



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2015/0210

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50569146
Dated: 20 August 2015**

Appellant: Clare Rush

1st Respondent: The Information Commissioner

2nd Respondent: Oswald Road Primary School

Heard on the papers: Leeds Employment Tribunal

Date of Hearing: 24 March 2016

Before

Chris Hughes

Judge

and

Darryl Stephenson and Paul Taylor

Tribunal Members

Date of Decision: 29 March 2016

Date of promulgation 31st March 2016

Subject matter:

Freedom of Information Act 2000

Cases:

**Linda Bromley v Information Commissioner & the Environment Agency
(EA/2006/072)**

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 20 August 2015 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant in these proceedings sought information from the Head of the Second Respondent (Oswald Road Primary School, “the School”) about documents informing the decision to change flexi-schooling arrangements (where children are educated partly at school and partly at home or elsewhere) at the School. These changes were brought about by a change in guidance issued by the Department for Education that the absence of these children from school should be recorded, as persistently absent; this would create an adverse impression of the school (Oswald Primary School Flexi Schooling Document July 2014 bundle pages 102 – 105). The requests were made on 12 November and 29 November 2014 and were for, in part:-

“All correspondence between yourself and your Senior Leadership Team regarding flexi schooling changes in the school.”

2. The School responded by providing some information but made certain redactions. The Appellant was dissatisfied and requested an internal review. This upheld the earlier reliance on S40(2) but resulted in the finding and disclosure of further information which was also redacted to protect personal information.
3. The Appellant complained to the First Respondent (“the ICO”) that the redactions should not have been made and that there was further information which had not been disclosed to her. The ICO investigated. He concluded that certain contact details of individuals were properly redacted, but considered that the identities and contact details of other individuals should be released. At paragraphs 61-66 of his decision notice he considered the question of whether more information was held which had not been disclosed. He applied the civil standard of proof to the question, noting the Appellant's view of the importance of the issue, the searches the school had made to

find information, and the explanation the Head Teacher gave of how she had handled the issue. He concluded that no further information was held.

The appeal to the Tribunal

4. The Appellant in her appeal argued that since flexi-schooling was a contentious issue there would have been more email discussions among the school senior leadership team than had been disclosed. She expressed distrust of the school claiming that it had been secretive with respect to another issue (school uniform policy) not wishing emails to be shown to parents. She drew attention to a set of governing body minutes which she stated had been altered without a record of the changes being approved. She felt that the school was not open on issues which were likely to be controversial with parents and concluded:-

“On my balance of probabilities I am absolutely sure the Head would have sought advice, back-up and thoughts from her senior team as she has done before and I cannot be convinced that she wouldn’t hide these if she thought they were contentious as has happened in the past.”

5. The ICO resisted the appeal relying on the decision notice and confirming that he was applying the test for whether information was held set out in *Bromley*. He confirmed his view that the searches carried out were reasonable in the circumstances, and noted the explanation of the Head-Teacher for the paucity of emails.
6. With respect to other points raised by the Appellant the ICO noted that a possible failure to disclose information outwith FOIA did not affect his consideration that no further information was held and discrepancies between minutes could be due to one version being draft.
7. In her reply the Appellant focussed on the merits of her underlying dispute with the School about flexi-schooling. She argued that leaked e-mails showed that the school did not handle information about contentious issues well. With respect to the two versions of the minutes she indicated that the first version of the minutes had been sent her by the Head- Teacher as the corrected minutes, a later version on the school website was different. She argued that the school suppressed information before it was subject to a FOIA request.

8. The Head Teacher of the School responded setting out the background of the local authority raising issues around school attendance procedures and the Head Teacher's prompt action (bundle page 71/2):-

"You will see from my email of the 17th July, I explained this to the Governors, along with my view that I felt we would have to stop Flexi Schooling. As you will note from the email, I met with the Local Authority that day and sent the email at 20.10. This wouldn't have allowed much time to have the discussions with the Senior Leadership Team around the issue as Ms Rush suggests.

As you will see from the ongoing communication with Governors (replies to my email on the 17th), at no point do I mention that I will be speaking with the Senior Leadership Team. I did, however, suggest in this email that I should meet with one or more Governors about this issue before taking action. After seeing responses (and some differing opinions), I emailed on the 19th and stated that I would collect and document all responses (which I did and this was discussed at a Full Governing Body meeting).

The Senior Leadership Team were kept informed at all times (verbally, in meetings) about potential changes to Flexi Schooling...

As Head of the school, I had been informed that I had to start coding Flexi Schooling in a way that would impact negatively on the school; therefore this was not a point for a discussion to make a decision. In my opinion (as you will be able to see from my email on the 17th July), my mind was clear as soon as I came out of the meeting that day..."

9. The Head Teacher gave an account of harassment of staff members. She apologised for confusion about the minutes, stating her belief that:-

"As Ms Rush has a copy that wasn't ratified, it appears that I have sent this in error believing it to be the final version. My apologies for this"

10. In her reply to the School's Response the Appellant gives an account and interpretation of the history of the minutes giving detailed information about issues around a school uniform policy.

Consideration

11. The issue before the tribunal is a simple, narrow question; whether or not on the balance of probabilities the School holds further information falling within the scope of the request which has not been disclosed.
12. It is clear that the Appellant is in conflict with the School over changes to flexi-schooling and school uniforms and has raised a number of issues to try and demonstrate that the School has suppressed information on various issues. In essence she is expressing a profound sense of distrust in the school arising out of her conflict with it. However the grounds for her lack of trust of the School do not stand up to objective scrutiny. The account given by the School to the ICO (and in more detail to the tribunal) as to how the School handled the Flexi Schooling issue seems entirely plausible and consistent – the Head Teacher felt that the School had no choice and therefore it fell to the Head Teacher and Governing Body to get on with implementing the change. All the information held within the scope of the requests was disclosed.
13. The Appellant has not criticised the searches carried out by the School or indicated what other searches should be carried out. The tribunal considers that the searches seem appropriate to the issue. In all the circumstances the ICO is entitled to accept the assurances of the public body that searches have been carried out and nothing has been found.
14. The tribunal is therefore satisfied that the decision of the ICO is correct in law and dismisses the appeal.
15. Our decision is unanimous

Tribunal Judge

Date: 29 March 2016