

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

### **Decision notice**

**Date:** **12 February 2025**

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

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

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1. The complainant has requested information about a specific member of staff. Pensby High School ("the public authority") disclosed some information but then refused to confirm or deny whether the remainder was held, citing section 40(5B) (personal information.)
2. The Commissioner's decision is that the public authority is not entitled to refuse to confirm or deny the requested information is held.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Issue a fresh response to part 2 of the request that confirms or denies that the requested information is held and, if held, either discloses it, or provides a valid refusal notice according to section 17.
4. The public authority must take these steps within 30 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

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5. According to the complainant, they submitted the following request on 17 June 2024 and the Commissioner can see evidence that it was resubmitted on 20 July 2024:

"1. Please can I request the integer number of all Freedom of Information requests submitted to Pensby High School during the tenure of [Head Teacher] or failing this from the time that the current Office of the Data Protection Officer starting acting (sic) in its capacity for Pensby High School. Please can I request the integer number of Freedom of Information request (sic) that have been rejected by Pensby High School over the same time period.

I trust that (sic) Office of the Data Protection Officer will have this information readily at hand, it should not take anywhere near 18 hours.

2. Please can I request the integer number of complaints against [Head Teacher] that have been escalated or referred to the Chair of Governors, or the Board of Governors at Pensby High school, and the number of complaints that have been upheld.

I would expect this information to be available in the minutes of the meetings of the Board of Governors and therefore should not take 18 hours to collate."

6. The public authority responded on 2 August 2024. It disclosed the information requested at part 1 but refused to confirm or deny whether any information was held in response to part 2, citing section 40(5B) (personal information) of FOIA.
7. The complainant requested an internal review, into how part 2 of the request had been handled, on 4 August 2024.
8. The public authority provided the outcome to its internal review on 16 October 2024, upholding its previous position.

## Scope of the case

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9. The complainant contacted the Commissioner on 21 October 2024 to complain about the way part 2 of the request had been handled.
10. The Commissioner considers that the scope of his investigation is to consider whether the public authority was correct to refuse to confirm or deny that the information being requested at part 2 is held.

## Reasons for decision

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11. Section 1(1)(a) of FOIA places an obligation on a public authority to confirm or deny whether the information being requested is being held. However, under section 40(5B) of FOIA a public authority is entitled to refuse to confirm or deny whether it holds information if to do so would contravene any of the principles relating to the processing of personal data that are set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
12. The most relevant principle is Article 5(1)(a). This states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
13. In the case of a FOIA request, personal data is processed when it's disclosed in response to the request or when the public authority confirms or denies that particular information is held. This means that the information can only be disclosed, or a public authority can only confirm whether or not it holds the information, if to do so would be lawful, fair and transparent.
14. So, the Commissioner must first consider whether, confirming or denying that information is held in response to part 2 of the request, would, in itself, disclose personal data.
15. Part 1, Section 3(2) of the DPA18<sup>1</sup> defines personal data as:

"any information relating to an identified or identifiable living individual."

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<sup>1</sup> [Data Protection Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable from that information.
17. The request clearly asks if the headteacher, named in the request, has been the subject of complaints that have been referred to the chair, or board of, governors and if so, how many of those complaints have been upheld. If the public authority confirms that it holds information that falls within the scope of the request, it's confirming that the headteacher has been the subject of at least one such complaint. Alternatively, if the public authority denies holding the requested information, it's confirming the opposite.
18. Whether or not they've been the subject of a complaint has biographical significance for the headteacher; this information relates to them and they're identifiable from the request. It's therefore their personal data and that makes them the data subject.
19. Now, the Commissioner must go onto consider whether confirming or denying whether the requested information is held, would contravene any of the data protection principles.
20. This involves considering three 'tests': the legitimate interest test, the necessity test, and the balancing test. More information about the three tests can be found in the Commissioner's guidance.<sup>2</sup>
21. The complainant clearly has concerns about the conduct of the headteacher and these concerns are shared by other members of the public. There is a history and wider context to these concerns, that the Commissioner doesn't intend to replicate in its entirety here.
22. The headteacher is pursuing a civil claim for harassment against two individuals. The Commissioner understands that the public authority will be contributing to the headteacher's legal fees.<sup>3</sup>
23. There's a legitimate interest being pursued here. There's the private interest of the complainant but also the wider public interest in transparency and accountability, given the significant sums of money involved. Understanding whether previous complaints have been

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<sup>2</sup> [Decision notice support materials | ICO](#)

considered may help the public to understand why the public authority has agreed to make a financial contribution to the costs of litigation.

24. 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 be sound reasons to support that action, but they don't relieve the public authority of its obligation to be transparent about its decisions.
25. The public authority has argued that disclosure, or confirmation or denial in this case, isn't necessary since:

"There are other available means of pursuing accountability of the headteacher, such as Ofsted's complaints procedure, reports to the TRA, or the school's own complaints procedure. These procedures would allow the headteacher's conduct to be investigated in a less intrusive manner, allowing a response to be provided to the requestor which avoids disclosure of unnecessary personal data."
26. The Commissioner agrees, the complainant can pursue all of these avenues if they have a specific complaint about the headteacher. However, the legitimate interest here is in understanding the information available to the public authority when it decided to provide financial support. This isn't information that would automatically be made available to the complainant via any of the aforementioned routes.
27. In this case, the Commissioner considers that disclosure under FOIA, or confirmation or denial in this case, is necessary. So he's gone onto consider the balancing test to consider whether the identified interests in confirmation or denial outweigh the interests or fundamental rights and freedoms of the headteacher.
28. The Commissioner recognises the wider circumstances of this request have caused the headteacher distress. Anything that has the potential to bring the matter up again, such as confirmation or denial in this instance, is likely to cause the headteacher distress once more.
29. The request also relates to circumstances that straddle both the headteacher's professional role but also their professional life. The headteacher has not consented to disclosure, or confirmation or denial, being issued in response to this request and the reasonable expectations of the data subject must always be taken into account when conducting the balancing test.

30. During his investigation, the Commissioner brought it to the public authority's attention that information about the context surrounding this complaint appear to be in the public domain. In response, the public authority explained:

"The information being requested is not already in the public domain. We are not aware of any school complaints against the headteacher being widely reported in the media. We are aware of media articles in which the headteacher's civil claim, and the associated costs, are reported on. However, those articles do not disclose the information requested in this FOI request."

31. The public authority is correct, the details that are being requested in this request are not strictly in the public domain. However, a lot of other information relating to the circumstances surrounding the headteacher, their civil claim and the request, is in the public domain. The Commissioner must therefore assess the extent to which confirming or denying that information is held would represent a further intrusion into the headteacher's privacy. It is less reasonable for the headteacher to expect that the public authority would refuse to confirm or deny that it held information when a reasonable person could infer, from what is already in the public domain, that such information would be held.
32. Given the matters covered in the civil claim, the Commissioner considers it highly likely that the two respondents would have submitted at least one formal complaint against the head teacher. Therefore, if the public authority were to confirm that it held information, the intrusion into the head teacher's privacy would be minimal compared to what is already in the public domain
33. Alternatively, if the public authority were to deny holding information, this provides important context to the civil claim, circumstances surrounding it and the public authority's decision to provide financial support.
34. The key to the balancing test is ascertaining whether disclosure would have an excessive or disproportionate adverse effect on the legitimate interests and rights of the individual concerned.
35. Whilst acknowledging the emotive circumstances surrounding this request, the Commissioner considers the distress, and consequences, of the public authority confirming or denying that the information is held, will be limited due to the significant amount of information, about the headteacher and the public authority, that's already in the public domain.

36. Furthermore, there's a legitimate interest being pursued in this request where a significant amount of public money is being spent, by the public authority, on the headteacher's civil claim – albeit one that arises out of their employment with the public authority. Whether justified or not, this money 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.
37. In this case, the Commissioner believes the need for transparency overrides the privacy rights of the headteacher. Since confirmation or denial would be compliant with principle (a), section 40(5B) of FOIA is not engaged and the Commissioner requires the public authority to take the steps outlined in paragraph 3 of this notice.

## Right of appeal

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38. 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)

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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