

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 May 2014

Public Authority: Royal Borough of Greenwich
Address: The Woolwich Centre
Wellington Street
Woolwich
SE18 6HQ

Decision (including any steps ordered)

1. The complainant requested information about Thomas Tallis School. The Royal Borough of Greenwich (the 'Council') responded and applied section 21 (information reasonably accessible to the applicant by other means) to the request. During the Commissioner's investigation, the Council revised its position and said that it did not hold the requested information, apart from that relating to a bathroom installation at Thomas Tallis School, which was disclosed during the investigation.
2. Apart from the information about the bathroom installation, the Commissioner's decision is that the Council, on the balance of probabilities, does not hold the requested information. The Council breached section 10 of FOIA by failing to provide a response within 20 working days. He does not require the Council to take any remedial steps.

Request and response

3. On 1 October 2013 the complainant wrote to the Council and requested information in the following terms:

"How were the executive head of Thomas Tallis school and the senior management held to account against what criteria during the 2012-2013 school year? What were these target criteria?"

What has been spent over the last two years to achieve a 1% increase in 5 GCSE's at A - C including Maths & English?"*

What do you intend to spend now to achieve what level of performance?

What was the executives [sic] head's salary?

What was the interim head's salary?

What was the senior leaderships [sic] team total remuneration in the 2012/13 school year?

How much did Thomas Tallis school pay to Woolwich Polytechnic or Woolwich Polytechnic staff after the executive head was appointed over both schools?

What other consultants/freelancers/or other staff who were not on the normal payroll were paid for by Thomas Tallis school over this period?

What was the cost of replacing the senior leadership team of the school? How many staff signed or were asked to sign the alleged confidentiality or 'gagging' clauses as part of their removal? Why were they asked to sign this type of clause?

How much has been spend [sic] on recruitment to Thomas Tallis since June 2011? What has been spent with recruitment consultants and who were they?

What has been spent with headhunters and who were they?

What was spent on recruitment advertising? What other recruitment costs were there?

How much was the reallocation of a PFI refund to install a bathroom for the executive head at Thomas Tallis school worth? Who negotiated and sanctioned this expenditure?

What other reallocation of PFI refunds or other remunerations were used to incentivise the new leadership since June 2011?

Please can you tell me what the school has spent on hotels and entertainment of staff and governors since 2011?

Please provide a breakdown of the senior leadership team, executive head's, consultants and governors expenses expenditure over the last two years."

4. On 18 November 2014, the Council responded. It stated that the requested information was reasonably accessible from the school and applied section 21 to the entire request.
5. The complainant wrote to the Council on 19 November 2013 querying the Council's response but did not receive any reply.

Scope of the case

6. The complainant contacted the Commissioner on 20 November 2013 to complain about the way his request for information had been handled.
7. Although the Commissioner initially set out to investigate the Council's application of section 21 (information accessible to applicant by other means), the Council then changed its position and said that it did not hold the requested information. It directed the complainant to contact Thomas Tallis School with his request.
8. During the investigation, the Commissioner queried whether the Council held any recorded information in relation to it stating that the cost of the bathroom installation at Thomas Tallis School was at "nil cost". The Council subsequently provided the complainant with a copy of this information (see paragraph 16).
9. The Commissioner has therefore considered whether, on the balance of probabilities, the Council holds any further information relevant to this request.
10. Although not a section 50 issue, the Commissioner also asked the Council to explain why it had not treated the complainant's email of 19 November 2013 as a request for an internal review. This issue is considered further under 'Other matters'.

Reasons for decision

11. Section 1 of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

12. The task for the Commissioner here is to determine whether, on the balance of probabilities, the Council holds any further information relevant to the request which it has not disclosed to the complainant. Applying the civil test of the balance of probabilities is in line with the approach taken by the Tribunal when it has considered the issue of whether information is held in past cases.

13. In this case the Council responded late to the Commissioner's investigation into its application of section 21 and changed its position. It now said that it did not hold the requested information. It did, however, state that the bathroom installation at Thomas Tallis School had been at "*nil cost*" to the Council. It said that it had now carried out an internal review which it had provided to the complainant.
14. The Commissioner then wrote to the Council again on 18 March 2014 and 24 March 2014, investigating its revised position that the information was not held. In his email of 24 March 2014 the Commissioner also included views from the complainant following receipt of the internal review.
15. The Council did not respond until 11 April 2014. In doing so it failed to answer all the Commissioner's questions about what information it held, advising that the relevant officers were on leave. In response to one of the complainant's queries the Council explained that the executive head's salary details appearing in the statement of accounts for 2012/13 related to Woolwich Polytechnic and not to Thomas Tallis School; the Commissioner advised the complainant accordingly.
16. On 16 April 2014, at the Commissioner's request, the Council provided a copy of the recorded information it held in relation to the nil cost bathroom installation. It asked the Commissioner to keep this information "*confidential*" but did not apply any exemption(s). It again said it could not provide full details about the searches undertaken due to staff being on leave but said that it would do so by 28 April 2014.
17. The Commissioner contacted the Council again on 22 April 2014 asking it to set out which exemption it had applied to withhold the information it held about the nil cost bathroom installation. He also reminded the Council that he was still awaiting a response from queries raised on 18 March 2014.
18. On 28 April 2014 the Council spoke to the Commissioner to explain that it did not wish to apply any exemption to the information held about the nil cost bathroom installation and gave its reasons for remaining confidential as "*being cautious*". The Council confirmed that the information could be disclosed in full to the complainant; the Commissioner has therefore sent the complainant this information.
19. The Council apologised for the delays in responding to the Commissioner's investigation. It said these were due to staff changes. Whilst the Commissioner acknowledged that this would have had some impact on the investigation, he commented that he had started his investigation on 29 January 2014 and that it was, in his view, a relatively straightforward investigation.

20. On 18 March 2014, the Commissioner asked the Council to explain the searches undertaken in order to respond to the request. In this case, a partial response was provided by the Council on 11 April 2013, with the remainder not provided until 28 April 2014.
21. The Council said, on receipt of the request, that the former Children Services lead for FOIA had emailed the Assistant Director and the HR team to ask if the Council held the requested information. Both replied in the negative and referred to Thomas Tallis School holding the requested information.
22. The Council explained that its officers do not have personal or laptop computers and that documents, including emails, are stored on networked servers. It said that it has moved to being a paperless environment, but that some officers continue to hold paper files whilst working on a particular task. Once the case has been concluded the papers are then disposed of, or are scanned and filed electronically. For these reasons, the Council said that if information were held it would be held electronically.
23. The Council confirmed it is not aware of any recorded information relevant to this request being held but subsequently deleted or destroyed.
24. The Commissioner asked the Council what its formal records management policy says about the retention and deletion of such records. The Council said it had based its response on HR records and confirmed that any such information would be subject to a seven year retention period.
25. It confirmed that there is no statutory requirement for the Council to hold the requested information and stated that there is also no business purpose for it to hold it as the expectation is that the school would hold this information.
26. Notwithstanding the protracted investigation and the Council's delay in responding, the Commissioner formed a preliminary view, on the balance of probabilities that the Council does not hold any further information, apart from that which it disclosed during the investigation.
27. The Commissioner asked the complainant to consider whether his complaint could be informally resolved on this basis. The complainant declined, stating that in his view the information is held by the Council. There followed an exchange of emails in which the complainant contended that the executive head's salary was in the Council's statement of accounts for 2012/13 and that this was evidence that it must hold some information.

28. The Commissioner has viewed the accounts and is satisfied that the salary relates to the head of Woolwich Polytechnic and not to the head of Thomas Tallis School. He understands that the head of Woolwich Polytechnic assumed responsibility for Thomas Tallis School as well at some point in 2011 and whilst the position was being advertised in January 2012.

Conclusion

29. Although the investigation in this case has been protracted, the view of the Commissioner is that the Council, on the balance of probabilities, does not hold any further information.

Section 10 – time for compliance

30. Section 10(1) of the FOIA provides:

"...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

31. In this case the Council did not provide its response for 35 working days. The Commissioner finds that the Council breached section 10(1) of the FOIA in this case and has ensured that the details of the case have been recorded for future monitoring purposes.

Other matters

32. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
33. The Council failed to carry out an internal review despite the complainant's email following the initial response. It then decided to carry out an internal review during the Commissioner's investigation. The Commissioner is concerned that it took over 85 working days for an

internal review to be completed, in what are not, in his opinion, exceptional circumstances.

34. While the Commissioner accepts that staff changes and leave have contributed to the delays in the Council's responses to his investigation, he considers that the Council's engagement with him during the investigation was nevertheless poor. The Commissioner had cause to contact the Council by telephone and in writing on a number of occasions in a bid to secure a response and/or an update, despite his agreement to extending the time for some of the responses. It is frustrating and disappointing that some of these late responses were either further delayed due to staff leave, or failed to address all the questions asked. Having waited a significant time for staff to return from leave, the Commissioner was disappointed that no additional information was provided by the Council relating to the searches for the requested information. He expects the Council to respond in a more timely and effective manner to future investigations.

Right of appeal

35. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

36. 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.
37. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF