

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2014

Public Authority: The Governing Body of Bexleyheath Academy

Address: Woolwich Road
Bexleyheath
Kent
DA6 7DA

Decision (including any steps ordered)

1. The complainant requested copies of correspondence between Bexleyheath Academy ("the Academy") and the Metropolitan Police since 1 January 2013. The Academy applied the exemptions in sections 31 and 40(2) to the withheld information. The complainant complained that the Academy had breached procedural sections of FOIA in its handling of the request.
2. The Commissioner's decision is that the Academy has not breached any of the provisions of FOIA in its handling of the request. He does not therefore require it to take any further steps to ensure compliance with the Act.

Request and response

3. On 25 June 2014 the complainant requested the following information:

"Copies of all correspondence between the Metropolitan Police and Bexleyheath Academy/Academies Enterprise Trust between January 1, 2013 and the current date including written and email correspondence; data and any accompanying analysis thereof; all accompanying attachments and documents; and any other related material received or sent."

4. Bexleyheath Academy responded on 8 July 2014. It withheld information under sections 31(1)(c) and 31(1)(g)(2)(a)(b) on the basis that

disclosure could prejudice the administration of justice and/or the exercise of the Metropolitan Police Service of its functions. It went on to say that the public interest favoured the withholding the information because all of the correspondence held related to proceedings that had yet to be concluded.

5. On 14 July 2014 the complainant wrote a detailed letter to the Academy setting out her basis for disagreeing with its decision and requesting an internal review. The proprietor of Bexleyheath Academy, Academies Enterprise Trust, provided the outcome of the internal review on 15 September 2014. It agreed with the Academy's original decision not to disclose the information that the complainant requested.
6. The Trust explained that it believed that the complainant's request was non-specific in nature and did not refer to correspondence in relation to any particular student, member of staff or parent. It went on to say that there were many instances where its academies were involved in discussions with the police and other agencies regarding criminal activity, child protection and other matters and, therefore, that at any one time there might be a number of active cases where legal proceedings were ongoing.
7. The Trust's view was that to disclose all such information would not only prejudice the administration of justice and/or the exercise of the Metropolitan Police Service of its functions, but also breach the Data Protection Act. It believed that the disclosure of personal data of a third party in these circumstances would be unfair and was exempt under section 40(2) of FOIA.
8. The Trust went on to say that the complainant's letter appeared to suggest that she was seeking information about a specific case. If this were the case, the Trust stated that it might be best to approach the Metropolitan Police Service direct.
9. The complainant wrote back to the Trust on 17 September 2014 raising concerns that it had suggested that her request was not specific enough but had not sought clarification from her and that it had applied different exemptions in each response.
10. The Trust acknowledged that it now appeared from the complainant's letter of 17 September 2014 that her original request was specifically related to information pertaining to a specific member of staff who was closely linked to her. It went on to say that her request for information was much broader than that and sought all correspondence between the Metropolitan Police Service and the Academy, which might include matters relating to other students, staff or parents. In its view, the Academy responded appropriately to her request as it would do to any

member of the public. It stated that it did not believe that there was any need to seek clarification.

Scope of the case

11. The complainant contacted the Commissioner on 23 September 2014 to complain about the way her request for information had been handled.
12. Whilst the complainant confirmed that she did not wish to contest the withholding of the information that she requested, she raised the following issues:
 - (i) whether the Academy breached FOIA by not seeking clarification from her as to the scope of her request. In particular that it did not clarify with her that she was only seeking information in relation to a specific case, not in any relation to any other cases that arose within the timeframe of her request; and
 - (ii) the possible inconsistency of the responses that she received. She contended that the initial refusal that she received relied on section 31 as a basis for withholding information whilst the internal review letter relied on section 40(2).
13. The Commissioner considered whether the Academy handled the complainant's request in accordance with FOIA in relation to issues (i) and (ii) above.

Reasons for decision

Section 1 – Interpretation of the request

14. The complainant contended that the Academy breached FOIA by not seeking clarification from her as to the scope of her request. In particular, that it did not clarify that she was only seeking information in respect of a specific case, not in any relation to all of the cases that arose within the timeframe of her request.
15. The Commissioner's guidance entitled "*Interpreting and clarifying requests*" states that:

"11. We would not expect an authority to search for the history and context behind a request where none has been provided."

12. However, authorities will need to take the background and context into account where:

- it is referenced in the request; and*
- has the potential to alter its objective meaning."*

16. The Commissioner notes that the complainant's request did not make clear that she was seeking information in respect of the Academy's correspondence with the Metropolitan Police about one specific case nor did it provide background and context from which the Academy could have concluded that this was its purpose. Consequently, he is of the view that it was reasonable for the Academy to interpret the request as being concerned with any cases in relation to which it held information for the relevant period.
17. Whilst the complainant did subsequently provide clarification that she was only seeking information in respect of one particular case, this was provided at a later stage, after the Academy had provided its response. The time for determining whether a public authority has complied with the Act is normally the time that the request is made. In the circumstances, the Commissioner has determined that the Academy acted reasonably in interpreting the request as it did at the time of the request. He therefore finds that it complied with section 1 of the Act.

Section 17 – Refusal of request

18. The complainant complained that the initial refusal that she received relied on section 31 as a basis for withholding information whilst the internal review letter relied on section 40(2).
19. In the Commissioner's view, a public authority will breach section 17 of the Act if it does not cite an exemption that it is seeking to rely on by the time of its internal review response, at the latest.
20. The Commissioner notes that the Academy did not, subsequent to its internal review response, seek to rely on any additional exemptions to withhold the requested information. Consequently, there is no basis for him to conclude that it breached section 17 of the Act.
21. In addition, the Academy's internal review response in refusing the request states that:

"To disclose all such information would not only prejudice the administration of justice and/or the exercise of the Metropolitan Police Service of its functions, but also breach the Data Protection Act. The disclosure of personal data of a third party in

these circumstances would be unfair and is exempt under section 40(2) of the Freedom of Information Act."

22. It appears to the Commissioner that the initial part of the first sentence of this extract from the Academy's letter, whilst not stating the section number explicitly, is a reference to the Academy's continued application of section 31 of the Act, as was contained in its initial refusal notice. Consequently, it was not seeking to rely solely on section 40(2) in its internal review response but also section 31.

Right of appeal

23. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Rachael Cragg
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