

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 August 2019

**Public Authority:** The King's (The Cathedral) School  
**Address:** Park Road  
Peterborough  
PE1 2UE

#### **Decision (including any steps ordered)**

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1. The complainant requested from The King's (The Cathedral) School ("the School") information relating to the School's year 3 entry in September 2018. The School withheld the information under section 40(2) (third party personal data) of the FOIA.
2. The Commissioner's decision is that the School correctly withheld the information under section 40(2) of the FOIA. Therefore, the Commissioner does not require the School to take any steps as a result of this decision notice.

#### **Request and response**

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3. On 11 February 2019 the complainant wrote to the School and requested information in the following terms:

*"The information required relates to students admitted to The King's School Junior Department (year 3 intake) September 2018 only.*

*Information required relates to the following applications only:*

- 6 non-chorister places awarded
- All applications that scored higher than the application for [name redacted]

*Information required:*

- *Dates of worship taken into consideration along with frequency of worship*
  - *Details on how the information submitted by each applicant was verified to ensure each application was valid, according The King's School Admissions Criteria".*
4. On the same day the School acknowledged receipt of the request and on 3 March 2019 the School provided the complainant with some information relating to his request. This consisted of an anonymised table of data, which contained information extracted from a document named the Supplementary Information Form (SIF). Each SIF related to an applicant to attend the school and contained information about that individual. The information disclosed included details requested in the fourth bullet point of the complainant's request. However, the School did not disclose dates of worship, which was requested at the third bullet point, as it deemed that disclosing this information would be a data protection breach, although no section from the FOIA was cited in relation to the withholding of this information.
  5. On 4 March 2019 the complainant asked the School for the following:  
*"...the calendar dates of worship taken into consideration as detailed on each supplementary information form for each of the applicants detailed on the spreadsheet submitted."*
  6. On 5 March 2019 the School responded and said that it was unable to provide the information requested. The School explained that *"it is not presented to the School in this format, and as such we do not hold this information."*
  7. On the same day the complainant referred the School to a specific part of the SIF – the "from" and "to" dates and he said that this information could be added to the spreadsheet. Therefore, the complainant disputed the information is "not held" as he believed that each applicant would have had to complete one of these forms. The complainant reiterated to the School what he had asked for on 4 March 2019.
  8. On 8 March 2019 the School responded and explained that the spreadsheet which it had sent to the complainant, was a summary version from the SIFs. The School indicated that it maintained that disclosing the information specified by the complainant on 4 March 2019 *"breaches the rights of those individuals"*.

9. A further exchange of correspondence followed in which the School stated that the information requested had already been provided within the table of information previously sent to the complainant. On 11 March 2019 the complainant asked the School for an internal review. He disputed the receipt of the information and he highlighted the specific information from the SIFs he had requested – the dates of worship - which had not been included on the spreadsheet previously disclosed by the School.
10. On 19 March 2019 following an internal review, the School continued to withhold the dates of worship from the SIFs. It now stated that it believed that this information was exempt from disclosure by virtue of section 40(2)(3A) (personal data) of the FOIA. Specifically, the School cited "special category data" as it considered the information related to the data subjects' religious beliefs.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 19 March 2019 to complain about the way his request for information had been handled.
12. The complainant clarified that he requested "*calendar dates of worship*" and not for the calendar dates to be associated with applicants. He confirmed the information he was seeking was outlined in his request of 4 March 2019.
13. The information which the School provided to the complainant was labelled Year 3 Entry Sept 2018. This sheet consisted of the following headings; CoE/Methodist, Frequency score, Attendance score, Distance, Ranked order, Offered/waiting list.
14. During the Commissioner's investigation, the School stated that it held information within the scope of the complainant's information request that was his own personal data. The complainant confirmed to the Commissioner that he had been provided with the information that is his personal data.
15. The following analysis covers whether the School correctly withheld the calendar dates of worship under the exemption at section 40(2) of the FOIA.

## Reasons for decision

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### Section 40(2) – third party personal data

16. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A), (3B) or 40(4A) is satisfied.
17. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
18. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
19. 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 DP principles.

### Is the information personal data?

20. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual".*

21. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
22. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
23. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

24. In this case, the School confirmed that the withheld information relates to one of each child's parents or guardians. It also argued that it is personal data of the child for whom an application at the School was made. The School considered the requested information to be the personal data of the parents as it is capable of being related to them (as natural persons) with reference to other identifiers such as the other information already released and combined with other identifiers accessible to the complainant. It also argued that the entirety of the withheld information is personal information, and the School argued that *'no element of it is capable of being supplied in a redacted format'*.
25. The School provided the Commissioner with the withheld information. The information contained the calendar dates of worship for the applicants.
26. The School considered that the withheld information constitutes personal data because the data relates to identifiable living individuals. The School said that if the information was disclosed, it believed it would contravene Article 5(1) (a) of the GDPR.
27. The Commissioner accepts that the individuals might be identified and she acknowledges the information which was released to the complainant relating to his request. The information concerns a number of children and to a degree their parent(s) or guardian(s). There are children identified within the information, some of which are awarded 'non-chorister' places in Year 3. These pupils, the School stated, are amongst only 60 in the School's 'Junior Department'.
28. The School further explained that within that group, there are non-chorister pupils which make up a minority of pupils in the Junior Department and the School in general. These pupils are identified by a modified uniform to those worn by the majority of pupils. The School believes that these pupils' identities will be known to the complainant.
29. The School said that the small number of children combined with small parish congregations, which will have small numbers of children of an age to seek a place in year 3, some of which have unique patterns of worship including breaks and changes of place of worship, the School believes that it is possible in this context and given the above description, that the withheld information could be related to identifiable individuals.
30. Having considered the withheld information and the reasoning from the School, the Commissioner accepts that the disclosure of the specific dates, could be used with other information in order to determine the identity of the individuals. Her finding is, therefore, that the withheld information is personal data.

31. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
32. The most relevant DP principle in this case is principle (a).

**Would disclosure contravene principle (a)?**

33. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

34. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
35. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
36. In addition, if the requested data is special category data, in order for disclosure to be lawful and compliant with principle (a), it also requires an Article 9 condition for processing.

**Is the information special category data?**

37. Information relating to special category data is given special status in the GDPR.
38. Article 9 of the GDPR defines 'special category' as being personal data which concerns race, politics, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
39. Having considered the wording of the request, and viewed the withheld information, the Commissioner finds that the withheld information is special category personal data. She has reached this conclusion on the basis that the information relates to the data subjects' church attendance. This data therefore concerns religious belief.
40. Special category data is particularly sensitive and therefore warrants special protection. As stated above, it can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Article 9 can be met.

41. The Commissioner considers that the only conditions that could be relevant to a disclosure under the FOIA are conditions (a) (explicit consent from the data subject) or (e) (data made manifestly public by the data subject) in Article 9.
42. The School reported that it does not have, and did not consider it appropriate to seek, the consent of the data subjects to the processing of the requested information.
43. The School said *'there is no evidence to suggest that any of the data subjects have manifestly made the requested data public.'*
44. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to the FOIA request or that they have deliberately made this data public.
45. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this special category data would therefore breach principle (a) and so this information is exempt under section 40(2) of the FOIA.
46. The Commissioner has therefore decided that the School was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

## Right of appeal

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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: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk).

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

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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