

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2023

Public Authority: The Governing Body of Ilfracombe Infant and Nursery School

Address: Marlborough Road
Ifracombe
Devon
EX34 8JL

Decision (including any steps ordered)

1. The complainant has requested information from Ilfracombe Infant and Nursery School (IINS) regarding staff turnover, financial settlements and non-disclosure agreements (NDAs) agreed for exiting staff from academic year 2018/19 to the current academic year to date. The IINS disclosed some relevant information but neither confirmed nor denied holding the remaining information.
2. The Commissioner's decision is that the IINS was entitled to rely on section 40(5B) (personal information) of FOIA to refuse to confirm or deny whether some of the requested information was held.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 21 April 2023, the complainant wrote to IINS and requested information in the following terms:

"Where information is asked for from the last 5 years it is requested from the academic year 2018/19 to the current academic year to date:

1. How many teachers and teaching assistants with a signed contract have left the school in the last 5 years?

2. What does that make the turnover rate for each academic year?

3. How much money has the school spent on legal fees relating to staff exits in the last 5 years?

4. How many non-disclosure agreements have been signed between the school and exiting staff each year for the last 5 years?

5. What is the total amount paid in settlements to staff exiting the school each year over the last 5 years?

6. Please confirm when each of the governing board members first became involved in governance within the schools (including at Goodleigh pre-federation).

- Nadine Sampson
- Silvia Panella
- Aidan Harding
- Cathryn Hewitt
- Clare Langmead
- Colin Ley."

5. The public authority responded on 24 May 2023. It provided information as follows in relation to questions 1,2,3 and 6 but would neither confirm or deny holding information for questions 4 and 5 of the request in accordance with section 40(5b)(a)(i) of FOIA

"1. You requested how many teachers and teaching assistants with a signed contract have left the school in the last 5 years?

Fifteen Teachers, three of which had fixed term temporary contracts

Thirty Teaching Assistants, ten of which had fixed term temporary contracts

The above includes permanent contracts and temporary fixed term contracts and does not include a teacher that did not fulfil the conditions of their contract.

2. Crude turnover rate which includes permanent contracts and temporary fixed term contracts and does not include a teacher that did not fulfil the conditions of their contract:

2018/19 3.17% teachers with permanent contracts

2018/19 3.17 % teaching assistants with permanent contracts / 6.35% teaching

assistants with temporary fixed term contracts

2019/20 3.36% teachers with permanent contracts / 1.68% teachers with temporary fixed term contracts

2019/20 5.04% teaching assistants with permanent contracts

2020/21 5.76% teachers with permanent contracts / 1.93% teachers with temporary fixed term contracts

2020/21 9.61 % teaching assistants with permanent contracts / 5.77% teaching

assistants with temporary fixed term contracts

2021/22 4.44% teachers with permanent contracts / 2.23% teachers with temporary fixed term contracts

2021/22 15.55% teaching assistants with permanent contracts / 6.67% teaching

assistants with temporary fixed term contracts

2022/23 to current May 2023 6.81% teachers with permanent contracts

2023/23 to current May 2023 6.80% teaching assistants with permanent contracts

3. You asked how much money has the school spent on legal fees relating to staff exits in the last 5 years?

Zero

6. You asked for confirmation of when each of the governing board members first became involved in governance within the schools (including at Goodleigh pre-federation).

- _Nadine Sampson September 2007
- Silvia Panella September 2015
- Aidan Harding November 2021
- Cathryn Hewitt March 2019
- Clare Langmead September 2022
- Colin Ley February 2007
- Pat Pengelly June 2005
- Peter Taylor October 2015"

6. On the 24 May 2023 the complainant requested an internal review in relation to the responses for questions 4 and 5 as follows

"You have stated that these requests relate to third party personal data. This is clearly untrue as there are ways to ensure that this data is non-identifiable. Below are links to FOI responses from the House of Lords and the Greater London Authority to a very similar request. Both organisations were able to find a way to provide it without disclosing third party personal data.

<https://www.parliament.uk/globalassets/documents/foi/house-of-lords-foi-and-data-protection/foi-responses---calendar-year-2020/foi-3366---response.pdf>

<https://www.london.gov.uk/who-we-are/governance-and-spending/sharing-our-information/freedominformation/foi-disclosure-log/foi-non-disclosure-agreements-mar-2022>"

7. Following an internal review the public authority wrote to the complainant on 7 July 2023. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 20 July 2023 to complain about the way their request for information had been handled.

9. The Commissioner considers that the scope of his investigation is to determine whether IINS was entitled to neither confirm nor deny whether the information requested in parts 4 and 5 of the request was held, under section 40(5B)(a)(i) of FOIA.

Response and Decision

Section 40 – Personal data

10. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the requested information – this is referred to as the duty to confirm or deny.
11. However, section 40(5B)¹ of FOIA allows IINS to refuse to confirm or deny that it holds particular information if the mere act of confirming (or denying) that information is held would, in itself, reveal personal data about an identifiable individual and would contravene one of the data protection principles.
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
14. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
15. The Commissioner considers that confirming or denying whether the information is held constitutes the disclosure to the wider world of third-party personal data. If IINS confirmed whether or not it held information within scope of part 4 it would, in effect, confirm whether or not teaching staff who exited the employment of IINS in the five

¹ <https://ico.org.uk/media/for-organisations/documents/2021/2619041/s40-neither-confirm-nor-deny-in-relation-to-personal-data-section-40-5-and-regulation-13-5-final-version-21.pdf>

academic years covered by the scope of the request signed a NDA. If IINS confirmed or denied it held information within scope of part 5, it would, in effect, confirm whether or not staff who exited the school received settlements.

16. On the face of it, the requested information does not directly identify any individual(s). However, it would be possible to identify individual(s) because it would be known amongst the teaching and admin staff, if no one else, who had left the school in the last five years. IINS has also confirmed to the Commissioner that the numbers are low for the whole period
17. The Commissioner has considered whether the information, when combined with other information either already in the public domain via published school newsletters, or known to other people working in IINS, may nevertheless make identification possible.
18. The Commissioner is satisfied that confirming or denying that the information is held constitutes the disclosure of personal data as specific individuals could be identified and it would disclose whether or not those individuals had signed a NDA or received a settlement.
19. The Commissioner has next considered whether confirming or denying that the information is held would contravene one of the data protection principles.
20. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed – or as in this case, IINS can only confirm whether or not it holds the requested information - if to do so would be:
 - a. lawful (i.e. it would meet one of the conditions of lawful processing listed in Article 6(1) UK GDPR)²;
 - b. fair; and
 - c. transparent.
21. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

² <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/lawful-basis/legitimate-interests/what-is-the-legitimate-interests-basis/>

22. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, or confirmation or denial that it is held, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits.
23. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
24. The Commissioner considers that the individuals involved have a strong and reasonable expectation that personal information about them will remain confidential in accordance with data protection laws.
25. In the Commissioner's view, the complainant's interest is a private concern that has limited wider public interest. However, it is nonetheless a valid interest for the complainant to have.

Is disclosure necessary?

26. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
27. The Commissioner appreciates that the complainant may have exhausted some or all of them, but he considers that there will exist other, more appropriate, routes through which they can pursue with INSS the interest they have in staff turnover at the school and any underlying reasons for this. Such routes would not involve disclosing other people's personal data to the wider world under FOIA, which the Commissioner considers would be unnecessarily intrusive.
28. The Commissioner has therefore decided in this case that confirmation or denial is not necessary to meet the legitimate interest in disclosure. As confirmation or denial is not necessary, there is no lawful basis for this processing, and it is unlawful.
29. Given the above conclusion that confirmation or denial would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether confirmation or denial would be fair or transparent.

30. The Commissioner has therefore decided that IINS correctly relied on section 40(5B)(a)(i) of FOIA to neither confirm nor deny that the information requested in parts 4 and 5 of the request is held.

Right of appeal

31. 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

32. 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.
33. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF