Case Reference: EA/2021/0315

First-tier Tribunal
General Regulatory Chamber
Information Rights

Decided without a hearing
On 1 April 2022

Decision given on: 7 September 2022

Before

TRIBUNAL JUDGE ANTHONY SNELSON
TRIBUNAL MEMBER SUZANNE COSGRAVE
TRIBUNAL MEMBER KATE GRIMLEY EVANS

Between

MR NEIL JINKS

Appellant

and

INFORMATION COMMISSIONER

Respondent

Decision: The appeal is dismissed.

REASONS

Introduction

1. On 1 January 2005 the Appellant ('Mr Jinks') was appointed as Head Teacher of the Holy Rosary Catholic Primary School ('the school'), one of a number schools run by the St Ralph Sherwin Catholic Multi-Academy Trust ('the Trust'), a public authority. That employment ended in March 2017.

2. On 7 July 2019 Mr Jinks wrote to the Trust requesting information under the Freedom of Information Act 2000 ('FOIA')[1] as follows:

[1] All section numbers in these reasons refer to FOIA.

I am writing to request that you send to me the information detailed below from your organisation. Unless otherwise stated, the requests below are for the period January 2014 to July 7th 2019. In all instances and given confidentiality it will be perfectly in order to provide the information anonymously for example by redacting the names of firms or individuals. In all instances, copies of the originals may be provided.

1. Any documentation that the school has produced or received concerning and ONLY with regard to safeguarding concerning [name redacted] - former employee - and, in addition, those records for the [name redacted] family.

2. [Safeguarding] training records for all staff from January 2004 until March 2017.

3. The generic risk assessment covering out of school sporting events from September 2016.

We will refer to this communication as 'the request'.

3. Between 23 September and 3 October 2019 Mr Jinks appeared before a Teaching Regulation Agency ('TRA') professional conduct Panel ('the Panel') to answer charges[2] of "unacceptable professional conduct and/or conduct that may bring the profession into disrepute". He was represented by counsel. As to the facts, Mr Jinks admitted those on which some allegations were based and disputed others. He neither admitted nor denied that the undisputed facts made out the charges. The Panel held against Mr Jinks on all allegations, found the charges proven under both heads and recommended to the Secretary of State that a prohibition order be made preventing him from teaching or working in any children's home or similar institution. In reaching its conclusions on a number of disputed matters the Panel preferred the evidence of witnesses called on behalf of the TRA to that given by Mr Jinks. In relation to some charges, it found that his behaviour had been dishonest and/or lacking in integrity. On 4 October 2019 the decision maker appointed by the Secretary of State accepted the Panel's recommendation and made a prohibition order of indefinite duration, subject to a right to apply for review after three years.

4. When Mr Jinks made the request the disciplinary proceedings had been underway for a substantial period of time.

5. The Trust initially declined to answer the request, judging it vexatious and relying on FOIA, s14 but, by a Decision Notice of 26 November 2020, the Commissioner, while observing that the matter was "finely balanced", held that s14 could not be applied and required it to deliver a substantive response.

6. By a fresh response of 18 December 2020 the Trust stated that it would not provide personal data under part 1 of the request. As to parts 2 and 3, it stated that safeguarding training of all school staff had taken place on 14 October 2014 and that it did not hold the information requested by part 3.

7. Following an internal review, the Trust maintained its position on 9 February 2021.

8. Dissatisfied, Mr Jinks complained to the Commissioner, who proceeded to carry out an investigation. This took the form of considering the information supplied by Mr Jinks in support of his case and the Trust's responses to a number of questions posed by the Commissioner. In the course of the review the Trust repeatedly stated that it held no recorded information within the

[2] There were 17 numbered allegations. One was withdrawn. Of the 16 pursued, one was divided into three sub-allegations.

scope of parts 2 and 3 of the request and provided details of the searches which it had undertaken and the time and resources so spent.

9. By a decision notice dated 11 October 2021 ('the DN') the Commissioner determined, as to part 1 of the request, that, to protect personal data of third parties, the Trust should have given a 'neither confirm nor deny' answer under s40(5) and that provision would accordingly be applied "proactively", and as to parts 2 and 3, that, on a balance of probabilities, the Trust did not hold information in addition to that already disclosed.

10. By a lengthy and discursive notice of appeal dated 24 October 2021, Mr Jinks attacked the DN on a number of grounds touching upon parts 2 and 3 of the request. The principal contentions drawn from these grounds have been summarised (fairly, in our view) by the Commissioner's representative as follows[3]:

> **(a) Previous questions / FOIA / Subject Access requests were not included in the decision.**
> **(b) The Trust has withheld or destroyed records with a view to avoiding providing the requested information.**
> **(c) There are factually incorrect statements, and derogatory comments in the Decision Notice.**
> **(d) The Commissioner was wrong to refer to the conclusions of the Teaching Regulation Agency given that they are contested.**
> **(e) Some information may be held by the local authority, and the previous headteacher's emails should have been checked.**

No challenge was raised to the adjudication on part 1 of the request.

11. In her response to the appeal dated 25 November 2021, prepared by Nicholas Martin, solicitor, the Commissioner joined issue with the appeal and defended the DN.

12. The matter came before us on 1 April 2022 for consideration on paper, the parties having agreed that it should be decided without a hearing. We had before us the open bundle of documents running to over 470 pages, of which the lion's share consisted of material relied on as supporting the appeal. In addition, Mr Jinks submitted an enormous number of further documents contained in 21 additional items (some loose Word documents, some folders of which many contained multiple enclosures).

13. Given the content of the notice of appeal, our examination of the case and the analysis which follows are confined to the second and third parts of the request.

The applicable law

14. The Freedom of Information Act 2000, s1(1) enacts a general right in favour of a person making a request for information held by public authorities to be informed whether the authority holds the information and, if it does, to have the information communicated to him or her. The request must be construed by giving the words used, in their context, their natural meaning. 'Information' means information recorded in any form (s84).

15. In *Bromley and Information Commissioner v Environment Agency* EA/2006/0072, the Information Tribunal held that any question under reg 12(1) and (4)(a) is to be decided on a balance of probabilities, adding:

[3] Response, para 16

Our task is to decide … whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.

We agree and direct ourselves accordingly.

16. The appeal is brought pursuant to the Freedom of Information Act 2000, s57. The Tribunal's powers in determining the appeal are delineated in s58 as follows:

> **(1) If on an appeal under section 57 the Tribunal considers –**
>
> **(a) that the notice against which the appeal is brought is not in accordance with the law; or**
> **(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that [she] ought to have exercised [her] discretion differently,**
>
> **the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.**
>
> **(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.**

Analysis and conclusions

17. We are satisfied on a balance of probabilities that the Trust does not, and did not at the time of the request, hold the disputed information. Our main reasons are the following.

18. In the first place, we agree with the Commissioner that the Panel's findings are highly significant and argue strongly against Mr Jinks's case on appeal. The Panel's inquiry was detailed and extensive. It heard the case on evidence over a number of days. Legal representatives were involved. The paperwork ran to something close to 2,000 pages. In so far as the documents were in dispute, it was open to Mr Jinks (through his counsel) to seek a direction for disclosure (indeed, the Panel did direct that a particular document be located and produced and it was duly admitted in evidence). Moreover, in the cases of several allegations, the existence (or non-existence) of records was the very matter that the Panel was required to determine. In the circumstances, we share the Commissioner's view that it is most unlikely that the Panel would not have inquired further if faced with a plausible argument or suggestion that any relevant document remained undisclosed. This gives us confidence that no such plausible argument or suggestion was raised.

19. Second, the Panel made favourable findings on the quality of the evidence called by the TRA but found Mr Jinks's credibility and integrity open to question (to put the matter at its lowest) in a number of respects. Given those evidence-based findings, this Tribunal must regard his serious allegations of dishonest suppression of documents by the Trust, which amount to mere assertion, with a considerable degree of scepticism.

20. Third, regardless of what points and arguments may have been raised on Mr Jinks's behalf in the disciplinary proceedings, there is in any event nothing in the Panel's decision to suggest any doubt or concern on its part as to whether material documents had been withheld by the Trust (or any other person or body), deliberately or otherwise.

21. Fourth, the Panel's decision includes a number of findings of poor record-keeping at the Trust during Mr Jinks's headship, and he did not dispute allegations of failing to keep adequate records. In the circumstances, it seems far from improbable that records of the single safeguarding

training exercise carried out by the Trust in October 2014 (it seems that Mr Jinks supplied that date), the subject-matter of part 2 of the request, were not kept.

22. Fifth, in any event, it strikes us as particularly unlikely that anyone (however ill-disposed towards Mr Jinks) would have deliberately withheld any documentary evidence concerning safeguarding training given in October 2014, since that could have had no direct bearing on the disciplinary case against him. The only allegation he faced to do with safeguarding training (allegation 3) was concerned with an (undisputed) failure to give training following the publication of certain guidance almost two years later, in September 2016.

23. Sixth, as to part 3 of the request, the Panel's decision included this:

> **The panel heard evidence from Mr Jinks that he had prepared a generic risk assessment which covered outside sporting events and the use of a DBS-cleared taxi firm. In his oral evidence, Mr Jinks asserted that such a generic risk assessment was acceptable. The panel noted that the bundle contained a number of risk assessments, which were not relevant to the specific sporting activity on 16 March 2017. However, the panel considered that there were a number of generic risk assessments in the bundle that covered transportation to and from activities. These risk assessments indicated that a 'generic risk assessment' form was used as a template and a copy of this form was amended for each activity, rather than a cluster of activities. Therefore, the panel considered that it was not common practice to use a single generic risk assessment form to cover a number of sporting activities.**

It can be seen from this extract that the Panel's decision was that use of a single, generic risk assessment for use in relation to transportation of children to and from sporting activities (rather than bespoke risk assessments, albeit perhaps based on a generic template) was not 'common practice' and warranted a finding that allegation 4c (causing or permitting children to be transported by taxi to a sporting event on 16 March 2017 "without completing a risk assessment") was made out.[4] In reaching its conclusion on allegation 4c, the Panel appears not to have thought it necessary to decide whether to accept Mr Jinks's evidence that he relied on a generic document for sporting events; its key finding was that doing so (if that is what he did) fell short of what was required. Accordingly, it seems to us that the existence (or non-existence) of a generic sporting-events-specific risk assessment document was a matter of little significance in the disciplinary proceedings and the idea that anyone in the Trust suppressed such a document (if one existed), at least after 4 October 2019, when the decision on allegation 4c and the basis for it were plain for all to see, and in circumstances where other generic risk assessment documents were freely disclosed, strikes us as fanciful.

24. Seventh the Trust has assured the Commissioner that it has carried out numerous searches in order to ensure that it has located all information within the scope of the request. Those searches have, according to the Trust, been guided in part by suggestions from Mr Jinks as to where the information may be located. We see no sensible reason to doubt the truthfulness of the Trust's account of the searches carried out and no reason to doubt that all searches were carried out properly, carefully and in good faith. Likewise, we see no reason to doubt their simple assertion that the searches have not disclosed any of the disputed information.

25. Eighth, for all the above reasons, we conclude that the most likely explanation for the Trust not producing the disputed information is that it never existed in the first place. If, contrary to this view, any document containing any part of the disputed information ever came into existence, we

[4] We read the reference to the use of a generic risk assessment as "not common practice" as tantamount to a finding that is constituted bad practice.

find that, owing perhaps to the somewhat chaotic administration of the school during Mr Jinks's headship, it was subsequently destroyed or lost.

26. Our reasoning dictates the conclusion that the appeal fails. For completeness, we will return briefly to the main grounds of appeal. We will adopt the lettering in para 10 above.

27. Grounds (a), (c) and (d) cannot assist Mr Jinks's case. Whether or not he has any tenable reason to feel aggrieved by any feature of the DN or any finding or comment contained in it (as to which we volunteer no opinion), we are, as already explained, quite satisfied that the Commissioner's core finding that the disputed information is not held is correct. Ground (b) fails for the reason just stated: contrary to Mr Jinks's argument, we are not at all persuaded that the Trust has withheld or destroyed any information within the scope of the request. Ground (e) is simply irrelevant: the appeal is against the Commissioner's adjudication on the request, which was directed to the Trust. Speculation about material which may, or may not, be held by the local authority is entirely beside the point.

Disposal

28. The appeal is dismissed.

(Signed) Anthony Snelson Date: 25 April 2022
Judge of the First-tier Tribunal