

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 October 2024

**Public Authority:** The Governing Body of Pensby High School  
**Address:** Irby Road  
Heswall  
Wirral  
CH61 6XN

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about legal fees. The above public authority ("the public authority") provided some information, stated that some information was not held and relied on section 40(2) of FOIA to withhold the remainder.
2. The Commissioner's decision is that on the balance of probabilities, the public authority does not hold information within the scope of part 2 of the request. In respect of part 1, the public authority is entitled to rely on section 40(2) of FOIA to withhold the information. The public authority breached sections 10 and 17 of FOIA in its handling of the request.
3. The Commissioner does not require further steps to be taken.

#### **Request and response**

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4. On 9 February 2024, the complainant requested information of the following description:  
    "[1] The total amount to date in sterling of all the legal costs, including but not limited to solicitors' fees, disbursements and the preparation and submission of court documents, in the actions

against Mr and Mrs Critchley by the Governors, Trustees and Headteacher of Pensby High School.

"[2] Please break down the above to provide the amounts and the percentages of the whole of each of the following sources of funding

1. Delegated funding to the schools, ie. tax-payer's [sic] money;
  2. Donations and fund-raising;
  3. Contributions from the claimant(s);
  4. Specified other, for example, insurance."
5. On 7 March 2024, the public authority responded. It refused to confirm or deny that it held the requested information. It relied on section 40(5B) of FOIA in order to do so.
6. The complainant requested an internal review on 16 March 2024. The public authority sent the outcome of its internal review on 21 May 2024. It now confirmed that it did hold some information, but it relied on section 43 of FOIA (commercial interests) to withhold it.

### **Scope of the case**

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7. During the course of the Commissioner's investigation, the public authority changed its position a second time. It now provided some information within the scope of part 2 of the request and confirmed that this was the only information it held. In respect of part 1, it confirmed that it now wished to rely on section 40(2) of FOIA to withhold the information.
8. The scope of the Commissioner's investigation is to determine whether further information is held within the scope of part 2 and whether the public authority is entitled to rely on section 40(2) of FOIA to withhold the information within the scope of part 1.

### **Reasons for decision**

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#### **Part 2 – funding sources**

9. The Commissioner accepts that the public authority does not hold further recorded information that would address this part of the complainant's request.

10. The public authority has explained to the Commissioner that it does not fund specific activities from specific income sources. There is a single pool of income (from all sources) and all activities that require funding draw their funds from this pool. The Commissioner recognises that this is not unusual practice across public authorities.
11. If all funding comes from a single pool, the public authority cannot apportion costs to any single source of funding. The Commissioner is therefore satisfied that no further information is held within the scope of this part of the request.

### **Part 1 - costs**

12. Section 40(2) of FOIA allows a public authority to withhold information that is the personal information of someone other than the requester and where there is no lawful basis in data protection legislation that would allow the information to be published.
13. The public authority has confirmed that it holds information (and, by implication, is funding some or all of the costs), but considers that this is the personal information of its head teacher – who can be identified from the request.
14. The Commissioner accepts that the withheld information, when combined with the request would identify the head teacher. The litigation in question has been the subject of several news articles and the head teacher's name is a matter of public record.
15. The Commissioner also accepts that the withheld information relates to the head teacher. The costs arise out of litigation which has been initiated by the head teacher and relates to matters involving him. The information is therefore his personal information.
16. Personal information cannot be published in the absence of consent from the subject of the information, unless it is necessary to satisfy a legitimate interest.
17. The head teacher has not consented to disclosure. He is under no obligation to do so.
18. The Commissioner recognises that there is a legitimate interest in disclosure of this information. The litigation in question involves the head teacher seeking an injunction against parents of a former pupil at the school who, he claims, are harassing him. Such action may not be unprecedented, but it is certainly not a regular occurrence.
19. It is not for the Commissioner to provide a view on either the merits of the litigation or the public authority's decision to fund the head teacher's

legal costs. However, significant sums of public money are involved and there is a public interest in understanding the decision-making process.

20. The Commissioner also considers that disclosure is necessary to further the legitimate interest. The public authority has confirmed that it does not intend to include the figure as a separate item in its published accounts so it will be difficult for parents to calculate what the value of its contribution is. Given the size of the sum involved, the Commissioner is not satisfied that there is a more proportionate means of achieving this aim.
21. Even where publication may be necessary to meet a legitimate interest, that legitimate interest must still be balanced against the rights of the subject of that information.
22. The Commissioner recognises that there are strong arguments on both sides.
23. An official source (though not one from the public authority) has stated that final costs in the case are likely to exceed £500,000. Though the figure the public authority holds is significantly smaller than that (because it only represents costs actually incurred to date) it remains significant.
24. The money that the public authority has agreed to pay in costs is either money that cannot be spent educating children or money that must be re-raised by the public authority to ensure no detriment to its pupils.
25. The public authority clearly believes that it owes a duty of care to its employee and that, given the exceptional circumstances, that duty warrants exceptional action to protect the employee. There may or may not be sound reasons to support that decision, but that doesn't relieve the public authority of its obligation to be transparent about its decisions.
26. On the other hand, the public authority has pointed to the numerous incidents that have taken place and which have prompted this exceptional action. These incidents have been widely reported in the press.
27. The public authority has argued that publishing the information now would be likely to intensify the pressure that the head teacher is already under. He has a reasonable expectation that this information will not be published and therefore publication would be likely to cause him significant distress as well as potentially inflaming the situation he finds himself in.

## **Conclusions on balancing**

28. In this case the Commissioner has concluded that the rights of the head teacher outweigh the legitimate interests in publication.
29. The information relates to the head teacher's personal life. Incidents have occurred outside of school hours and outside of school premises. The injunction being sought would prevent the respondents from being within a certain distance of his home or from knowingly driving within a certain distance of him.
30. However, the information also intrinsically links to his professional life because it relates to his employment and position at the public authority.
31. A reasonable degree of transparency has already been provided by the public authority confirming that it holds information (thereby confirming that it is making a contribution) and by the publication of the estimated final costs. Whilst the Commissioner notes that this latter information was not provided by the public authority, it is in the public domain and therefore informs debate around this issue.
32. In the Commissioner's view, the balance should favour the rights of the head teacher – at least whilst the litigation remains ongoing. Once the case has been determined it will provide important context to the public authority's decision to contribute to costs and the antagonism between the parties is likely to have reached some form of resolution.
33. The Commissioner is therefore satisfied that there is no lawful basis on which the information could be disclosed and thus section 40(2) of FOIA is engaged.

## **Procedural matters**

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34. The public authority breached section 10 of FOIA because it failed to confirm, within 20 working days, that it held relevant information.
35. The public authority breached section 17 of FOIA because it failed to provide a refusal notice, within 20 working days, citing the exemption from disclosure upon which it ultimately came to rely.

## **Other matters**

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36. During the course of the investigation, the public authority informed the Commissioner that the complainant had sent correspondence in which he stated that his "objective" was see the litigation dropped and the respondents' legal costs reimbursed by the public authority. It if did so, the correspondence stated, "my involvement will cease."
37. The Commissioner has not seen the full correspondence and the public authority has confirmed that it did not wish to claim that the request was vexatious.
38. However, the Commissioner wishes to make clear that FOIA is not a tool for venting wider displeasure at a public authority's decisions or actions. Nor should requests be used as a means of coercing a public authority into a particular course of action.
39. Any public value to a request can be outweighed if the requester is abusing their right of access.

## Right of appeal

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40. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**