

Wednesday, 24 July 2013

Dear Ms King

Your complaints concerning West Cheshire College (the College)
Our references: FS50488835 (request dated 10 December 2012) and
FS50488836 (request dated 3 January 2013)
The Freedom of Information Act (the FOIA)

I refer to my attached email dated 4 June 2013 and write to advise that I have now heard from Dr Ruth Jones at the College.

Dr Jones has provided me with details of the searches and enquiries carried out by the College to identify and locate recorded information falling within the scope of your above two requests and has confirmed that no further information is held apart from that already disclosed.

Specifically, Dr Jones has pointed out that upon receipt of your requests the College undertook a keyword search on the following archives:

- Physical Document Storage
- Archived document store
- West Cheshire College website search
- Current Email
- Archived Email from backup

The College has confirmed that the digital and physical archives, the property of West Cheshire College, as well as live email and documents were searched for content that might contain references to the keywords used in the requests. All documents identified and returned were reviewed for relevancy at the time of the request.

FS50488835 (request dated 10 December 2012)

Your request dated 10 December 2012 comprises of 5 questions.

In respect of question 1, I suggested that as the College claimed not to hold any recorded information it might be reasonable to conclude that it did not seek any advice or if it did, the request for it and the response received were not recorded? The College responded by stating it 'does not have any relevant recorded information to provide either a yes or no to the question asked of the College. It would not be reasonable to make any conclusions either way from this outcome to the search. It is entirely plausible that someone may have for example made a telephone call to the Information Commissioners Office on data protection and RFID and not formally recorded the response. Equally it is plausible that no advice was sought'.

In relation to question 2, I suggested that as the College claimed not to hold any recorded information it might be reasonable to conclude that it did not undertake a Privacy Impact Assessment. The College responded to this by stating that 'a search for a "privacy impact assessment" as keywords and within document archives was undertaken, and the College did not locate any documents that matched the enquiry. Should the College have completed a PIA in this area this would have been returned on the search therefore it is reasonable to assume that no PIA was undertaken'.

In relation to question 3, I suggested that as the College admitted that it was trialing the RFID technology for the purpose of automatic registration of students, it was not unreasonable to assume that it held some recorded information in relation to how it worked. The College responded to this by stating that its 'building partner (BAM and their subcontractors) were trialling the technology for the College as part of their contractual obligation and no documentation was provided to the College, therefore the search of recorded information held by the College at that time provided no results'.

In respect of question 4, I noted that information relating to RFID tags and their purpose was covered during the College's induction/enrolment. I therefore invited the college to let me know whether it held any recorded information in relation to the induction/enrolment process and the information imparted. The College responded by stating 'we can confirm that the induction process is covered verbally with students. It is fair to assume that information about RFID was also communicated verbally to students'.

In relation to question 5, the College has confirmed that some staff were given RFID tags as part of the trial (for example, to check the whereabouts of first aiders). However, at the date of your request on 10 December 2013, the College has clarified that 'staff badge tags remained inactive and were not in active use for any purpose. Staff who had a RFID badge for first aid purposes also had inactive badges'. The College has also reiterated that it does not hold any recorded information in relation to this question.

FS50488836 (request dated 3 January 2013)

I note from your email dated 3 June 2013 that the only outstanding issues in respect of this complaint is the College's response to questions 1 and 3 of your request dated 3 January 2013. I confirm that the scope of my investigation will be limited to these issues.

In relation to questions 1 and 3, the College has provided details of the searches and enquiries it carried out (as described above) and has reiterated that it does not hold any recorded information falling within the scope of your request.

As you are aware a public authority is not required to create new information to answer a question or give an opinion or judgment that was not already recorded.

You will recall that in my email dated 30 May 2013 I pointed out that in cases such as yours, where there is a dispute as to the extent of information held in a recorded format falling within the scope of a request, the Commissioner will make a decision based on a balance of probabilities as opposed to absolute certainty.

In *Linda Bromley & Others v Information Commissioner and Environment*

Agency [EA/2006/0072] ('Bromley'), the Information Tribunal confirmed that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.

The standard of proof has been recently confirmed by the Tribunal decisions of *Edwards v Information Commissioner* [EA/2010/0104], *Innes v Information*

Commissioner [EA/2009/0046], *Thompson v Information Commissioner* [EA/2011/0144], *Parker v Information Commissioner* [EA/2011/0283] and *Oates v Information Commissioner* [EA/2011/0138].

In the above decision of *Oates v Information Commissioner* [EA/2011/0138] the Tribunal stated that: 'As a general principle, the (Commissioner) was, in the Tribunal's view, entitled to accept the word of the public authority and not to investigate further in circumstances, where there was no evidence as

to an inadequate search, any reluctance to carry out a proper search or as to a motive to withhold information actually in its possession. Were this to be otherwise the (Commissioner) with its limited resources and its national remit, would be required to carry out a full scale investigation, possibly onsite, in every case in which a public authority is simply not believed by a requester’.

The FOIA and the EIR are not concerned with the veracity or accuracy of recorded information held, only whether such information exists.

Based on the comments and arguments provided by the College so far, the Commissioner will very probably conclude that it does not hold any further recorded information falling within the scope of your requests based on a balance of probabilities.

Yours sincerely,

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