

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2018

Public Authority: St. Patrick's C.E. Primary Academy
Address: Salter Street
Earlswood
Solihull
B94 6DE

Decision (including any steps ordered)

1. The complainant has requested information about the number of students in a particular class that were excluded and reported for bullying. The Commissioner's decision is that St. Patrick's C.E. Primary Academy ("the school") has correctly applied section 40(2) of the FOIA to withhold the information. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

2. On 24 October 2017, the complainant wrote to the school and requested information in the following terms:
"1. Clarification and list of Extremely dangerous and violent behaviour noted in your Behaviour, Discipline and Anti-bullying Policy
2. Number of children excluded from class and/or school in Reception in 2016/2017 term and Year 1 2017/2018 term (not including [redacted])
3. Number of children reported to Senco/DHT/HT for bullying in [redacted] class during the last 3 years"
3. The school responded on 7 November 2017. In relation to point 1 of the request, the school provided a link to advice published by the Department for Education ("DfE") that it uses when assessing student behaviour. In relation to points 2 and 3 of the request, the school

refused to provide the requested information by virtue of section 40(2) of the FOIA (personal information).

4. Following an internal review the school wrote to the complainant on 9 November 2017. In relation to point 1 of the request, the school stated that it does not hold a list of 'extremely dangerous and violent behaviour' as each situation is unique but clarified that it considers behaviour that has or could cause harm, distress and/or injury to other people relevant. In relation to points 2 and 3 of the request, the school upheld its decision to apply section 40(2) of the FOIA to withhold the information.

Scope of the case

5. The complainant contacted the Commissioner on 9 November 2017 to complain about the way her request for information had been handled.
6. The Commissioner considers that the scope of her investigation is to consider whether the school was correct to rely on section 40(2) of the FOIA to withhold the information under points 2 and 3 of the request. The complainant has confirmed that she agrees with the scope of the Commissioner's investigation.

Reasons for decision

7. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ("DPA").
8. In order to rely on the exemption provided by section 40(2) of the FOIA, the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

"personal data" means 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 likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual. "

9. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

Is the withheld information personal data?

10. As explained above, the first consideration is whether the withheld information is personal data. The information requested is the number of students excluded and reported for bullying. The complainant has said that the information does not constitute personal data and therefore disclosure would not contravene any of the data protection principles.
11. The school has said that there are 239 students in the school and 32 students in the class that is the focus of the request, and that disclosing numbers relating to a such a small group would therefore be likely to identify those students who have been excluded and / or reported for bullying to their friends, classmates, families and neighbours and others who have been aware of their absence or aware they have left the school but do not know the reason why.
12. The information in this case doesn't directly identify individuals. However, just because the name of an individual is not known, it does not mean that an individual cannot be identified. Although the figures in isolation may be unlikely to identify individual students, having viewed the information and considered her guidance 'Determining what is personal data'¹ the Commissioner accepts that it is personal data. The requested information is specific to one class for a limited period of time and with other information, such as local knowledge of children that have been absent from school or who no longer attend school it could identify the specific students the information relates to.

Does the disclosure of the information contravene any of the data protection principles?

13. In the Commissioner's section 40(2) guidance for personal data², it is explained that for the purposes of disclosure under the FOIA, it is only the first principle that is likely to be relevant.

¹ <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

² <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

14. The first data protection principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the condition in schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

15. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Nature of the information and reasonable expectations

16. The school has said that although a student would expect information about their exclusion and/or bullying behaviour to be shared internally between the Headteacher and governors, it would not be within their reasonable expectation that such confidential information would be shared under the FOIA.

17. The Commissioner has considered the school’s argument and agrees that it would not be within a student’s reasonable expectation for the school to disclose private information about their exclusion and /or bullying behaviour under the FOIA to the world at large.

Consequences of disclosure

18. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subject(s).

19. The school has said that the public interest is best served by protecting the confidentiality of information it holds about its students. It has also indicated that students are likely to become distressed if information about their exclusion from school or bullying behaviour is published and they are identifiable from this by their friends, peers, families or neighbours.

20. As the school has stated that the students would be identifiable if their information was put together with local knowledge, the Commissioner considers it is very likely that disclosure of information about their exclusion and /or bullying behaviour would cause them significant distress. Although the Commissioner acknowledges that the school has

not provided robust arguments about the consequences of disclosure, in her role as regulator for the DPA she considers it prudent to take a proactive approach to avoid breaching the first data protection principle and causing distress to the data subjects concerned.

Balancing the legitimate rights of the data subjects with the legitimate interests in disclosure

21. Notwithstanding the reasonable expectations or any damage or distress caused by disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure.
22. However, the Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the individual(s) 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.
23. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual(s). Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
24. The complainant has said that she believes she has legitimate reasons for requesting the information as it is of personal importance to her and her family. The school has said that had the complainant made a wider request for figures across the entire school for a number of years it is likely that information may have been disclosed. However, as the complainant's request was very specific and related to students in one class for a limited period of time it is highly likely to identify individual students.
25. Having viewed the requested information, the Commissioner accepts that, although the complainant may have a strong personal interest in the withheld information, she has not identified any wider legitimate public interest in disclosing it which could outweigh the likely distress caused to the data subjects.

Conclusion

26. Therefore, the Commissioner's decision is that section 40(2) of the FOIA is engaged in this case and has therefore been correctly applied by the school to the requested information.

Right of appeal

27. 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

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

28. 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.
29. 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

Pamela Clements
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