

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 July 2014

Public Authority: Department of Education
Address: 43 Balloo Road
Bangor
Co Down
BT19 7PR

Decision (including any steps ordered)

1. The complainant has requested from the Department of Education ("the DENI") a copy of inspection reports relating to Crumlin Integrated College.
2. The Commissioner's decision is that DENI has correctly applied the exemption set out at section 40(2) of FOIA.
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 21 November 2013, the complainant wrote to the Education and Training Inspectorate and requested information in the following terms:
"I notice that I did not receive the MARS Reports for English, Mathematics, Geography and SEN and would respectfully ask through the Acts of Data Protection (1998) and Freedom of Information (2000) for a copy of each for the above Inspections".
5. The ETI is the Education and Training Inspectorate¹, which provides inspection services for a number of organisations including DENI. The

¹ <http://www.etini.gov.uk/index/about-us.htm>

ETI is part of DENI², so information held by the ETI will be held by DENI for the purposes of the FOIA.

6. DENI responded on 20 December 2013 and withheld the requested information on the grounds that it contained personal data.
7. Following an internal review DENI wrote to the complainant on 30 January 2014. It acknowledged that the reason behind withholding the requested information had not been adequately explained in its earlier response. It subsequently stated that the information was exempt from release under section 40(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 27 February 2014 to complain about the way her request for information had been handled.
9. The Commissioner has had to consider whether DENI was correct to rely upon the exemption set out at section 40(2) of FOIA.

Background

10. The ETI carried out a standard inspection of Crumlin Integrated College ("the School") in January 2010 where the quality of provision was evaluated as unsatisfactory. As a result of this, the School entered the formal intervention process in February 2010.
11. In November 2011 and March 2013, the ETI carried out follow up inspections. The aim of this was to evaluate the progress being made in bringing about the necessary improvements.
12. DENI explained that there are three types of reports that relate to this request. The 'MARS reports standard' relates to the overall inspection and has been disclosed to the complainant in response to a previous request. This information is also available on the ETI's website and the School's website.

² <http://www.niassembly.gov.uk/Documents/Education/Inquiries-and-Reviews/Education-and-Training-Inspectorate/correspondence/01-Education-and-Training-Inspectorate.pdf>

13. DENI confirmed that the remaining information that falls under the scope of this request, specifically the 'MARS reports standard – subject' and the 'MARS Grading Sheet' are exempt from release under section 40(2).
14. In order to be helpful DENI explained what 'MARS' is. The Management and Recording System (MARS) is used by inspectors to complete different types of proforma and access numerous types of statistical information.
15. MARS allows inspectors to do the following:
 - View information on institutions
 - Enter the 'Record of Inspection Visit' (RoIV) proforma against inspections scheduled in their diaries.
 - Enter, view and edit phrase-specific grading sheets
 - View information entered by schools into their record sheets
 - Retrieve information about inspection grades
 - Enter, view and edit survey proforma
 - View information from the legacy IRIS system

In addition to this, MARS also enables:

- Web-based interface for systems administrators
- Follow-up Inspection (FUI) Record of Inspection facility
- Inspection Services Branch, which is the administrative support branch for Education Training Inspectorate (ETI) to manage its key dates

Reasons for decision

16. Section 40 of FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
17. 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 the 'MARS reports standard – subject' and the 'MARS Grading

Sheet' from the follow up inspection can be withheld under this exemption.

Personal data

18. 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.
19. 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 individuals.
20. DENI explained to the complainant that:

"...Under the terms of this legislation the Department is obliged not to disclose information which would be of a personal identifiable nature and as there is a small number of staff in each of the above departments, the information in MARS which you have requested relates closely to the work of these individuals and as such constitutes personal identifiable information".
21. The Commissioner asked DENI to be provided with the exact number of staff in each of the departments. It confirmed that each department has a staff number of less than 4.
22. The Commissioner considers that the withheld information relates to named individuals that have been assessed and are therefore subject to the report.
23. With this in mind, the Commissioner has concluded that the withheld information in its entirety constitutes personal data and therefore he has concluded that the information falls within the scope of the exemption.
24. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of the FOIA are met. The relevant condition in this case is section 40(3)(a)(i), where disclosure would breach any of the DPA principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first DPA principle which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in schedule 2 should be met and (in circumstances involving the processing of sensitive person data) at least one of the conditions of schedule 3 should be met.

25. In DENI's response, it stated that in providing the requested information, it would breach the first principle of the DPA.
26. DENI concluded in its response that it would not be fair to the data subjects who would have no expectation that the requested information would be made publicly available. In addition, DENI did not identify any appropriate condition in either schedule 2 or 3 that would justify disclosure

The Commissioner's response to fairness

27. The Commissioner has first gone onto consider whether disclosure of this information would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - The individual's reasonable expectations of what would happen to their information;
 - The consequences of disclosure, (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - The balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectation of the data subject

28. DENI has explained:

"ETI has assured teachers that personal information about them, which is compiled as part of the inspection process, will be protected under the terms of the Data Protection Act".

29. DENI therefore stated that the individuals have an expectation that information gathered during an inspection process would not be disclosed in response to an FOI request.
30. DENI reiterated its position that disclosure of the withheld information would not be fair to the data subject's that would have no expectation that this personal information would be made publicly available.
31. The Commissioner understands that consent to release the withheld information hasn't been sought. However, it is important to note that consent is not a determining factor however; it is a factor that will be considered when taking into account the reasonable expectations of the data subject.

32. Given the nature of requested information, the Commissioner considers that it would be within the reasonable expectations of the data subject's for this information to not be put into the public domain.

Would disclosure cause damage and distress to the data subject?

33. The Commissioner considers that information of this nature may cause damage and distress to the data subjects if it were to be released.
34. The requested information relates specifically to individual performances and the quality of teaching. Due to the small number of teachers that were assessed and the total number of teachers in each department, it would be reasonable to consider that generally, information of this nature would be confidential. The Commissioner is therefore satisfied that the disclosure of this information would cause damage and distress to the data subject's.

The legitimate public interest

35. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainants) accessing the withheld information.
36. The Commissioner considers that information about an employee's actions or decisions in carrying out their job is still personal data about that employee, but given the need for accountability and transparency about public authorities, there must be some expectation of disclosure.
37. In some circumstances, the Commissioner believes that third party personal data may be anonymised. With reference to this case he has determined that due to the small number of individuals in which the inspection reports relate to and the total number of staff in each department, the information cannot be anonymised.
38. The Commissioner has also taken into account the reasonable expectations of the data subject's, and the potential impact on the individual if the information were to be disclosed at the time of the request.
39. The Commissioner considers that the data subject's would not expect, quite reasonably, in the circumstances that the requested information would be disclosed to the public.
40. He has therefore determined that the reasonable expectations of the data subject's is not outweighed by any legitimate public interest in

disclosure, and accepts that disclosure of the personal data in this case would be unfair and unnecessary in the circumstances.

41. When coming to this conclusion, the Commissioner has taken into account the case EA/2012/0135³. From this case, the Commissioner has considered the knowledge of the School the complainant has, and whether she would be able to use that knowledge to determine which inspection report related to which specific individual.
42. The Commissioner further considered the case EA/2009/0121⁴. In this case the Tribunal found that the information should not be disclosed as there was a:

"...significant risk that the process of identification could well be narrowed to a significant extent, and certainly to the level where an informed guess might be made as to the identity of a particular teacher and the association of him or her with a particular set of scoring grades. This, in turn, could lead to a degree of informed speculation which could be damaging to the individual".

"In the context of a particular event (the inspection), taking place on a particular date within the restricted environment of a single school, we think that the publication of information about the grades recorded against just 12 lessons creates a real risk of identification by those having other information about, for example the order and timing of class visits. We think the risk is some way short of 'remote' and that an Individual facing that degree of risk of having his or her performance assessment identified (whether accurately or not) would be entitled to be concerned".

43. From the two cases described at paragraph 41 and 42, the Commissioner considers that due to the small number of staff in each department and the inside knowledge of the complainant, he is satisfied that there is a significant risk of identification. The Commissioner considers that the complainant may use her knowledge and other information available to her, to piece together which inspection report relates to which teacher. Clearly disclosure of this information would therefore be unfair.

³ http://www.informationtribunal.gov.uk/DBFiles/Decision/i945/EA-2012-0135_2013-01-29.pdf

⁴ http://www.informationtribunal.gov.uk/DBFiles/Decision/i713/EA-2009-0121_Decision_2012-02-20.pdf

44. The Commissioner has acknowledged that there may be public interest in the requested information. However, he has determined that the overall summary of the follow up inspections are in the public domain and these therefore satisfy the public interest in this information.
45. The Commissioner has therefore determined that DENI has struck the right balance between the individual's rights, freedoms and legitimate interests of the named individual and the legitimate interest in the public. The Commissioner considers that disclosing the 'MARS reports standard – subject' and the 'MARS Grading Sheet' is not information that would be of value to the greater public and therefore not necessary or reasonable in the circumstances. He further considers that the release of this information would also result in an unwarranted intrusion into the data subject's life.
46. On this basis and from the arguments set out above, the Commissioner concludes that DENI were correct to rely upon section 40(2) to withhold the requested information.

Right of appeal

47. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.
49. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF