

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 September 2024

Public Authority: The Governing Body of Loxwood Primary School

Address: Nicholsfield
Loxwood
RH14 0SR

Decision (including any steps ordered)

1. The complainant has requested information about the Special Educational Needs budget of Loxwood Primary School ('the School'). The School provided broad information but withheld certain information about expenditure under section 40 of FOIA. This exemption concerns personal data.
2. The Commissioner's decision is that the School correctly withheld the information under section 40(2) of FOIA. The information is other people's personal data and disclosing it wouldn't be lawful.
3. It's not necessary for the School to take any corrective steps.

Request and response

4. On 27 February 2024 the complainant requested the following information from School:

"I recently explored the school's website to gather information about how it allocates and spends its Special Educational Needs (SEN) budget. Despite my efforts, I was unable to locate specific details on the website regarding the utilisation of this budget. [Redacted], I am keenly interested in understanding how the school supports students

with special educational needs, and having insight into the budget allocation would be valuable.

Please could you pass this email to the relevant person within the school who can provide information on how the school spends its SEN budget. Additionally, if any documents or reports that outline the allocation and utilisation of this budget are available, I would greatly appreciate access to them..."

5. In its response of 20 March 2024, the School provided general information relevant to the request.
6. Following its internal review of 16 April 2024, the School provided further information but said:

"The funding allocated under Education, Health, and Care Plans (EHCP) is designated for supporting individual children with specific needs outlined in their EHCPs. I am unable to disclose information relating to costings around EHCP's as these costs are specific and ring fenced to each child and their plan and it is their personal data so is exempt from disclosure pursuant to section 40 of the Freedom of Information Act 2000."

Reasons for decision

7. This reasoning covers whether the School is entitled to withhold information within scope of the complainant's request under section 40(2) of FOIA.
8. Under section 40(2) of FOIA information is exempt from disclosure if it's the personal data of an individual other than the applicant and disclosure would contravene any of the principles relating to the processing of personal data that are set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).
9. The most relevant principle is Article 5(1)(a). This states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
10. The Commissioner has first considered whether the information the School is withholding under section 40(2) can be categorised as other individuals' personal data.
11. Personal data is defined as information that relates to a living individual and from which the individual can be identified.

12. The School has provided the Commissioner with a background and context to the request, which include interactions with the complainant. It has also explained to the Commissioner that the School is a small, single form entry primary school in the rural area of Loxwood, West Sussex, with a capacity of 210. It is a community school which children from Loxwood and surrounding villages attend. All of the families of children that attend the school know other well, with some parents also working at the school.
13. The School says that information about provision for children with Special Educational Needs is set out in the school's SEN Information Report "which the School is statutorily required pursuant to Children & Families Act 2014, the Special Educational Needs and Disability Regulations 2014 and paragraph 6.79 of the SEND Code of Practice of January 2015."
14. The Commissioner has reviewed the information the School is withholding, which is held in two spreadsheets. These spreadsheets set out the names of members of staff and payments made to them.
15. The School considers that this information is the personal data of the members of staff and the children being provided with SEN support.
16. The Commissioner is satisfied, first, that the specific information in the spreadsheet can be categorised as the personal data of the staff members. The information relates to those people, and they can be identified from it.
17. The Commissioner has next considered whether information about amounts paid to certain staff members can be categorised as the personal data of children at the School with SEN, including those with EHCPs.
18. In its submission, the School has said that if details about support given to particular children were to be provided to the complainant under FOIA, it's more likely than not, particularly given the circumstances that the School has explained in its submission, that the complainant would be able to identify from the disclosed information who the children are.
19. Regarding children with EHCPs, the School has acknowledged that the withheld information doesn't include any children's names. However, the School considers that, given the nature of the School, that the request concerns only a small number of individuals, and the wider context the School has detailed, each of the children would be reasonably identifiable if the specific details of any expenditure were to be disclosed.

20. The Commissioner has taken account of the following factors:
- the School's rural location and small size
 - the familiarity between parents, staff and students
 - other information that may already be known to the complainant or others, such as parents and care givers, School staff or local people; and
 - the small number of individuals that the withheld information concerns.
21. Disclosure under FOIA is, in effect, disclosure to the wider world. The Commissioner accepts that it would be possible to determine the identities of specific children if the withheld information were to be disclosed, by combining that information with other information that is likely to be known by others. The Commissioner is therefore satisfied that the withheld information can also be categorised as the personal data of certain children.
22. The Commissioner has found that the withheld information is personal data. He's therefore gone on to consider whether disclosing that data would breach Article 5(1)(a) which, as above, states that personal data must be processed lawfully.
23. Personal data is processed when it's disclosed in response to a FOIA request. In order to be lawful under Article 5(1)(a), the lawful basis under Article 6(1)(f) of the UK GDPR must apply to the processing. It must also be generally lawful.
24. Article 6(1)(f) states:
- “processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, **in particular where the data subject is a child** [Commissioner's emphasis].”
25. In order to determine whether disclosing the personal data would be lawful the Commissioner considers three 'tests': the legitimate interest test, the necessity test, and the balancing test.

26. For personal reasons, the complainant has an interest in the specifics of how the School spends its SEN budget. That's a legitimate interest for them to have and there's also some wider interest in this matter, as well as disclosure generally demonstrating that the School is open and transparent.
27. The Commissioner has next considered whether disclosing the withheld information would be necessary to address the legitimate interests that have been identified. This test is one of reasonable necessity and involves considering alternative measures which may make disclosing the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
28. The Commissioner isn't aware of any other way that the complainant could obtain the specific information that's been withheld. The complainant has requested information about how the School spends its SEN budget, not just the total figure spent. Regarding the staff members, in the Commissioner's view it would therefore be necessary to disclose the names of the staff members, and the amounts paid to them (ie not simply the amounts paid) to satisfy the complainant's interest.
29. Disclosing the information under FOIA would therefore be necessary to full address the legitimate interests that have been identified.
30. The Commissioner has moved on to the third test and balanced the complainant's legitimate interests against the data subjects' rights and freedoms.
31. In doing so, it's necessary to consider the impact of disclosure. For example, if the data subjects wouldn't reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
32. In considering this balancing test, the Commissioner takes into account: the potential harm or distress that disclosure may cause; whether the information is already in the public domain; whether the information is already known to some individuals; whether the individuals expressed concern to the disclosure; and the reasonable expectations of the individuals.

33. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information won't be disclosed. These expectations can be shaped by factors such as the individuals' general expectation of privacy, whether the information relates to employees in their professional role or to them as individuals, and the purpose for which they provided their personal data.
34. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to those individuals.
35. The Commissioner is satisfied that the data subjects in this case would reasonably expect that their personal data – that is, what payments have been made to the staff members and what SEN support particular children have received - wouldn't be disclosed to the world at large under FOIA. They haven't consented to disclosure and disclosure would therefore be likely to cause them harm and distress.
36. As well as staff members, the Commissioner is mindful that the information is also the personal data of children, which requires particular protection. The complainant is pursuing a largely private concern and unrestricted disclosure of the data subjects' personal data to the general public isn't proportionate. The Commissioner is satisfied that the information that the School has provided addresses to a satisfactory degree the general interest in how the School spends its SEN budget.
37. Based on the above factors, the Commissioner has determined that there's insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there's no Article 6 basis for processing and so disclosing the information wouldn't be lawful.
38. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he doesn't need to go on to consider separately whether disclosure would be fair or transparent. The Commissioner has therefore decided that the School is entitled to withhold the information under section 40(2) of FOIA.

Right of appeal

39. 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

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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