

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 July 2015

**Public Authority:** E-ACT  
**Address:** Third Floor  
10 Whitfield Street  
London  
W1T 2RE

#### Decision (including any steps ordered)

---

1. The complainant has requested information from E-ACT relating to a teacher employed at The Oldham Academy North.
2. The Commissioner's decision is that E-ACT has correctly applied section 40(2) of the FOIA to withhold some of the requested information.
3. The Commissioner does not require E-ACT to take any steps.

#### Request and response

---

4. On 26 November 2014, the complainant wrote to E-ACT and requested information in the following terms:

*Could you please answer the following questions as a request under the freedom of information act for Oldham Academy North Broadway, Royton, OL2 5BF*

*1. What is the salary of [redacted name] in 2010/2011, 2011/2012, 2012/2013, 2013/2014*

*2. What is the qualification of [redacted name]*

*3. How much expense has been claimed by [redacted name] on 2010/2011, 2011/2012, 2012/2013, 2013/2014*

*4. What has the role of [redacted name] been in 2010/2011, 2011/2012, 2012/2013, 2013/2014 at the academy*

*5. (a) Which classes has [redacted name] taught in 2010/2011, 2011/2012, 2012/2013, 2013/2014 and (b) if they are GCSE classes please state the results*

5. E-ACT responded on 17 December 2014. It provided the complainant with information within the scope of requests 1, 2 and 3. However, it explained that the information sought in requests 4 and 5 was exempt from release under section 40 of the FOIA.
6. Following an internal review, E-ACT wrote to the complainant on 6 February 2015. It considered that the information sought in request 4 could be disclosed, however it maintained its position that section 40 of the FOIA applied to request 5.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 16 February 2015 to complain about the way his request for information had been handled.
8. Specifically he disputed E-ACT's application of section 40(2) of the FOIA to request 5.
9. During the Commissioner's investigation, E-ACT disclosed the information sought in request 5(a).
10. The decision notice will therefore focus on whether E-ACT correctly applied section 40(2) of the FOIA to request 5(b).

### **Reasons for decision**

---

11. 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.
12. 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 E-ACT was correct to withhold the GCSE results of the classes a specific teacher has taught.

### **Is the withheld information personal data?**

13. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") 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..”*
14. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
15. The information sought in 5(b) relates to the performance of a data subject carrying out their job. The Commissioner is therefore satisfied that the withheld information constitutes personal data.

### **Would disclosure breach the data protection principles?**

16. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
17. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations of the data subject**

18. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
19. E-ACT explained that the teacher concerned is aware that her teaching specialism is a matter of public knowledge and that her performance as a teacher will be reviewed in-house. However, it is not expected that as a teacher, the GCSE results of each of her classes since 2010 will be published and scrutinised by the general public.

## **The consequences of disclosure**

20. E-ACT explained that the data subject raised concerns about this particular request and was clearly distressed about the potential consequences of releasing this information.

## **The legitimate public interest**

21. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms or legitimate interests 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 complainant) accessing the withheld information.
22. 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.
23. The Commissioner has also taken into account the reasonable expectations of the data subject, and the potential impact on the individual if the information requested in 5(b) were to be disclosed at the time of the request. He is also conscious, with regard to accountability and transparency, of the disclosures already made in relation to requests 1 to 4 and 5(a).
24. In this case, the Commissioner considers that there is a legitimate public interest in information regarding exam results as there is a strong public interest in the performance of schools.
25. However, he also considers that this interest is already met to a large extent by the information regarding exam results published on the school's website and, additionally, the latest exam results which are published on the Department for Education website.
26. The information sought within the scope of 5(b) clearly constitutes the personal data of the teacher and the Commissioner considers that disclosure of this information would be likely to cause damage and distress to the data subject.
27. Having balanced the public's legitimate interests against the prejudice to the rights, freedoms or legitimate interests of the individual concerned, the Commissioner concludes that the disclosure of this information would be unfair and in breach of the first data protection principle.
28. In conclusion, as the Commissioner considers it is unfair to disclose the information sought in request 5(b), he therefore concludes that E-ACT correctly applied section 40(2) to request 5(b).

## Right of appeal

---

29. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**