

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 May 2018

Public Authority: Council for Catholic Maintained Schools ("CCMS")

Address: Eugene.o'neill@ccmsschools.com

Decision (including any steps ordered)

1. The complainant has requested information from the CCMS regarding panel interviews for a position at a specific school. The CCMS disclosed some of that information ("the withheld information") however it refused to disclose the remainder, citing sections 40(2) and 36(2)(c) of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the CCMS has correctly applied section 40(2) of the FOIA to part of the withheld information, however it has incorrectly applied section 36(2)(c) to the remaining withheld information.
3. The Commissioner requires the CCMS to take the following steps to ensure compliance with the legislation.
 - To disclose to the complainant the information withheld from him under section 36(2)(c).
4. The CCMS must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 23 November 2016, the complainant wrote to the CCMS and requested information in the following terms:

"I wish to request the following information under the FOI Act 2000. A recruitment exercise for the post of Vice Principal for St Patrick's Primary School, Aughacommon has recently been completed.

(a) How many applied for the post?

(b) How many were interviewed?

I understand that I may not receive any personal data relating to individuals but I am interested in completion of the documentation within the process. A form is completed by each panel member for each candidate when they have been interviewed to reflect the nature/quality of the answers given.

(c) I would like copies of these forms completed by the panel members on the day, with only personal data removed.

I understand that at a pre-interview meeting, the panel agree a number of questions to be put to the candidates at the interview. As each panel meets independently for each post, it is reasonable to assume that each panel will devise their own range/style of questions specific to the individual post to be filled.

(d) I would like a copy of the agreed questions.

6. On 20 December 2016 the CCMS responded to the complainant, stating only that the requested information could not be disclosed, as disclosure would breach the Data Protection Act 1998. The complainant sought an internal review of that response on the same date. The CCMS responded on 9 February 2017, disclosing information in response to parts (a) and (b) of the complainant's request and stating that it could not disclose information in parts (c) and (d) of the request, citing sections 40(2) and 36(2)(c) of FOIA respectively as a basis for non-disclosure.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the CCMS has correctly applied the exemptions as set out in section 40(2) and 36(2)(c) of the FOIA to the withheld information.

Reasons for decision

9. Section 40(2) of the FOIA applies where disclosure of the information in question under FOIA would constitute a breach of the Data Protection Act 1998 ("DPA"). It would breach the DPA if personal data were to be disclosed and that disclosure was not in accordance with one of the data protection principles. The CCMS has applied this to the information requested in part (c) of the complainant's request.

10. Personal data is defined in section 1(1) of the DPA as:

"... data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual."

11. The CCMS has provided the information withheld under section 40(2) (the interviewers' notes) to the Commissioner and stated that they identify living individuals.

12. The Commissioner has reviewed the information withheld under section 40(2). Whilst the names of the individuals concerned could be redacted, this still leaves notes referring to the answers they provided to interview questions. As Northern Ireland is a small place, and the teaching community is also small and people would probably be aware of who would be likely to apply for the post, there is a potential for individuals to be identified from those notes, especially as they refer in part to those individuals' previous jobs and experience. The notes also constitute the personal opinions of the interviewers as to the candidates' responses. Disclosure of these will constitute the personal data of the interviewers, who again may be known due to the small size of the teaching community in Northern Ireland. Therefore, in the particular circumstances of this case, the Commissioner is satisfied that the notes constitute personal data.

13. As set out above, information is exempt from disclosure where disclosure would breach one of the data protection principles. The most relevant data protection principle in this case is the first data protection principle which states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

*(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*

14. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
 - The reasonable expectations of the individual(s) in terms of what would happen to their personal data. Such expectations could be shaped by;
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectation of privacy including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - any particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
15. With regard to the consequences of disclosing the information, i.e. what damage or distress, would the individual suffer if the information was disclosed? The Commissioner may take into account the following factors:
 - Whether information of the nature requested is already in the public domain;
 - If so, the source of such a disclosure, and even if the information has previously been in the public domain, does the passage of time mean that disclosure now could still cause damage or distress?
16. Furthermore, notwithstanding the data subjects' reasonable expectations or any damage or distress caused by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure into the public domain.
17. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests

with the rights of the data subject, it is also important to consider a proportionate approach.

18. The CCMS explained that it had made it clear to the individuals in question the purposes for which the notes are made, what will be done with them, and how they will be stored. The CCMS further explained that it did not consider it appropriate to seek the consent of the individuals to disclose their personal information.
19. The CCMS further stated to the Commissioner that the reasonable expectations of the individuals would be that their personal information is kept securely and would not be disclosed into the public domain.
20. The Commissioner has considered whether or not there is any legitimate interest in disclosure of the information withheld under section 40(2) of the FOIA. Although the complainant clearly has a private interest in the information, the Commissioner considers that disclosure of the information may cause distress to the individuals concerned, due to the loss of privacy, and no legitimate public interest exists to justify disclosure when balanced against this.
21. Therefore, the Commissioner is satisfied that the CCMS has correctly applied section 40(2) to part of the withheld information.

Section 36 – prejudice to the effective conduct of public affairs

22. Section 36(2) provides that “information is exempt if in the reasonable opinion of the qualified person, disclosure -
 - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”
23. The CCMS is seeking to use the exemption as set out in section 36(2)(c) as a basis for non-disclosure of the information requested in point (d) of the complainant's request. However, as the CCMS has not provided any evidence of having sought or obtained the opinion of a qualified person in relation to the application of this exemption, despite having been asked several times by the Commissioner, the Commissioner can only conclude that section 36(2)(c) is not engaged in relation to the withheld information within the scope of part (d) of the complainant's request.

Right of appeal

24. 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

25. 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.
26. 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

Deirdre Collins
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