

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 May 2012

Public Authority: Department of Education for Northern Ireland
Address: Rathgael House
43 Balloo Road
Rathgill
Bangor
BT19 7PR

Decision (including any steps ordered)

1. The complainant has requested copies of questionnaires completed by parents in relation to an inspection of Kirkinriola Primary School. The Department of Education for Northern Ireland (DENI) disclosed some information, but also withheld some information under the exemption for information provided in confidence (section 41). The DENI also made reference to the third party personal information exemption (section 40(2)).
2. The Commissioner's decision is that the DENI has correctly withheld some of this information under section 40. However, he has also decided that some of this information is not exempt under either exemption and should be disclosed.
3. The Commissioner requires the DENI to take the following steps to ensure compliance with the legislation:
 - Disclose the completed parental questionnaires provided to the DENI in relation to the inspection of Kirkinriola Primary School in March 2011, with the following information redacted:
 - i. The 'Other Comments' section (including any comments provided for this section on attached sheets).
 - ii. Any other handwritten comments on the form.

- iii. The name or signature of the respondent (where provided)
– as this fell outside the scope of the request.
4. The DENI must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 1 September 2011 the complainant wrote to the DENI and made the following request in relation to Kirkinriola Primary School:

"I request copies of the parents questionnaires with the names redacted which were submitted to the Inspectorate at the time of the recent Inspection. I also request copy of the documentation which accompanied the questionnaires when they were forwarded to the parents for completion."

This was in relation to an inspection of the school carried out by the Education and Training Inspectorate, on behalf of the DENI, in March 2011.

6. The DENI responded on 15 September 2011 and provided the complainant with a sample of the parental questionnaire template, together with the associated documentation. However, it refused to provide a copy of the completed questionnaires, stating that the disclosure of this information would constitute a breach of confidentiality.
7. The complainant requested an internal review on 17 September 2011. He stated that the letter to the parents in regard to the inspection, which had been forwarded as part of the 'associated documentation', was not in actual fact the letter that had been sent to the parents at that time. He enclosed a copy of the letter that he said had been sent to the parents at that time.
8. Following an internal review the DENI wrote to the complainant on 29 September 2011. It accepted that the letter to parents which it had forwarded to him was a standard template, rather than the one actually sent out, and conceded that it should have released the actual letter rather than the template. However, it noted that he had a copy of this letter, and therefore did not intend to forward a copy to him. It also upheld its previous use of section 41 to withhold the completed questionnaires. However, it did disclose a statistical summary and analysis of the questionnaire responses, showing the numbers of

responses in relation to the set questions that had been contained on the parental questionnaires – although this was disclosed in a redacted format, with small numbers of responses (i.e. between 0 and 5) withheld. It noted that this was being withheld under section 40(2).

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The scope of this case has been to consider whether the DENI was correct to withhold the completed parental questionnaires under section 41. Given the nature of the information in question, and the DENI's arguments, he has also considered whether section 40(2) applies to this information.

Reasons for decision

11. The Commissioner has first considered whether the withheld information is exempt under section 40.

Section 40 – third party personal information

12. Section 40(2) provides an exemption for information which is the personal data of a third party, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.
13. Taking into account his dual role as regulator of both the FOIA and the Data Protection Act 1998 (the "DPA") the Commissioner has considered whether any or all of the completed parental questionnaires can be withheld under this exemption.
14. The Commissioner has considered whether this information is exempt from disclosure under section 40(2) with section 40(3)(a)(i).
15. The condition contained in section 40(3)(a)(i) applies where the disclosure of requested information to any member of the public would contravene any of the principles of the DPA. This is an absolute exemption, and is therefore not subject to the public interest test.
16. In order to establish whether this exemption applies the Commissioner has first considered whether the withheld information is the personal data of a third party.

17. Personal data is defined in the DPA as information about a living individual who can be identified from that information, or from that information and other information in the possession of, or likely to come into the possession of, the data controller. Therefore the central question is whether the disclosure of any of the withheld information would lead to the identification of the respondents.
18. In this case, the withheld information consists of the contents of a number of completed parental questionnaires. This information amounts to:
 - The answers to 20 set questions (phrased as statements) – with a tick box marking showing whether the respondent strongly agreed; agreed; neither agreed or disagreed; disagreed; or strongly disagreed with the statement.
 - The year or key stage of the respondent's child.
 - An 'Other Comments' section, allowing the respondent to enter any additional comments they wished to make (this can potentially include comments made on attached sheets).
 - Any other handwritten comments on the completed questionnaire forms.
19. The Commissioner notes that the questionnaire forms also contain an optional box for the respondent's name and signature. However, as the request specifically asked for parents' names to be redacted, he considers that this information falls outside the scope of the request.
20. In order to consider whether individuals can be identified from any of the withheld information, the Commissioner has considered both the context and the nature of this information.
21. The withheld information in this case is as described at paragraph 18 above. It was obtained during an inspection of Kirkinriola Primary School in March 2011. The report for that inspection states that there were 93 pupils at the school in that academic year, that sixty questionnaires were issued to parents, and that approximately 75% of these were returned.¹

¹ <http://www.etini.gov.uk/index/inspection-reports/inspection-reports-primary/inspection-reports-primary-2011/focused-inspection-kirkinriola-primary-school-ballymena.pdf>

22. In relation to the information referred to at the first two bullet points above, namely the answers to the set questions and the year/key stage of the respondent's child, the Commissioner notes that this information has – to a certain extent – already been disclosed by the DENI, although it has only disclosed the information where the number of respondents was over 5. The DENI has argued that it is necessary to withhold these smaller figures in order to protect the respondents' anonymity. During the investigation of the case the Commissioner asked the DENI to provide further arguments as to how the disclosure of this information would lead to the identification of individual respondents. However, the DENI did not provide any further submissions as to how this would occur.
23. As noted above, the school inspectors issued sixty questionnaires to parents or carers at the school. Whilst the Commissioner notes the DENI's arguments, he considers that given the number of potential respondents the disclosure of this information would not, in itself, be likely to lead to the identification of any individual respondent. In reaching this view, the Commissioner notes that he has not been provided with any evidence that there is any other information publicly available which would (together with this information) lead to the identification of individual respondents. Therefore the Commissioner does not consider that the disclosure of this information, in itself, would lead to the identification of individual respondents.
24. Therefore, the Commissioner does not consider that this information is personal data.
25. As this information is not personal data, the information referred to at the first two bullet points above is not exempt under section 40(2).
26. In relation to the details of the 'Other Comments' section, the Commissioner considers that given the 'free text' nature of this section, it is highly likely that the comments contained in this section, the language or phraseology used, or even details of the handwriting (where it was handwritten), would be likely to lead to individual respondents being identified.
27. Finally, in relation to the information referred to at the fourth bullet point the Commissioner again considers that disclosure of the handwriting used for making these comments would be likely to lead to individual respondents being identified.
28. Therefore, the Commissioner is satisfied that the information referred to at the third and fourth bullet points above is the personal data of the respondents.

29. The Commissioner has gone on to consider whether the disclosure of this information would be a breach of any of the principles of the DPA.
30. He has initially considered whether disclosure would breach the first data protection principle. This requires, amongst other things, that personal data is processed fairly. The Commissioner has first considered whether the disclosure of the withheld information would be fair.
31. In considering whether disclosure of this information would be fair the Commissioner has taken the following factors into account:
 - whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
 - the individual's reasonable expectations of what would happen to their information; and
 - are the legitimate interests of the public sufficient to justify any negative impact to the rights and freedoms of the data subject.
32. The withheld information in question relates to respondents to a questionnaire for the parents / carers of children attending a primary school. The complainant has referred to a letter sent to potential respondents to the questionnaire which states *"The information you provide in this completed questionnaire may be released if a request under the Freedom of Information Act 2000 is received. However, under such circumstances your identity would be withheld."* Therefore, he has argued, the respondents completed the form with the expectation that this information may be disclosed under the FOIA. He has provided a copy of this letter to the Commissioner.
33. However, the Commissioner also notes that the questionnaire forms state that: *"Your name will not be released and your reply will be treated in strictest confidence. The Principal and Teachers will not be shown this questionnaire."*
34. It is clear from the cover letter to the questionnaire that any parent or carer who chose to complete it was made aware that their response was potentially releasable under the FOIA. However, the Commissioner considers that given the clear statement on the questionnaire form, together with the wording of the reference in the cover letter, parents would not have expected any information that identified them to be disclosed. Therefore he considers that respondents would have had a reasonable expectation that any information that identified them would have been provided in confidence, and subsequently not be disclosed under the FOIA.

35. Taking into account that this information relates to the parents or carers of children at a primary school who were commenting on their views of the quality of education at that school (and their child's experiences), the Commissioner considers that the disclosure of this information would be an invasion of the privacy of the respondents.
36. In relation to the legitimate interests in disclosure of this information, the Commissioner considers that there is a public interest in increasing transparency of the regulation of schools, and in ensuring that the inspection process carried out on behalf of the DENI was carried out in a fair and effective manner.
37. However, these legitimate interests have to be balanced against any negative impact to the rights and freedoms of the individuals concerned. Taking into account his findings that the disclosure of this information would be an invasion of the privacy of the respondents, the Commissioner finds the arguments in favour of withholding this information particularly weighty.
38. Taking all these factors into account, the Commissioner considers that the disclosure of this information would be unfair. Therefore the information referred to at the third and fourth bullet points at paragraph 18 above is exempt from disclosure under sections 40(2) with 40(3)(a)(i).
39. The Commissioner has gone on to consider whether the outstanding withheld information (the answers to the set questions and the year/key stage of the respondent's child) is exempt under section 41.

Section 41 – information provided in confidence

40. Section 41(1) of the FOIA states that information is exempt if;
 - it was obtained by the public authority from any other person (including another public authority), and
 - the disclosure of the information to the public (other than under the FOIA) would constitute an actionable breach of confidence by that or any other person.
41. The Commissioner has first considered whether the outstanding withheld information was obtained from third parties. In this case the withheld information consists of certain sections of a number of parental questionnaires that were completed by a parent or carer of a child at Kirkinriola Primary School. Taking this into consideration the Commissioner is satisfied that the withheld information was obtained from third parties.

42. The Commissioner has gone on to consider whether disclosure would constitute an actionable breach of confidence. In considering whether disclosure of information constitutes an actionable breach of confidence the Commissioner will consider if:
- the information has the necessary quality of confidence;
 - the information was imparted in circumstances importing an obligation of confidence; and
 - disclosure would be detrimental to the confider.
43. If these parts of the test are satisfied, the Commissioner will then consider whether there would be a defence to a claim for breach of confidence based on the public interest in disclosure of the information.
44. In order for section 41 to apply it is necessary for all of the relevant elements of the test of confidence to be satisfied. Therefore if one or more of the elements is not satisfied then section 41 will not apply.
45. When the information in question relates to personal matters or an individual's private life, the Commissioner considers that it can still be protected by the law of confidence even if its disclosure may not be detrimental in terms of any tangible loss. This is because, if the disclosure of information on personal matters were to result in a loss of privacy, this would have enough impact on an individual as to amount to detriment to that person. Therefore the very disclosure of information about an individual's private life can be detrimental, if the disclosure of that information would amount to an invasion of that individual's privacy.
46. However, for disclosure to result in a loss of privacy, the Commissioner considers that the information in question would have to identify the individual. If the confider cannot be identified from the information the Commissioner considers that there can be no detriment by way of an invasion of privacy, and therefore no actionable breach of confidence.
47. The Commissioner has already considered whether the disclosure of this information would (or would be likely to) lead to the identification of the respondents in relation to the application of section 40 to this information. He is satisfied that the same reasoning applies to the question of whether the individual respondents are identifiable for the purposes of section 41. Therefore, bearing in mind his comments at paragraphs 22 and 23 above, the Commissioner does not consider that the disclosure of this information, in itself, would lead to the identification of individual respondents.

48. Therefore he does not consider that the disclosure of the outstanding withheld information would amount to an actionable breach of confidence. As such, section 41 does not apply to this information.

Right of appeal

49. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

50. 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.
51. 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

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF