would total 493 hours work, or £12,325. It advised that, even if each entry only took 30 seconds to review, it would still exceed the appropriate amount considerably.
20. The Commissioner considers that the school estimated reasonably that it would take more than the 18 hours / £450 limit to respond to this part of the request. If one part of a request triggers the cost limit, then it applies for the entirety of a request. The school was therefore correct to apply section 12(1) of FOIA to the complainant's request. As the Commissioner considers that section 12(1) applies to the whole request, he has not gone on to consider the validity of the other exemptions which were cited originally.

Section 16(1) – The duty to provide advice and assistance

21. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

22. The Commissioner notes that the school provided the complainant with some information in relation to their request, which would go towards partially answering the request on a voluntary basis, notwithstanding the fact that section 12 of FOIA applies. The Commissioner is therefore satisfied that the school did meet its obligations under section 16 of FOIA.

Right of appeal

23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Michael Lea
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Wycliffe House
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