

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 July 2013

Public Authority: Manchester City Council
Address: Town Hall
Albert Square
Manchester
M60 2LA

Decision (including any steps ordered)

1. The complainant requested details about the replacement of a Headteacher with an acting Deputy Head at a named school. Manchester City Council (the 'Council') responded stating that it did not hold the requested information. Following an internal review it provided some information and applied the exemption for personal information (section 40(2)) to the remainder. During the investigation the Council reverted to its original position that no information was held at the time the request was made.
2. The Information Commissioner's decision is that the information the Council identified at internal review was not held at the time of the request and has concluded, on the balance of probabilities, that the Council did not hold the requested information at the time of the request. He does not require the Council to take any steps.

Background

3. Prior to making her FOIA request, the complainant, who has children at the school in question, had written to the school's Governing Body about the situation with the Headteacher. She was dissatisfied with the response which said that confidential issues relating to a member of staff who could be identified should not be put in the public domain. The Governing Body referred the complainant to its previous correspondence sent to all parents of children at the school and said it was not able to add anything further at this time.

Request and response

4. On 26 October 2012 the complainant wrote to the Council and requested information about the replacement of the Headteacher with an acting Deputy Head at a particular school in the following terms:
 1. *Who initiated the process which is currently on-going?*
 2. *How long is it likely to last?*
 3. *How is it likely to be resolved?*
 4. *When is it likely to be resolved?*
 5. *How long will the 'interim period' last, during which our new Deputy Head will continue in the role of Acting Head?*
 6. *How long are we likely to have a part-time Deputy Head on loan from another school?*
 7. *Are the Governors actively carrying out an investigation or are they passive?*
 8. *Which processes are the Governors carrying out?*
 9. *If the Governors re passive, who else is carrying out processes in relation to this situation?*
 10. *Are there documents which describe these processes which I can read and refer to?*
 11. *If the situation is so very serious that the Headteacher needed to be physically removed overnight, how was it possible to time the Head's removal so neatly to fit in with the changeover of Deputy Head?*
 12. *Is the situation irreversable? [sic]"*
5. The Council responded on 15 November 2012. It stated that it did not hold the requested information.
6. The complainant requested an internal review on 15 November 2012. Following the internal review the Council wrote to the complainant on 7 February 2013. Further comment about the delay in completing the internal review can be found in the 'Other Matters' section of this notice. The Council said it was incorrect to state that it did not hold information relevant to the request. Its review response instead advised "*The process is ongoing*" to questions 2, 3, 4, 5 and 6 of the request. It

applied the exemption for personal information (section 40(2)) to the remainder of the request.

Scope of the case

7. The complainant contacted the Information Commissioner (the 'Commissioner') on 13 February 2013 to complain about the way her request for information had been handled.
8. The Commissioner initially set out to determine whether the Council had properly applied section 40(2) to parts of the request; however, as is detailed in the 'Reasons for decision' section of this notice, the Commissioner's final determination has been to consider whether, on the balance of probabilities, any of the requested information was held by the Council at the time of the request.
9. The Commissioner does not consider that questions 11 and 12 of the complainant's request constitute requests for recorded information under the FOIA. He has therefore not included them in the scope of this case.

Reasons for decision

10. The Commissioner began by investigating the position at internal review, as is the norm. In this case, this meant that he asked the Council about its application of the exemption for personal information (section 40(2)) to parts of the request, and for the Council to reconsider the way in which it had handled the request in its entirety. The Commissioner also requested the Council to provide him with the withheld information marked up with the exemption(s) relied on and an explanation as to why they were considered to apply.
11. The Council responded on 28 May 2013. It told the Commissioner that while preparing the information in order to respond to his investigation, it had become apparent that the Council's internal review of 7 February 2013 had reached a "*mistaken conclusion*" as to what information was actually held by the Council for the purposes of FOIA.
12. The Council advised that, after making enquiries, it was able to confirm that it did not hold in a recorded form the information in question at the time of the complainant's request. It said the failure to appreciate this while undertaking the internal review would appear to have resulted from a miscommunication between the officers assisting in the

completion of the internal review and the officers who it was thought may hold relevant information.

13. By way of explanation, the Council said that certain services it historically provided to schools are now instead provided by a private company that contracts directly with schools. While it acknowledged that some Council officers were aware of the situation concerning the Headteacher at the school, it said that this had come about incidentally as part of their dealings with the school and its contractor in relation to other matters where the Council still maintains a supporting role towards Community Schools. The Council advised, however, that as the information in question did not directly relate to the Council's remaining responsibilities in supporting schools, the officers in question had no reason to record it.
14. The Council confirmed that information pertaining to the first 10 of the 12 questions in the request entered a recorded form for the first time on 15 January 2013. It said, however, that as none of the relevant information known to Council officers was held by the Council in a recorded form at the date of the request, it had been correct to state that the information was not held.
15. In addition, the Council stated it was of the view that, even if the requested information had been held in a recorded form at the time of the request, it would nonetheless be appropriate to withhold answers to 7 of the 12 questions on the basis of section 40(2) as per its internal review response of 7 February 2013.
16. If a request were to be received at the present time for this information, the Council advised it would be able to confirm that the former Headteacher had resigned, and following an open recruitment process, the acting Headteacher has been appointed as the new Headteacher. It confirmed that this information has already been communicated to parents.
17. Given that the Council had reverted to its original response that the requested information was not held at the time the request was made, the Commissioner has not considered its application of section 40(2) and has instead gone on to consider section 1 of FOIA which 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."

18. 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 in past cases when it has considered the issue of whether information is held.
19. In preparation for drafting this notice, the Commissioner wrote to the Council on 4 June 2013 asking it to clarify why it was certain that the information only attained a recorded status on 15 January 2013, and whether this was the date on which the contractor started dealing directly with schools.
20. On 18 June 2013 the Council replied to the Commissioner's queries from 4 June 2013. It confirmed that its contract with the contractor pre-dates both 15 January 2013 and the date of the request. The Council advised that officers from the relevant section of the Directorate for Children and Commissioning had confirmed that, while certain information was known to them that may have been relevant to the questions asked by the complainant, this information had not been put into a recorded form (as it related to matters in respect of which the Council no longer provided support to schools). The Council confirmed that information only attained a recorded status on 15 January 2013 when an officer assisting in undertaking the internal review of the Council's response to the complainant's request made a set of handwritten notes following discussions with the aforementioned officers of the Directorate for Children and Commissioning.
21. On 25 June 2013, the Council replied to the Commissioner's remaining query. The Council confirmed that the contractor had passed the information to it, by way of a telephone call. As detailed above, the Council reconfirmed that this information was only put into a recorded form on 15 January 2013 when notes were made during the internal review of the Council's response to the complainant's FOIA request.

Conclusion

22. On the basis of the explanation provided by the Council, the Commissioner is satisfied, on the balance of probabilities, that the requested information was not held by the Council in a recorded form at the time the complainant made her request.

Other matters

23. 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 the 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. The Commissioner is concerned that in this case, it took over 58 working days for an internal review to be completed, despite the publication of his guidance on the matter.
24. He notes that the Council has acknowledged the delay in this case in handling the internal review and that it has undertaken to strengthen its existing processes for dealing with requests and reviews, with a view to ensuring that misunderstandings on what information is held do not recur and that reviews are completed within appropriate timescales.

Right of appeal

25. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. 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.
27. 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