

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 December 2024

**Public Authority:** The Governing Body for West Leigh Junior School

**Address:** Ronald Hill Grove  
Leigh-on-Sea  
Essex  
SS9 2JB

#### Decision (including any steps ordered)

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1. The complainant made a two-part request to West Leigh Junior School (the school) for information about "Primary School Catchment Changes in 2017".
2. The Commissioner's decision is that, on the balance of probabilities, the school does not hold any further information falling within the scope of part one of the request. In addition, the school was entitled to rely on section 40(1) of FOIA to withhold the information requested in part two of the request. However, he has recorded a procedural breach of section 17(1) of FOIA.
3. The Commissioner does not require the school to take any steps as a result of this decision notice.

#### Request and response

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4. On 26 April 2024, the complainant wrote to the school making the following request for information:

"I am requesting the following information under the Freedom of Information Act:

- All documents, emails, notes and other records relating to the 2017 Primary School Catchment area changes, including items that have subsequently been deleted;

- All documents, emails, notes and other records referencing myself, either in direct name, code or any other reference from 2017, including items that have subsequently been deleted.”
5. On 3 May 2024, the school responded to the request. It denied holding any information within the scope of the request.
  6. On 5 May 2024, the complainant asked the school to confirm that it had performed searches for the information that had been requested.
  7. On 13 May 2024, the school asked the complainant to confirm their address.
  8. On 14 May 2024, the school explained that it had asked the complainant for their address so that it could send them information it had identified within the scope of the request. The complainant replied stating that they would like the information sent by email, and sought an explanation as to how it had identified information it previously said was not held.
  9. On 15 May 2024, the school provided the complainant with copies of trustee/governor minutes from 2017. It said that there was a 'slight misunderstanding' around the request, and that the information identified is from meetings it assumed the complainant would have copies of.

### **Scope of the case**

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10. On 27 May 2024, the complainant contacted the Commissioner to complain about the way their request for information had been handled.
11. During the Commissioner's investigation, the school confirmed that it had withheld information in response to part two of the request under section 40(1) of FOIA.
12. The Commissioner considers the scope of his investigation is to determine whether, on the balance of probabilities, the school holds any further information falling within the scope of part one of the request. He will also consider whether the school was entitled to rely on section 40(1) of FOIA when refusing to disclose the information requested in part two of the request.

## Reasons for decision

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### Part one of the request – is any further information held?

13. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled:
  - a) to be told if the authority holds the information and,
  - b) to have the information communicated to them if it is held and is not exempt information.
14. Where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of “the balance of probabilities” when deciding whether there is any further information held by the public authority.
15. This means that in order to determine such complaints, the Commissioner must decide whether it is more likely than not that the public authority holds any information which falls within the scope of the request (or held it at the time of the request).
16. In this case, the request is for information relating to primary school catchment changes in 2017.
17. The school has explained that in its initial response to the request, it directed the complainant to the Local Authority because admissions issues sit with that organisation. The school admitted that it wrongly assumed that the complainant already had copies of the relevant minutes because they were a governor at the time.
18. The school subsequently carried out detailed searches of its paper archive of governor and trustee minutes for the time period of the admissions consultation, plus the complainant’s tenure as a governor, with an additional one year either side to ensure all information was captured.
19. The school stated that it also carried out a search of its central email server for any correspondence to and from the local authority about the admissions consultation. It confirmed that this search did not return any results, because emails that are over six years old are deleted in accordance with the school’s data retention policy. The school stated that any emails sent at the time would therefore no longer be held.

20. The school also confirmed that it searched the paper files within the main office and other areas within the school, with nothing relating to the admissions consultation found.
21. The school explained that due to the time period that the request relates to, the only staff consultation was with the CEO to try and identify where the school may have relevant information relating to the request. The school stated that this did not identify any other areas that had not already been searched as described above.
22. The school confirmed that trustee and governor minutes from 2017 are held as a signed paper copy of each meeting. Any emails would be held on Microsoft Office 365 which is held digitally on the cloud, and any other documents (of which the school stated none were found) would be held within the main school office, which is locked when not attended by the office staff.
23. The school stated that no specific information requested has been destroyed, but emails are deleted in accordance with the school's data retention policy.
24. The school stated that there are no statutory requirements to retain information within the scope of the request but explained that all trustee and governor minutes are kept as a permanent log of the Trust's minutes. All other information relating to this request is managed in accordance with the school's retention schedule from its Data Protection Policy.
25. The school has explained that there was no need to keep a copy of the requested information. The school stated that as well as a digital search, paper files within the school office were also searched to ensure that no paper copies of correspondence were missed. The school has advised that there is limited space in the school, so there are only a few places where this type of information would be stored.
26. The school stated that minutes of meetings are kept as a historical record of the Trust. It explained that the request concerning the primary school catchment changes is the business of the local authority, not the school.
27. The Commissioner appreciates that the complainant believes that the school should hold the requested information. However, FOIA's purpose is to provide transparency of information actually held by public authorities. It gives an individual the right to access recorded information held by public authorities at the time the request for that information is made. FOIA does not cover whether public authorities

should hold information - it only provides access where information is held.

28. The school has explained the searches it has carried out and, on this basis, confirmed that it has not identified any further information falling within the scope of the complainant's request. The Commissioner has not been provided with any evidence to contradict the school's explanation or to show that it in fact holds further information within the scope of the request. The Commissioner is therefore satisfied that the school conducted appropriate searches to identify what information it held in relation to the request.
29. Based on the above, the Commissioner finds that, on the balance of probabilities, the school does not hold any further information beyond that already disclosed to the complainant and has therefore complied with the requirements of section 1 of FOIA in relation to part one of the request.

**Part two of the request – could the school rely on the exemption under section 40(1) to withhold the requested information?**

30. As stated above at paragraph 4 of this notice, part 2 of the request asked for the following information:

“All documents, emails, notes and other records referencing myself, either in direct name, code or any other reference from 2017, including items that have subsequently been deleted.”

31. Section 40(1) of FOIA provides that personal information is exempt from disclosure under FOIA if it is the personal data of the requester.
32. Furthermore, because a disclosure under FOIA is not a disclosure only to the requester, but to the world at large, the Commissioner's guidance is clear that a requester's own personal data must not be disclosed under FOIA.<sup>1</sup> Instead, public authorities must handle requests for information that constitute the requester's own personal data as a subject access request (SAR) under data protection legislation<sup>2</sup>. This is the case even where the requester has explicitly asked for the information under FOIA.

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<sup>1</sup> [What do FOIA and the EIR say about requests for personal information? | ICO](#)

<sup>2</sup> Consisting of the UK General Data Protection Regulation and Data Protection Act 2018.

### **Is the information the complainant's personal data?**

33. Section 3(2) of the Data Protection Act 2018 defines personal data as:

“any information relating to an identified or identifiable living individual.”

34. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

35. 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.

36. 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.

37. Given that the requester has asked for documents with reference to their own name, the Commissioner is satisfied that the information constitutes the requester's personal data.

38. The school has also confirmed it handled this part of the request as a SAR and the response sent to the complainant contained all of the information relating to both parts of the request (the information of the admissions consultation and any personal data found relating to the complainant) as one response.

39. Section 40(1) is absolute; there is no access to the requestor's own personal data through FOIA because there is a separate access regime for this purpose under data protection legislation.

40. It is for the public authority to determine, in the first instance, which information access regime is most appropriate to deal with a request. In this case, the school was correct to handle part two of the request under data protection legislation as the requested information is exempt under section 40(1) of FOIA.

### **Procedural matters**

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#### **Section 17(1) – refusal of request**

41. Section 17(1) of FOIA states that where a public authority intends to refuse a request for information on the grounds that it is subject to an exemption in Part II of FOIA, it must issue the requester with a refusal

notice explaining the exemptions relied upon and why they apply (if not apparent), no later than 20 working days after the date on which the request was received.

42. In this case the school failed to specify which exemption under FOIA it was relying on to withhold the information requested in part two of the request. The Commissioner notes that the school accepted this oversight in its submissions to him.
43. The Commissioner has made a note of this procedural breach for monitoring purposes. However, he does not require the school to take any further action.

## **Right of appeal**

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44. 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)

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

**Pamela Clements**  
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