

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2024

Public Authority: The Governing Body of St Dunstan's Catholic Primary School

Address: Onslow Crescent
Woking
Surrey GU22 7AX

Decision (including any steps ordered)

1. The complainant has requested information about the appointment of a new headteacher. St Dunstan's Catholic Primary School ('the School') addressed the complainant's questions and disclosed relevant information. The School redacted some information from the material it disclosed, advising this was personal data.
2. The Commissioner's decision is first that, on the balance of probabilities, the School holds no further relevant information. He's also decided that the School correctly withheld some of the requested information under section 40(2) of FOIA, which concerns personal data. However, the School's refusal notice didn't fully comply with the requirements of section 17(1).
3. It's not necessary for the School to take any corrective steps.

Request and response

4. On 19 March 2024 the complainant requested the following information from the School:

"1) In his email to me of 15 February 2024, Mr McKendry [the Chair of Governors] said 'The process was conducted in compliance with all recruitment guidelines and involved both the Diocese and the Local Authority.' What guidelines were being referred to? What did the Diocese and the Local Authority say about the need for external advertising?"

- 2) Accepting this may overlap with 1) above, was consideration given to the Department for Education's 2017 guidance 'Recruiting a Headteacher'?
 - 3) By reference to the School Staffing (England) Regulations 2009, referred to in the 2017 guidance, what 'good reason' did the school think it had for not advertising the post?
 - 4) In the event any of the provisions in 2) or 3) above have been superseded, (I have not looked into their currency in detail), what consideration was given in any event, to whether it would be a good idea to advertise?
 - 5) No external advertising having been undertaken, what internal process was followed in terms of the appointment? Were other senior staff able to express an interest in the headteacher post? Were there any interviews?"
5. In its response of 19 April 2024, the School addressed parts 1, 2, 4, and 5 of the request. The School also addressed part 3, advising that final decisions and reasoning were included in the meeting minutes that it was disclosing. However, the School said it had redacted some information from the minutes as it considered this was personal data.
 6. Following its internal review of 13 June 2024, the School confirmed that it had redacted information as this information constituted personal data belonging to third parties.

Reasons for decision

7. The Commissioner's role is solely to consider whether the School's response to the complainant's request complied with FOIA in this case. His reasoning therefore focusses on whether the School holds any further information relevant to the request and whether it was entitled to redact parts of the information it disclosed. He will also consider a procedural aspect of the School's handling of the request. Under 'Other matters' the Commissioner will briefly discuss what FOIA entitles an applicant to, and how to submit an effective request for information.

Section 1 – right of access to information held by a public authority

8. Section 1(1) of FOIA requires a public authority (a) to confirm whether it holds information an applicant has requested and (b) to communicate the information if it's held and isn't exempt information.

9. In their complaint to the Commissioner, the complainant has said that they consider that the School would hold further information within scope of their request; namely:
 - the views of the Diocese and local authority, including email correspondence prior to the relevant meetings
 - records of relevant discussions between the Chair and Vice-Chair
 - written records on internal processes.
10. The Commissioner put this to the School and asked it to explain how it was certain that it didn't hold any other relevant information.
11. By way of background, the School has explained that there was real time pressure on the Executive Headteacher and Governors to deal with an impending vacancy quickly. The vacancy was going to occur in the middle of the academic year with no certainty as to the date involved. This recruitment challenge was dealt with as quickly as possible by a small number of people at formal committee meetings "at which confidentiality was stressed as being paramount."
12. Regarding the first bullet point, above, the School says that it obtained the views of the Diocese "at a face to face meeting (real not virtual) in order to expedite the matter. The Diocese was aware that the Personnel Committee and Full Governing Body Meetings would be conducting full discussions as to the rationale for the single candidate approach. The Diocese and local authority both attended the single candidate interview knowing that this was the position and aware that if the candidate were not successful an alternative route would need to be pursued."
13. The School says it hadn't considered it necessary to seek advice in writing given the conversations it had had, the fact that relevant officials attended the interview and that the final decisions would be taken at minuted meetings. It says, "The recruitment policy states that the Personnel Committee decision should be clearly recorded in the minutes and this was followed."
14. Regarding the second bullet point, above, the School has told the Commissioner that the Chair and Vice-Chair are often at the School and, when needed, handled the vacancy issue by face to face meetings and occasional telephone discussions. There was no record of these meetings or discussions, "as they involved the set up of formal meetings which were the actual discussion and decision points on the process in line with policy." The School says that these formal meetings were minuted and these minutes have been provided in response to the request, with personal data redacted.
15. Regarding the third bullet, the School says that, as it's noted above, the internal processes it followed were the official meetings in which there

were open discussions about options, methodology and timings. The School says that the recruitment policy it followed clearly lays out the internal process around recruitment; in this case it involved discussing the subject and reaching a decision. This discussion and decision process took place, as per the policy, at the Personnel Committee, and the agreed minutes of this Committee state this fact. The School has confirmed that there are no other internal processes that it would follow and therefore it holds no further recorded information.

16. The Commissioner has considered all the circumstances of the vacancy in question and the School's explanation as to how it handled this vacancy. The School has considered more than once whether it holds any further information relevant to the complainant's request and has addressed the specific points that they've raised. It has confirmed that it doesn't hold any further relevant information, and the Commissioner sees no reason to doubt that this is the case. He's satisfied that, on the balance of probabilities, the School doesn't hold any other recorded information within scope of the request.

Section 40 – personal data

17. 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).
18. 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.”
19. The Commissioner has first considered whether the information in the meeting minutes that the School is withholding under section 40(2) can be categorised as other individuals' personal data.
20. Personal data is defined as information that relates to a living individual and from which the individual can be identified.
21. The Commissioner is satisfied that specific individuals – the School's former headteacher and another individual - can be identified from the redacted information; the information relates to them, and they can be identified from it. The redacted information can therefore be categorised as the personal data of the above individuals – the 'data subjects.'
22. The Commissioner has 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.”
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. The complainant has an interest in how a headteacher vacancy was filled – this interest appears to be in the process that was followed rather than why a particular individual left the role. That's a legitimate interest for the complainant to have but there's little wider interest in the information, save for disclosure 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 redacted. The Commissioner has noted that the complainant's interest appears to be in the process that was followed rather than the reasons why a specific individual – one of the data subjects - left the role. However, he will accept that disclosing the information under FOIA would be necessary to fully address the complainant's legitimate interests in this particular appointment. The Commissioner considers that the general interest in transparency has been adequately addressed through the information the School has disclosed.
29. Because he's found that disclosure would be necessary to meet the complainant's legitimate interests, the Commissioner has moved on to the third test and balanced the complainant's legitimate interests against the data subjects' rights and freedoms.

30. 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.
31. 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.
32. 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.
33. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to those individuals.
34. The Commissioner has considered the information that's being withheld and the circumstances of the data subjects. He's satisfied that the data subjects in this case would reasonably expect that their personal data 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.
35. The complainant is pursuing what appears to be a private, or very localised, concern and unrestricted disclosure of the data subjects' personal data to the general public isn't proportionate.
36. 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.
37. 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 was entitled to withhold the information under section 40(2) of FOIA.

Procedural matters

38. Under section 17(1) of FOIA, a public authority that's relying on an exemption to withhold information should, within 20 working days, provide the applicant with a notice that states that fact, confirms what exemption it's relying on and explains why that exemption is engaged.
39. In its response to the request and internal review, the School didn't make any reference to section 40(2) of FOIA. In the Commissioner's view, the School could also have provided slightly more explanation on why it considered that exemption was engaged. The Commissioner therefore finds that the School's refusal notice didn't fully comply with section 17(1) of FOIA.

Other matters

40. In this case, the complainant introduced their request to the School as being made under FOIA but many of their questions read as general queries or requests for explanations.
41. FOIA concerns solely information held in recorded form. It doesn't oblige a public authority to answer general queries, give opinions or provide explanations. A public authority may respond to these types of communications as a matter of good customer service. However, as above, FOIA concerns only recorded information that a public authority holds, and the Commissioner will only consider a public authority's compliance with this legislation.
42. The Commissioner has produced guidance on how to write an effective request for recorded information¹ and the complainant may find it useful to review this.

¹ <https://ico.org.uk/for-the-public/official-information/preparing-and-submitting-your-information-request/>

Right of appeal

43. 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

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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