

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2019

Public Authority: The Governing Body of Alderman Davies Church in Wales Primary School

Address: ads@npt.school

Decision (including any steps ordered)

1. The complainant requested details relating to the costs of two employment tribunal cases involving teachers at Alderman Davies Church in Wales Primary School ('the School'). The School provided some information and stated that other information was not held. The Commissioner's decision is that, on the balance of probabilities the School does not hold information about the costs paid in respect of one of the employment tribunal cases. The Commissioner does not require any steps to be taken.

Request and response

2. The complainant wrote to the School about employment tribunals involving two members of staff and requested information in the following terms:

"What is the figure for the legal costs to be paid by the school for both these tribunals?"

Who is paying the costs?

Who will fund for any compensation the court might award?

And will any of those costs/compensation will come from the school's budget, and if so what proportion?"

3. The School responded on 8 January 2019 and provided information relating to one member of staff (Individual A) and stated that costs associated with the other member of staff (Individual B) were being funded through the School's insurance policy.
4. The complainant wrote back to School on the same day and pointed out that it had not provided information about the legal costs in respect of the Individual B's case. The School responded and stated that no legal costs would be paid by the School in relation to the case in question as the costs were being met by its insurers.
5. On 9 January 2019 the complainant submitted a new request for information in the following terms:

"1 / Could I please find out of what the figure for the legal cost to be paid by Alderman Davies School, through its insurance policy, for the legal costs of its employment tribunal against former teacher [Individual B name redacted] ?

I also understand Alderman Davies School reached a settlement before Christmas with a third employee, [Individual C name redacted].

2/ Could I find out what the figure for that settlement was?

2a/ If the settlement is confidential, could you tell me how that figure is to be paid - by the school, or through an insurance policy?

Additionally, could you also provide:

3/ A breakdown of the figures for the legal costs in both the [Individual B name redacted] and [Individual A name redacted] tribunals (and [Individual C name redacted] if not confidential) eg costs owed to solicitor, to the solicitor's assistant, to the firm, to the barrister, to the barrister's assistant, and any other costs.

4/ The school's budget and, separately, its reserves

5/ [Individual B name redacted] has yet to have one of [redacted] three cases heard so costs (and potential compensation) may take the sum for [their] case over the insured sum.

Could you provide the figure for the total insured sum please?

6/ Could you also confirm that [Individual B name redacted] and [Individual A name redacted] cases were covered by the Diocesan insurance policy with DAS, but that was cancelled by a number of governors following advice received, making themselves liable for costs and compensation".

6. The School responded on 6 February 2019 and provided some of the information requested and stated other information was not held. In respect of the legal costs of Individual B, the School confirmed that it would not pay any legal costs to its insurers in respect of the case in question because its insurers were representing the School in the case.
7. The complainant wrote back to the School again on 13 and 14 February 2019 pointing out that information about the legal costs being paid by its insurer had not been provided. The School confirmed it did not hold the information in question. It also advised that *"it is not unusual for fees being met by an insurance company not to be relayed to a client"*.

Scope of the case

8. The complainant contacted the Commissioner on 4 March 2019 to express his dissatisfaction with the School's handling of the request. He indicated that he was dissatisfied with the School's position that it does not hold any information about the costs paid, via its insurers, in respect of the employment tribunal case involving Individual B.
9. The scope of the Commissioner's investigation into this complaint is to determine whether the School holds any information about the costs relating to the employment tribunal case involving Individual B.

Reasons for decision

Section 1 and Section 3 – access to information held by a public authority

10. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
11. Section 3(2) sets out the criteria for establishing if information is held for the purposes of the FOIA:

"For the purposes of this Act, information is held by a public authority if
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(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

12. The issue for the Commissioner to determine is whether the School holds the requested information and, if not, whether it is held by another person, namely its insurers, on its behalf.
13. The School advised the Commissioner that it undertook full searches to identify information falling within the scope of the request. Searches were conducted of the paper file and electronic searches were conducted of its electronic filing system. These searches did not identify any information relating the costs paid, via its insurance company, in respect of the employment tribunal case involving Individual B.
14. The School maintains that it has never been provided with the information in question, namely the legal costs associated with the employment tribunal case.
15. The School is not a maintained school and, as such, it is under the care of the Catholic Diocese ('the Diocese') as opposed to the local authority. The Diocese takes out insurance policies, without any prior consultation or discussion with the Schools within its remit. Such policies include provisions to cover legal expenses. Up until the involvement of the Commissioner in this complaint, the School advised that it had not actually seen or been provided with a copy of the policy itself. A copy of the policy was provided to the Commissioner for the purpose of her investigation.
16. The insurance policy is with Ecclesiastical and the policyholder is the Diocese. In order to receive any benefits under the insurance policy, the School submits an application form. The case is then passed from Ecclesiastical to its legal expenses insurance provider, DAS. Once a merits assessment has been undertaken, DAS will then instruct its own subsidiary DAS Law (an entirely separate legal entity to DAS, and, of course, Ecclesiastical) who then represent the School. Whilst the School is unaware of the specific internal working arrangements between the parties, it understands that DAS and DAS Law have fee structures and arrangements which have been agreed between them. These fee structures are not made available to any beneficiary under the policy. Information relating to costs involved in any claim for legal costs have never have been, and indeed were not passed to the School in this particular case.
17. The complainant in this case does not accept that the School has no record of how much its insurers paid out on its behalf as such claims will affects its insurance premium, and in turn the School's budget (with implications for funding for education purposes). Even if such information is not routinely provided to the School the complainant considers that it would be feasible and relatively easy for the School to ask its insurers to provide details of the costs concerned.

18. In cases where there is a dispute over the amount of information which is held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
19. In this case, based on the representations provided by the School the Commissioner considers that its assertion that it does not, itself, hold the information is reasonable. The request relates to legal costs incurred at a particular employment tribunal case, at which the School was represented by its insurers. The Commissioner has not seen any evidence or grounds for believing there is any motive to withhold information relevant to the request, particular as the School provided details of the costs involved related to the employment tribunal involving Individual A. The Commissioner also does not consider the School's explanation that it has never been provided with details of the costs involved to be unreasonable. She is, therefore, satisfied on the balance of probabilities that the information is not held by the School itself.
20. The Commissioner has also investigated whether the information is held by the School's insurers, Ecclesiastical on behalf of the School in accordance with the provisions of section 3(2)(b) of the FOIA.
21. In determining whether the information is held by an organisation on behalf of a public authority, the Commissioner makes her decision based on the specifics of the case and a number of aspects such as:
 - The relationship between the two parties
 - Whether the public authority has access to the information
 - Whether the public authority has a degree of control over the information
22. The Commissioner is aware of a number of circumstances in which it is generally accepted that information is held by another person on behalf of a public authority. These include situations where there is a contractual arrangement and where public authorities are working in partnership arrangements. The Commissioner does not consider any of these situations to be the case here.
23. The Commissioner is aware that Ecclesiastical Insurance, DAS and DAS Law are private companies that provides insurance cover to organisations. The Commissioner is satisfied that the companies operate independently from the School and are neither subsidiaries nor linked companies such as an arms-length management organisation. The

relationship between the parties in this case comprises an insurance policy to cover legal costs which is taken out by the Diocese for all schools under its remit.

24. It is evident from the School's submissions that it does not have access to the requested information, and that the relationship between the two parties does not afford the School any control over the information. The Commissioner considers this key to her decision because 'another person' is only considered to hold information on behalf of a public authority where the public authority is able to access or has a degree of control over the information. Finally, the insurance policy does not contain any provisions which allow the School access to the information requested.
25. The complainant has argued that it would be relatively easy and straightforward for the School to contact its insurers to obtain the information he is seeking access to. Whilst this may be the case, the FOIA only applies to recorded information held by a public authority. It does not require an authority to obtain information from a third party in order to respond to a request for information unless that information is held on its behalf in accordance with section 3(2)(b) of the FOIA.
26. Based on the evidence available and the representations provided by the School the Commissioner is satisfied that the School does not hold the requested information itself, and it is not held by its insurers on behalf of the School.

Right of appeal

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

28. 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.

29. 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

Joanne Edwards
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