

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2017

Public Authority: Green Spring Academy Shoreditch (formerly Bethnal Green Academy)

Address: Gossett Street
London
E2 6NW

Decision (including any steps ordered)

1. The complainant requested from Bethnal Green Academy (now Green Spring Academy Shoreditch) ("the Academy") information concerning the safeguarding of children from extremism. The Academy provided some information but withheld other information under section 36(2)(c) of FOIA.
2. The Commissioner's decision is that the Academy has correctly applied section 36(2)(c) to the information that it has withheld and so she does not require it to take any further steps to ensure compliance with the legislation.

Request and response

3. On 6 October 2015 the complainant requested the following information from the Academy:
 - (i) *"... how many pupils have been referred to the Prevent or Channel programme since the start of the academic year 2014, their age and sex."*
 - (ii) *"... how much money has been spent on safeguarding children from radicalisation/extremism since the start of the 2014 academic year."*
 - (iii) *"Please list any safeguarding programmes the school has been involved in and the organisations that deliver these programmes since the start of the academic year 2014."*

(iv) *"Did the school receive any specific funding for safeguarding programmes or staff since the start of the academic year 2014."*

4. On 11 November 2015 the Academy refused to provide the information requested in part (i) of the request under section 36(2)(c) FOIA. It stated that the information requested in part (ii) was not held. It provided the information requested in part (iii) and answered part (iv).
5. On 18 February 2016 the complainant asked the Academy to review its response in relation to part (i) of the request. The Academy's internal review of 18 March 2016 upheld the application of section 36(2)(c) to the withheld information.

Scope of the case

6. The complainant contacted the Commissioner on 26 May 2016 to complain about the way his request for information had been handled. He specifically complained about the Academy's application of section 36(2)(c) to part (i) of his request.
7. The Commissioner considered whether the Academy had correctly applied section 36(2)(c) to the information falling within part (i) of the request.

Reasons for decision

Section 36 – Prejudice to the effective conduct of public affairs

8. The Academy argued that section 36(2)(c) applied to the information that it withheld in relation to part (i) of the complainant's request.
9. Section 36(2)(b) and (c) provides that:

'Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act -

...(b) would, or would be likely to, inhibit –

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation...'

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

10. In order to determine whether section 36 has been correctly applied the Commissioner has:
- (i) ascertained who the qualified person was for the public authority;
 - (ii) established that an opinion was given;
 - (iii) ascertained when the opinion was given; and
 - (iv) considered whether the opinion given was reasonable.

The engagement of section 36

11. The Academy informed the Commissioner that the opinion under section 36 was given by the Chair of Green Spring Education Trust, the Academy's governing body. The Commissioner is satisfied that as the Chair of the Academy's governing body, he is the appropriate qualified person for this purpose.
12. In support of the application of section 36, the Academy provided the Commissioner with a copy of the submission to the qualified person. The submission clearly described the information to which it was suggested section 36 should be applied.
13. The Academy confirmed to the Commissioner that the qualified person gave his opinion on 11 November 2015 and that his opinion was set out in its letter to the complainant of 11 November 2015.
14. The opinion of the qualified person was that disclosure of the withheld information would be likely to otherwise prejudice the effective conduct of public affairs. The qualified person explained that in his view:

"The Academy fully engages with the Prevent Duty and complies with the requirements set out in the Departmental advice on safeguarding, 'Keeping Children Safe in Education' and 'The Prevent Duty - Departmental advice for schools and childcare providers'.

It is my opinion that to provide information about the number of referrals the Academy has made to Channel / Prevent since the start of 2014 would be likely to prejudice the Academy's ability to comply with its statutory duties to safeguard students and promote their well-being.

This is because:

- A. *Disclosing the information is likely to cause distress and upset to any students who may have been referred to the Prevent or Channel programme who would have a reasonable expectation that any such referrals will be kept in strict confidence in the same way that other safeguarding matters are. It is my view that providing information to a third party regarding sensitive safeguarding matters that relates to students would undermine the Academy's role in safeguarding and protecting students and would therefore be likely to have an adverse effect on the school's ability to meet its safeguarding responsibilities.*
- B. *I believe this risk is heightened because of the intense amount of national and international media coverage relating to the Academy over the past year as it is reasonable to assume that a response to the question could be of interest to the media and therefore be newsworthy. In my view, this would place an unacceptable level of stress on any students who may have been referred to Channel / Prevent and, as a school, it would therefore be inappropriate for us to comment on safeguarding matters which could have a detrimental impact on the welfare of our students. I note that there has been a significant level of coverage in the media about the application of the Prevent Duty in schools which adds to the risk of this information being of wider media interest.*
- C. *Your request does not ask us to name students and I am not therefore convinced that section 40 of the Freedom of Information act 2000 is applicable (personal data) as any individuals are arguably unlikely to be identifiable from the information that would be disclosed. However, it is my opinion that providing any information about the numbers, gender or age of students who have been referred to Prevent / Channel could lead to unhelpful speculation amongst the school community about their identity which could be very damaging, particularly for any students who may then fear being named (correctly or incorrectly) in the press or on social media and the consequences this could have for them in the short and long term.*

In the event that the disclosure of this information attracts media attention, students and / or the wider school community are likely to have concerns at any perception that the Academy had disclosed information into the public

domain about safeguarding matters which could cause significant damage to levels of trust in the Academy and the way in which it handles their information. This risk applies not just to any students who may have been referred to Prevent / Channel but also to other students and families whether there are highly sensitive safeguarding issues. This is a risk we cannot take particularly in light of the hard work that staff put in to build levels of trust with students in order to fulfil their safeguarding duties.

In particular, the advice for schools from the Department for Education on the Prevent duty states, "it is important to emphasise that the Prevent duty is not intended to stop pupils debating controversial issues. On the contrary, schools should provide a safe space in which children, young people and staff can understand the risks associated with terrorism and develop the knowledge and skills to challenge extremist arguments." My concern is that disclosing the information requested could undermine efforts by members of staff to create a 'safe space' for students and inhibit the Academy's ability to support students with these issues as anticipated by the Departmental advice if they become unduly concerned that engaging with the Academy could have ramification for their privacy.

As students and families will not know the extent of the information that has been requested or disclosed by the Academy in response to this request, they may feel a sense of betrayal by members of staff at the Academy. Given that an individual's engagement with the programme is voluntary at all stages, there is a risk that any students who may have been referred will withdraw from the programme if they fear their identity could be disclosed, which could place them at further risk if they are vulnerable. Further, providing the information could undermine the extent to which students and families engage with Channel / Prevent in future if they have concerns about whether information will be publicly disclosed and subject to public scrutiny.

I also consider that there is a real risk that individuals may be discouraged from providing information which might lead to a referral in future if they think there is a risk that the person could be identified. Clearly this would not be consistent with the Academy's duties under the Prevent guidance.

D. Members of staff at the Academy have worked extremely hard to provide students with a stable and secure environment in light of the unprecedented levels of media coverage in the last year so that students can focus on their studies. Students have experienced a large number of reporters waiting outside the building and have even been approached by reporters on their way home from school. In this context, it would be inappropriate for the school to disclose information into the public domain which could undermine these efforts where there is a risk of further media interest which would not be in the best interests of students.

Unfortunately the Academy's experience has been that some articles and media reporting contain inaccuracies which presents an additional risk to students that the Academy cannot ignore."

15. The qualified person's view was that disclosure of the withheld information would be likely to prejudice the effective conduct of public affairs. In the Commissioner's view "would be likely" means that there must be more than a hypothetical or remote possibility of prejudice occurring. There must be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than fifty per cent.
16. As part of determining whether section 36(2)(c) was engaged, the Commissioner considered whether it was reasonable for the qualified person to conclude that section 36(2)(c) applied to the withheld information. She notes the basis on which the qualified person believed that the exemption was applicable, particularly with regard to the potential impact on students of the disclosure of details of referrals under the Prevent/Channel programmes.
17. The Commissioner understands that the Prevent programme was set up by the Government as part of its counter terrorism strategy. It aims to try to stop people getting drawn into violent extremism. The Prevent programme includes the Channel programme, which focusses on providing support at an early stage to people who are identified as being vulnerable to being drawn into terrorism. This programme seeks to use a multi-agency approach to protect people by identifying individuals at risk, assessing the nature and extent of that risk and developing the most appropriate support plan for them. Schools are under a duty to make referrals to relevant bodies where they perceive that there may be a risk to particular individuals.
18. The Commissioner also notes that the Academy was the subject of very widespread media coverage in February 2015 when three of its students disappeared. It is believed that they travelled to Syria to join ISIS. This

followed the earlier disappearance of another student in December 2014. It is believed that she also left to join ISIS.

19. With regard to the application of section 36(2)(c), the complainant believed that the exemption had been applied inappropriately. He argued that:

"The ICO guidance states that prejudice to the effective conduct of public affairs refers to "an adverse effect on the public authority's ability to offer an effective public service or meet its wider objectives or purpose". Your concern relates to the Academy's narrower ability to "safeguard students and promote well-being". The Academy's service to the public, and wider objectives or purpose, encompass much more than this narrower aspect of safeguarding and promotion of well-being. Any perceived inhibition of the narrower concerns of safeguarding and promotion of well-being cannot be seen to carry a risk of adversely impacting the Academy's ability to offer an effective public service or to meet its wider objectives or purpose. Therefore, the use of exemption 36(2)(c) which relates to an adverse impact to public affairs, is not appropriate in relation to narrower concerns of safeguarding and well-being."

20. The Commissioner notes the point made by the complainant but in her view the safeguarding of students who attend a school or academy is very much part of its public service and would clearly be one of its fundamental objectives. Consequently, she is satisfied that the qualified person's view that the disclosure of the withheld information would be likely to prejudice the Academy's ability to safeguard the well-being of its students is an appropriate consideration for the engagement of section 36(2)(c).

21. The complainant went on to argue that the qualified person's opinion was not reasonable. In his view, the qualified person's opinion that *"to provide information about the number of referrals the Academy has made to Channel / Prevent since the start of 2014 would be likely to prejudice the Academy's ability to comply with its statutory duties to safeguard students and promote their well-being"* could not be seen as 'reasonable' as it lacked sound judgement, and was not logical or sensible.

22. In judging the reasonableness of the qualified person's opinion the Commissioner's guidance on section 36 states:

*"The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only unreasonable if it is an opinion that **no** reasonable person in the qualified person's*

*position could hold. The qualified person's opinion does not even have to be the **most** reasonable opinion that could be held; it only has to be a reasonable opinion."* (para 21)

23. The complainant, in support of his argument that the qualified person's opinion was not reasonable, stated that detailed figures for the number of Channel/Prevent referrals were already provided by the Association of Chief Police Officers and provided a link to this information.
24. The Commissioner notes that the published information identified by the complainant is national statistics on referrals to the Channel/Prevent programmes. It is not information in respect of the numbers of referrals made by individual educational institutions or other organisations and so is not comparable with the detailed information about a specific educational institution sought by the complainant. Consequently, she is not persuaded that the publication of this information affects the reasonableness of the qualified person's opinion.
25. The complainant went on to argue that the opinion was not reasonable because schools had already voluntarily given out information on referrals and he provided links to four news websites where information could be found.
26. The Commissioner notes that the disclosures identified by the complainant relate to two schools which provided some information about pupils being referred to the Prevent programme. It appears to the Commissioner that these are isolated incidents in which this type of information was disclosed and that these disclosures are not part of a regular pattern of similar disclosures by educational institutions across the country. Consequently, she has concluded that schools and academies do not normally disclose this type of information to the public and that, therefore, these very limited disclosures do not impact on the reasonableness of the qualified person's opinion in this case.
27. The complainant also commented on the Academy's arguments that providing detailed information about numbers, gender and ages of students who had been referred to the Channel or Prevent programmes could lead to unhelpful speculation amongst the school community about their identity and that this could be very damaging, particularly for any students who might fear being named (correctly or incorrectly) in the press or on social media. He emphasised that he had not requested the names of the students on the programme. He went on to say that he presumed that the students were aware that their information was being passed on to the Prevent/Channel programmes and this had not hindered the school's safeguarding responsibilities.
28. In the complainant's view, the disclosure of the requested information:

"... will show a school dealing with the issue and living up to its safeguarding duties. Students cannot be named by the press. Neither do I seek to name them. Arguing on the basis of what the press will or will not do, is unreasonable and does not serve as an exemption to the Freedom of Information Act. If the school has already referred a student to the Prevent programme then their information has already been passed on to someone outside the school. The release of numbers being referred to the Prevent / Channel programme is not particular or detailed as initial referrals to prevent, therefore it is unreasonable to suggest that it will damage trust levels as you have suggested. It is for the school to clarify their position to students, staff and parents, not for the issue to be used to refuse foi requests.

It is again unreasonable to argue about trust levels, whether it be the students or parents, when detailed information about students has already been passed onto external bodies, when all I am asking for is numbers of referrals and sub-sets. All the arguments you have listed in terms of risk of identification, future referrals, safe-space, openness in discussion, do not apply to an foi request simply asking for the number of referrals and ages, when more detailed information has potentially already been passed onto external bodies. If referring individuals to Prevent, which entails the school contacting Prevent bodies with details of the student, has not damaged trust levels, future referrals, safe-spaces, openness in discussion, then it would be unreasonable to assume that the school complying with the FOI duty would not have an effect either, especially considering the ambiguous nature of the information.

Arguments to relating to media attention are not an exemption to the FOI act and therefore using this as an exemption is unreasonable. The nature of FOI is that information is available to the public and can be picked up by the media."

29. In relation to the complainant's argument that detailed information about students had already been passed on to external bodies and that, consequently, it would be appropriate to provide the information requested. The Commissioner notes that information about individual students may have been passed by the Academy to those involved in the Prevent/Channel programmes but this will have been done on a confidential basis. Such a limited provision of information is very different to the releasing of information under FOIA, which requires the publication of that information to the whole world.
30. The Commissioner also notes that the complainant has argued that it was not reasonable for the qualified person to base his opinion on concerns over the impact that disclosure of the requested information

might have on the levels of trust that any affected students might have in the Academy and the stress that they might be caused by speculation as to their identity. She accepts that the disclosure of this detailed information would be likely to lead to speculation from students at the Academy, and from other people outside it, as to the identity of any students who had been referred under the Channel or Prevent programmes. She also accepts that such a disclosure would in turn be likely to lead to concerns from any relevant students that, whilst they had not specifically been named, they might come under pressure to confirm whether they were involved with the programmes. This inevitably would be likely to affect their relationship with staff at the Academy and their willingness to participate in the programmes. It might also deter others from becoming involved with the programmes and would clearly adversely affect any students who were incorrectly identified as being involved with the programmes. The Commissioner is therefore satisfied that it was not unreasonable for the qualified person to take into account these factors in forming the opinion that the exemption was engaged.

31. In light of the above and after reviewing the content of the withheld information to which this section had been applied, the Commissioner accepts that the opinion of the qualified person in relation to the information that has been withheld was a reasonable one. She therefore accepts that section 36(2)(c) was engaged. As the section is a qualified exemption, she went on to consider whether the public interest in maintaining the exemption outweighs the public interest in the disclosure of the information.

Public interest test

Public interest arguments in favour of maintaining the exemption

32. The Commissioner initially notes that the reasonable opinion of the qualified person was that disclosure of the withheld information would be likely to prejudice the effective conduct of public affairs under section 36(2)(c). The consequences of this opinion is that the Commissioner accepts that there is a plausible causal link between the disclosure of the information and the prejudice identified and that there is a real possibility that the circumstances giving rise to this prejudicial effect could occur. She has taken this into account in assessing the public interest arguments in favour of maintaining the exemption.
33. The Academy, when considering the public interest test, acknowledged the public interest in the disclosure of information about the programmes. However, its view was that the specific context of the Academy and the high levels of media interest meant that the risk to the well-being of students and its ability to maintain the trust and support that it needed from the wider school community in order to fulfil its

safeguarding duties, could be seriously and irreparably undermined if the information was disclosed. It therefore believed that the public interest in maintaining the exemption outweighed the public interest in disclosure.

34. The Academy went on to acknowledge that there might be a public interest in the disclosure of the number of referrals that it had made. However, its view remained that the school community had a reasonable expectation that matters relating to safeguarding were kept confidential. In addition, it contended that it was not appropriate for it to do anything which could adversely affect the well-being of students, which included any risk of exposing them to media interest or doing anything which might reduce levels of co-operation in future.

Public interest arguments in favour of disclosing the requested information

35. The Commissioner believes that there is a strong public interest generally in increasing the understanding of the operation of educational institutions. In this case, disclosure of the information withheld would provide the public with some information about the possible involvement of students at the Academy with the Government's Prevent or Channel programmes.
36. The complainant argued that the Academy had applied a very limited and narrow public interest test and that it had applied it incorrectly and unreasonably. He noted that the Academy had said that "other agencies" agreed that it was not appropriate for the requested information to be disclosed. However, he was unclear as to who these agencies were and whether they were in a position to lend weight to the public interest test. He went on to state that:

"These agencies have been consulted by the school, the same arguments made for exemption under the grounds of trust, etc can be made about the schools consultation about this FOI with external agencies. Did the school not think that if students, parents and staff were to discover that the school has been discussing FOI information with external agencies that it would affect trust? The public interest has been limited."

37. The complainant went to argue that:

"The school has acknowledged that the information has a wider public interest in the application of the Prevent Duty and the number of referrals that public institutions have made to Channel / Prevent, but seeks to exempt itself on wholly unreasonable grounds. Given the fact that there will be NO identification made of children at the school, and the FOI specifically looks at the

numbers of referrals for this specific school, it cannot be argued that it is against the public interest to disclose."

Balance of the public interest arguments

38. In considering where the balance of the public interest lies, the Commissioner notes the public interest arguments presented in favour of the disclosure of the withholding information. However, it does not appear to her that the disclosure of the withheld information would provide the public with any significant insights in to how the Prevent or Channel programmes operate. It would simply provide details of the age and sex of any students that may have been referred by the Academy to the programmes since the start of the academic year in 2014 to the date of the request in October 2015.
39. The Commissioner does accept that the disclosure of the requested information would be likely to generate significant speculation within the Academy, and outside it, as to the identity of any individuals who might have been referred to the programmes. The disclosure of this information, as the complainant has identified in relation to the disclosure of similar information by two other schools, would also be likely to generate press interest, both locally and nationally. This in turn would be likely to increase speculation about the identity of, and attempts to identify, any students who had been referred. Any media interest in this information might also be enhanced in light of the Academy being the subject of intense interest following the disappearance of students in 2014 and 2015, apparently to join ISIS. In light of these previous experiences, the Commissioner understands the Academy's desire to avoid its students being the subject of further media interest.
40. The Commissioner accepts that the disclosure of the withheld information would be likely to lead to increased speculation and generate press and social media interest as to the possible identity of any students that may have been referred to the Prevent or Channel programmes. This is likely to have a detrimental effect on any such students, and also on any students that might be referred in the future, in terms of increased concerns on their part that they might subject to additional pressures to confirm whether they are or have been involved with the programmes. This may then impact on their willingness to engage with these programmes and with staff at the Academy. It might also clearly have a detrimental effect on any students who, through speculation in the press or social media, are incorrectly linked with the programmes.
41. In light of the sensitivity and significance of the above concerns as to the impact of disclosure of the requested information, the Commissioner has determined that the public interest in withholding the information

outweighs the public interest in disclosure. She has therefore concluded that the Academy has correctly applied section 36(2)(c) to the information that it has withheld.

Right of appeal

42. 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

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

43. 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.
44. 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

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