

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 July 2016

**Public Authority:** Governing Body of St Richard Gwyn  
Catholic High School

**Address:** Albert Avenue  
Flint  
Flintshire  
CH6 5JZ

#### Decision (including any steps ordered)

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1. The complainant requested copies of various items and documents such as newsletters, Annual Governor's Reports and programmes for plays and mass. St Richard Gwyn Catholic School ('the School') applied section 21 to the request. The Commissioner's decision is that the School correctly applied section 21 to the request. He does not require any steps to be taken.

#### Request and response

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2. On 2 March 2016 the complainant wrote to the School and requested information in the following terms:  
  
"Please treat this as a request for information under the FoI Act. Please respond by post.  
  
Please send in COLOUR A4 booklet format (A3 sheets folded) or A4 back-to-back:-
  1. AGRs issued after 1 Sep 2008 i.e. 2007-8 onwards;
  2. Newsletters (these could not be found on your website):-  
Sep 08-31 Dec 08  
Jly 09 (got 16 Jly)  
Jan 10 (got 22 & 29)

Jly 10 (got 16)  
1 Sep 10 - 31 Aug 11  
1 Jan 13 - 31 Aug 13  
1 Sep 13 - 31 Aug 14  
1 Sep 14 - 31 Aug 15

3. Programmes for plays/ concerts & special events e.g. Annual Awards Prize-giving Evening from 1 Sep 08
  4. Current Prospectus (not the shared Flint High - Form VI booklet)
  5. Dated Mass Programmes for special occasions (not the seasonal booklets which are re-used) from 1 Sep 08".
3. The School responded on 22 March 2016 and confirmed that newsletters were available via its website, and as such were exempt under section 21 of the FOIA. The School also advised that it "has an existing procedure in place to transfer items to the County Record Office. The ones not on our website are in the process of being transferred to County Archive where they will be accessible via their access regime". It therefore confirmed that it considered section 22 to apply to this information.
  4. On 23 March 2016 the complainant requested an internal review of the School's handling of the request. He indicated that the newsletters on the website did not comprise the dates he had asked for. He also said that the School's reference to the archive office is "somewhat premature, as at the date of the request (in accordance with the legislative provisions) they were held by the authority ..... and must be disclosed". He also stated that the School had not addressed the other parts of his request for Mass booklets etc.
  5. The School provided the outcome of its internal review on 24 March 2016. It confirmed that, other than the newsletters available on its website, it considered section 22 of the FOIA to apply to all other information held relevant to the request, including special mass booklets. The School advised that, at the time of the request, some of the information had already been deposited with the Records Office, and the remainder had been batched ready for transfer. The School also confirmed that the transfer process had been completed and all information held by the School relating to the request was now available at the County Record office. In addition, the School also explained that the lack of newsletters on certain dates was a result of "some weeks being fallow in terms of news or the need to conflate information to a timescale which corresponds with school operation".

## Scope of the case

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6. The complainant contacted the Commissioner on 1 April 2016 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation, the School confirmed that it had retained copies of the information which had been sent to the County Records Office ('CRO'). The School also confirmed that a copy of its current prospectus was available on its website as well as being accessible from the CRO. The School's position is that it considers section 21 of the FOIA to apply to the request.
8. The scope of the Commissioner's investigation into this complaint is to determine whether the School handled the request in accordance with the provisions of the FOIA, in particular, whether it had applied section 21 correctly to the request.

## Reasons for decision

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### Section 21 - Information accessible to the applicant by other means

9. Section 21 of the FOIA provides an exemption to information which is reasonably accessible to the applicant otherwise than under section 1 of the FOIA. The purpose of the section 21 exemption is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another route. Therefore, unlike most exemptions, the circumstances of the applicant can be taken into consideration.
10. Although the information may be available elsewhere, a public authority will need to consider whether it is actually 'reasonably accessible' to the applicant before it can apply section 21. Defining 'reasonably accessible' is open to interpretation, however it generally applies to the following:
  - Information available via the public authority's publication scheme will be reasonably accessible to an applicant.
  - There is another existing, clear mechanism by which the particular applicant can reasonably access the information outside of FOIA. For example, under the Access to Health Records Act 1990.
11. In his complaint to the Commissioner, the complainant stated that he believed the documents he had requested were still held by the School on its computer system. He also indicated that he considered it to be irrelevant that the School had given/would give copies to the Records Office.

12. Section 21 is one of only two exemptions within the FOA where there is no exclusion from the duty to confirm or deny that the information is held. As such, a public authority must know that it holds the information in order to apply the section 21 exemption.
13. During the course of the Commissioner's investigation, the School confirmed that it had retained copies of the requested information which had been sent to the CRO. This includes copies of the Annual Governor's Reports from 2007-08 onwards, newsletters, programmes for plays & concerts, the current prospectus and mass programmes. The School reiterated that it does not publish newsletters to an explicit timescale eg weekly and confirmed that where there appeared to be small 'gaps' in the dates of newsletters held, this was because no newsletters were produced during that period. The School also explained that although the format of a Mass Service did not change, it did issue Mass Service books with specific covers for certain events eg School Leavers Mass, copies of which had been transferred to the CRO.
14. The School advised that in 2015 it had formalised a process for sending certain information to the CRO for historical preservation. The School confirmed that copies of all the information held relevant to the request had been sent to the CRO in accordance with this process and could therefore be obtained via the CRO access regime. In its responses to the complainant the School provided the complainant with an email address in order for him to contact the CRO.
15. The Commissioner considers that information is regarded as being in the public domain if it is reasonably accessible to the general public. It is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public until it becomes aware of any particular circumstances or evidence to the contrary. In this particular case, the School advised that the address given by the complainant is within walking distance of the CRO (less than two miles). The School also advised that it is aware that the complainant is a regular service user of the County Archive Service provided by the CRO.
16. In the specific circumstances of this complaint, the Commissioner notes that the information was sought in hardcopy format. The Commissioner understands that the CRO allows members of the public to inspect information held there free of charge. It also levies charge for the costs of providing a copying and postage service. The CRO is transparent about its charges and details of the charging regime are provided on its website. The Commissioner does not consider the charges to be so high that they inhibit public access to the information, particularly as inspection is free.

17. As the Commissioner's guidance specifically details, information may be deemed as 'reasonably accessible' even when it is only available for inspection in a certain location. Having considered this, as well as the fact that copies of the information requested can be obtained from the CRO on payment of a fee, the Commissioner must therefore conclude that the information the complainant requested is reasonably accessible via other means. It is therefore the Commissioner's decision that the School applied section 21 appropriately to the request.

## Right of appeal

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18. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**