

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 20 August 2014

Public Authority: North Eastern Education and Library Board
Address: County Hall
182 Galgorm Road
Ballymena
BT42 1HN

Decision (including any steps ordered)

1. The complainant has requested information redacted from a note of a meeting. The North Eastern Education and Library Board withheld the information under section 40(2) of the FOIA. The Commissioner's decision is that the Board was entitled to withhold the information in reliance on this exemption, and requires no steps to be taken.

Request and response

2. On 12 January 2014 the complainant requested the following information from the Board:

"I refer to my previous email of 6th January relating to your meeting also of 6th Jan 2013 with regards Kirkinriola PS [Primary School].

Please provide the following information in relation to same:

1. *Confirm the names of all attendees, including MLAs, KPS parents and NEELB Officers and any other attendees?*
 2. *A copy of Agenda for meeting?*
 3. *Full minutes, notes and/or action points relating to all discussions conducted?"*
3. The Board responded on 15 January 2014, although the complainant says he did not receive this response until 22 January. The Board provided a note of the meeting but advised that it did not hold an

agenda. The Board further advised that it would not disclose the names of some individuals who attended the meeting.

4. The complainant emailed the Board on 26 January 2014, asking whether it had sought permission from parents to disclose their names, and asking the Board to clarify its basis for redacting certain information from the note provided. The complainant emailed the Board again on 12 February 2014, in response to correspondence received from the Board dated 4 February 2014, requesting an internal review.
5. The Board responded to the complainant on 12 March 2014. At this stage the Board confirmed that it was relying on the exemption at section 40(2) of the FOIA in respect of the names of attendees at the meeting on 6 January 2014, and in respect of one item raised at that meeting.

Scope of the case

6. The complainant contacted the Commissioner on 17 March 2014 to complain about the way his request for information had been handled. The complainant argued that the Board had wrongly withheld information from him.
7. The Commissioner considers the scope of this case to be the Board's decision to withhold the following information under section 40(2) of the FOIA:
 - The names of some individuals who attended the meeting
 - An extract from the note relating to one item raised at the meeting.

Reasons for decision

8. Section 40(2) of the FOIA states that a public authority is not obliged to disclose information that is the personal data of an individual other than the applicant if to do so would:
 - constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).
9. The Board argued that the withheld information fell under section 40(2) as it was personal data of various individuals other than the complainant. The Board argued that disclosure of the withheld

information would breach the first data protection principle because it would be unfair to those individuals.

The names of individuals who attended the meeting

10. The Board argued that the individuals who attended the meeting, other than Board officials and elected representatives, would have a reasonable expectation that information relating to their attendance would not be disclosed into the public domain. Although notes of the meeting were taken, the Board did not issue the note to the individuals who attended. The Board explained that it had not sought consent from the individuals when the response was received, as it did not have contact details for all of them. In any event the Board expected that consent would not be forthcoming.
11. The complainant was of the strong view that it would not be unfair to disclose the names of attendees. The complainant said that the individuals concerned had spoken publicly about the meeting; therefore they could not reasonably expect their names to be withheld as they were already in the public domain. The complainant also pointed out that he was not asking for the information to be disclosed to the public.
12. The Commissioner explained to the complainant that disclosure under the FOIA constitutes the release of information into the public domain. Therefore the Commissioner's decision in this case can only address whether the information should be disclosed to the public at large; he cannot order that disclosure be limited to particular parties or individuals.
13. The Board confirmed to the Commissioner that the meeting was requested by an elected representative to discuss ongoing matters relating to the school. The Board advised the Commissioner that it was dealing with ongoing issues relating to the school, which is part of a small community. Given the strength of feeling around these issues the Board considered it likely that disclosure would cause the individuals who attended the meeting some distress.
14. The Commissioner notes that the Board has disclosed the names of its officers and the elected representatives who attended the meeting. In the Commissioner's view this reflects the distinction to be made between individuals in public facing roles (including those who have been elected by the public) and individuals who interact with public bodies such as the Board. The Board officers were the Chief Executive and Senior Education Officer, and the Commissioner agrees that officers at this level and function could be expected to understand that their names would be properly disclosed to the public in response to a request.

Similarly, elected representatives would not expect that their names would be withheld in these circumstances.

15. The Commissioner considers that the other individuals who attended the meeting would not expect their names to be disclosed into the public domain. The Commissioner has seen no evidence to suggest that there is an overriding public interest which demands that the information be disclosed into the public domain. Furthermore, the Commissioner accepts the Board's argument that disclosure of the withheld individuals' names would cause those individuals distress. The Commissioner notes the complainant's argument that he was already aware of the identities of the attendees but the Commissioner does not consider that this means the information should be disclosed into the public domain.
16. In light of the above the Commissioner finds that disclosure of the withheld names of the individuals who attended the meeting would be unfair to those individuals, and would thus breach the first data protection principle.

The information relating to an item raised at the meeting

17. The Commissioner cannot describe this information in detail as to do so would defeat the purpose of the Board's reliance on section 40(2). Having inspected the information in question the Commissioner can confirm that it is personal data relating to an individual or individuals who are not the complainant. This is because the content of the information in question would allow the individual or individuals to be identified from that information. Therefore the Commissioner is satisfied that the withheld information falls to be considered under section 40(2) of the FOIA.
18. Again the Commissioner is unable to provide a detailed analysis of his reasoning in relation to section 40(2) since to do so would reveal the content of the withheld information. The Commissioner has had regard to the context, ie the fact that this information comprises an item raised at the meeting, and the fact of the dispute relating to the school. The Commissioner is also mindful that the note of what was actually discussed has been disclosed in full. Consequently, the Commissioner is satisfied that disclosure of this information into the public domain would be unfair on the individual or individuals whose personal data is involved.

Procedural requirements

19. Section 17(1) of the FOIA states that:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies”.*

20. In this case the Board’s letter of 15 January 2014 stated that it could not disclose the names of attendees but failed to cite any exemption. Nor did it address the redaction made to the note of the meeting. Therefore the Board failed to comply with section 17(1) in that it failed to provide an adequate refusal notice within the statutory time for compliance.

Other matters

21. Although it does not form part of the decision notice, the Commissioner wishes to comment on the internal review conducted by the Board. The Commissioner has found at paragraph 20 above that the Board initially issued an inadequate refusal notice to the complainant. However, the Commissioner is satisfied that this deficiency was largely rectified by the internal review.

22. In the Commissioner’s opinion this demonstrates the value of the internal review process, as it provides an opportunity for public authorities to ensure that it has complied with the procedural requirements of the FOIA. This may help to reduce complaints, and will in any event ensure that the complainant understands the reasoning behind the public authority’s decision.

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 123 4504

Fax: 0116 249 4253

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 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

Alexander Ganotis
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