



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2016/0039

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS 50585804
Dated: 21 January 2016**

Appellant: Grant Roxburgh
1st Respondent: Information Commissioner
2nd Respondent: Mill View Primary School
Heard at: Chester Civil Justice Centre
Date of hearing: 18 July 2016
Date of decision: 11 August 2016

Before

ROBIN CALLENDER SMITH
Judge

and

ANNE CHAFER and MALCOLM CLARKE
Tribunal Members

Attendances:

For the Appellant: Mr G Roxburgh

For the 1st Respondent: written representations by Ms Clare Nicholson

For the 2nd Respondent: Ms L Atkin, Counsel instructed by Browne Jacobson LLP

Subject matter: FOIA 2000

Whether information held s.1

Absolute exemptions

- Personal data s.40

Cases:

Linda Bromley v IC and Environment Agency (EA/2006/0072)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 21 January 2016 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Mr Grant Roxburgh (the Appellant)'s property is next to Mill View Primary School.
2. Mill View Primary School has a Forest School attached to it and operating on its site.
3. Such schools have a particular ethos. That ethos, according to the Forest School website,¹ is summarised as being a school where all participants are viewed as being:
 - equal, unique and valuable
 - competent to explore & discover
 - entitled to experience appropriate risk and challenge
 - entitled to choose, and to initiate and drive their own learning and development
 - entitled to experience regular success

¹ <http://www.forestschoollassociation.org/what-is-forest-school/>

- entitled to develop positive relationships with themselves and other people
 - entitled to develop a strong, positive relationship with their natural world
4. The principles of Forest School were first articulated by the Forest School Community in 2002. They were reviewed in 2011 and sent out for a 5-month consultation to Forest School networks and practitioners in all UK nations. They were published on the Institute for Outdoor Learning Forest School SIG page in Feb 2012, and in the minutes of the GB trainers' network.
 5. On 30 April 2015 the Appellant requested copies of the following information from Mill View Primary School:

Request 1: All agendas and minutes of meetings of the school's Forest School Committee.

Request 2: All agendas and minutes of the Governor's meetings relating to the conversion to an academy.

6. The School responded on 2 June 2015 stating, in respect of the first request, that the agendas and minutes of the Forest School Committee were not held.
7. In relation to the second request, the School sent the Appellant all its agendas and minutes relating to its conversion to an academy but parts were redacted on the basis that the information was not relevant to the conversion of the school to an academy or contained personal information.
8. On 3 June the Appellant made a third request:

.... Please can you issue a full copy of the current Forest School risk assessment document along with full details of the position and credentials of the person that has undertaken this latest review.
9. Dissatisfied with the information supplied, the Appellant requested a review in respect of the first two requests on the basis that there was an

internal email from Cheshire Western Cheshire Council which referred to the School having provided:

....many examples of feedback to Governor Meetings (full and sub-committees), a timeline of events and minutes from the Forest School committee themselves. There have also been press releases.

10. He also stated that there was evidence that the agendas and minutes of meetings of the School's Forest School Committee existed. He made it clear that, in respect of the second request, he wished to see the full, un-redacted agendas and minutes which the school had provided.

11. The School responded to the Appellant on 26 June 2015 having completed an internal review. In respect of the first request, the School stated that the Forest School had, initially, been a volunteer-led initiative and that there were no formal recorded agendas or minutes of the Forest School Committee. There were a number of documents concerning the Forest School, including communications, action plan documents and a press release. The School believed that it was those documents that had, in fact, been referred to in the email from Cheshire West Cheshire Council and provided them to the Appellant.

12. During the internal review the School carried out a search for all information relating to the Forest School that it held. This included:
 - (1) An electronic search for all information relating to the Forest School on the School's server.
 - (2) Searchable hard copies of any documentation relating to the Forest School which was held by the School.
 - (3) Held discussions with two members of the Forest School Committee who confirmed that no formal agendas or minutes were recorded.

13. In respect of the third request, the School provided the Appellant with a copy of the risk assessment but stated that it was unable to provide the position or credentials of the person who undertook the risk assessment

as it constituted personal data and the school did not have the individual's permission to disclose that information.

14. The Information Commissioner contacted the School on 30 September 2015, asking for greater detail in terms of the reasons for not providing the Forest School Committee minutes and agendas and the reasons why some of the information had been withheld or redacted on the grounds that it constituted personal data. The School responded on 9 October 2015 (Appendix 2 in the Appeal Bundle).
15. On 13 November 2015 the School provided the Appellant with the details of the position – and a list of the qualifications - held by the individual who undertook the risk assessment as requested by the Appellant in his third request. The School explained that the individual teacher in question had now consented to disclosure of this information requested to the Appellant (as evidenced in Appendix 3 of the Appeal Bundle).

The appeal to the Tribunal

16. By the time this appeal came before the Tribunal the issues in the appeal itself had, to an extent, been narrowed because of some of the information that had been supplied by the School to the Appellant.
17. The Appellant made it clear however, at the oral hearing, that he wished to see the relevant qualification certificate in relation to the named teacher rather than simply being told by the School that this particular individual had that qualification.
18. In the Appellant's view, the teacher in question had no reasonable expectation that the certificate itself would not be disclosable rather than simply the information that she held the relevant Level 3 qualification.
19. In relation to the minutes of the meetings, the Appellant had never accepted that the school did not hold the information about the Forest

School Committee minutes and agendas information. The documentation showed that the information should be held.

The questions for the Tribunal

20. Has Mill View Primary School disclosed, within the terms of FOIA 2000 and the Data Protection Act 1998, such information as it holds – if any – in relation to the first request about the agendas and meeting minutes of the Forest School Committee?
21. Has Mill View Primary School disclosed to the Appellant, within the terms of FOIA 2000 and the Data Protection Act 1998, the requested (and required) information in respect of the qualifications and credentials of the named individual in respect of the third request.

Conclusion and remedy

22. It was clear to the Tribunal, looking at the history and chronology of matters within the appeal bundle, that there was little, if any, trust between the Appellant in information provided by the School.
23. In the end, it is a factual issue about whether the School does or does not or ever has held agendas or minutes of the Forest School Committee. It has explained its position to the Information Commissioner and to the Tribunal at the oral hearing of this appeal.
24. The School's position is quite straightforward: the Forest School had initially been volunteer-led initiative and there were no formal recorded agendas or minutes of the Forest School Committee.
25. After this length of time, and given the effort the School has devoted to responding to the information requests and instructing Counsel to represent it at the appeal hearing, the Tribunal concludes that if the

minutes and agendas requested did exist it would have been much easier for the School to say so and produce them for the Appellant than to have to admit that they did not exist. Neither could we identify any motivation for the school to take the very serious step of telling falsehoods to the Commissioner and the Tribunal at this point.

26. The Tribunal finds, on the balance of probabilities, that this portion of the requested information is not held and, because it is not held, cannot be disclosed to the Appellant.

27. The issue in the remaining request, which in fact is the third request, that the Appellant should be able to inspect the Level 3 certificate of the relevant member of staff, is a matter that falls within the Data Protection Act regime by virtue of the FOIA “gateway” Section 40 (2).

28. By virtue of section 40 FOIA, personal information which relates to a third party must not be disclosed if to do so would contravene any of the data protection principles.

29. Personal data is defined by Section 1 of the Data Protection Act 1998 as:

.... Data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual.

30. In this case, the School was only ever asked by the Appellant to provide the “full details of the credentials” of the individual in question.

31. The Tribunal agrees that the ordinary Oxford English Dictionary definition of “credential” means, in this context, a qualification or achievement. In

normal English usage “full details” would not be taken to include provision of the certificate(s) themselves. We therefore conclude that provision of the certificates is not within the scope of the request.

32. The School provided a list of the individual’s qualifications to the Appellant on 13 November 2015 with that individual’s consent. The Appellant has already been told that this individual achieved a Level 3 qualification.

33. The School maintains a central register in compliance with the Department of Education Guidance and Regulations and it has been audited by *Ofsted* and been found to be fully compliant with its statutory obligations.

34. Even if we are wrong the provision of the certificates themselves does not come within the scope of the request, the Tribunal finds that it is consistent with the provisions within the Data Protection Act that copies of the actual certificates and further information above and beyond what has already been provided to the Appellant constitutes this particular individual’s personal data and can be withheld in reliance of the exemption within FOIA. The individual in question had been asked whether she consented to disclosure the actual copies of the qualification certificates or any information above that which had already been provided to the Appellant. She has indicated she did not wish any further disclosure.

35. That individual has a reasonable expectation that copies of her certificates or other documents held by the School on its central register - preventing a further “creeping” disclosure that would not be lawful – will not be disclosed to members of the public.

36. The Tribunal finds that such further disclosure of this information would be unfair and give rise to a contravention of the first data protection principle and can validly be withheld.

37. Personal data can only be processed fairly and lawfully and – to require the certificate to be revealed in this context and when the information

about the qualification has already been revealed and is lawfully held by the School – would not be fair and lawful. The certificates have been lawfully disclosed to the School and there is no legitimate public interest – beyond the Appellant’s private interest – that would be served by such further disclosure.

38. Given that the Appellant’s original request did not require anything other than the information about the qualification itself he is not in a position lawfully to then seek the certificate itself within the parameters of this appeal.

39. Our decision is unanimous.

40. There is no order as to costs.

Robin Callender Smith
Judge
11 August 2016