

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

### **Decision notice**

**Date:** 8 April 2022

**Public Authority:** The Governing Body of  
Rathmore Grammar School

**Address:** Kingsway  
Finaghy  
Belfast  
BT10 0LF

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

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1. In a seven part request, the complainant has requested information about 2020 summer assessments. Rathmore Grammar School ('the School') relied on section 12(1) of FOIA to refuse to comply with two of the parts (cost exceeds the appropriate limit) and disclosed information within scope of the remaining five parts. The School subsequently withdrew its reliance on section 12(1) and disclosed information within scope of those two parts. The complainant considers that the School holds further information relevant to four parts of their request.
2. The Commissioner's decision is as follows:
  - The School holds further information within scope of Q1 and Q5 but, on the balance of probabilities, holds no other recorded information that falls within scope of Q1, Q2, Q3.2 and Q5 of the request that it has not already disclosed.
3. The Commissioner requires the School to take the following step to ensure compliance with the legislation:
  - Disclose to the complainant the information it holds that falls within scope of Q1 and Q5 of the request, that relates to English.
4. The School must take this step 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 Act and may be dealt with as a contempt of court.

## **Background**

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5. The School has provided the Commissioner with the following background and context. As a result of the COVID-19 pandemic, in the middle of March 2020 the School was suddenly in lockdown. This was with very little warning and was also at a time when each subject Department was at varying stages of preparedness for summer (June) 2020 exams. In the immediate aftermath of the lockdown decision the School, like all Northern Ireland (NI) schools, was focussed on getting some form of online learning for pupils up and running as soon as possible. The School was awaiting guidance from the examining body (CCEA) on how key milestone examinations (GSCE, AS and A2) scheduled for June 2020 would be delivered.
6. In May CCEA informed schools that summer assessments would be in the form of Centre Assessed Grades (CAG) provided by the school (in the form of predicted grade and ranking). This would then be subject to the application of an algorithm developed by CCEA to drive the final grade issued by CCEA. CCEA provided guidance on this process, copies of which the School subsequently provided to the complainant in the course of its correspondence with them.
7. All NI schools provided CAG as requested, but when the final (algorithm adjusted) grades were issued by CCEA there was widespread public concern that they were not truly reflective of the CAG data schools had submitted. As a result, CCEA reversed its plan to use the algorithm and school data was used instead. The only proviso was that no child would be downgraded where the school data produced a lower grade than the algorithm assessed grade.
8. This is the method of assessment by which the complainant's child's grades for summer 2020 were derived. This method of assessment was set out in the guidance but was predominantly based on 1) whatever formally assessed data was available for each subject area and 2) teacher judgement. For this reason, the School explained in its submission, every subject used a different set of data as they were at different stages of assessment or had different types of performance data particular to the subject area. The School said that the teacher judgement aspect is difficult to articulate due to its subjective nature and because it was a holistic and non-prescriptive approach. Nevertheless, it says, teacher judgement was fundamental to ensuring that every pupil was considered comprehensively and fairly, and in the

context of their class, subject and year cohorts. The final stage of the assessment process was an individual review of every pupil's grade by the Principal/Vice Principal.

## Request and response

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9. In the course of wider correspondence with the School which included other requests for information, on 10 November 2020 the complainant requested the following information:

"[Q1] - Details for how comparable exam - based subjects such as Politics, English, Sociology, History and Economics derived their grades. If this was the same formula as used by the Religion department could you please detail this for each subject i.e. the broad group e.g. October exam, mock and 4 best essays homework or class work. Did these subjects use the same essays and exams for everyone or were they bespoke for each student?

[Q2] - How each comparable subject considered special educational needs. If the answer again is 'in line with CCEA instructions' can you please detail which of those particular instructions were used.

[Q3.1] - An anonymous spread sheet of results from each assignment for each pupil in [redacted]'s Religion class so I can see [redacted]'s rank order within each task even those that were not used for the formula. I see the tracking sheets in Appendix 14 has had the names of the other students blocked out. Perhaps this could be sent with the data for the class with names removed

10. In the course of the continuing correspondence, on 13 November 2020 the complainant requested the following:

"[Q3.2] - Did any subjects in the school, including Religion, use teacher judgement to adjust the ranking of any pupils when the data did not seem to correctly reflect what the student would have achieved at A2 had they sat the exam.

[Q5] - Did any of the comparable subjects use 'best day' to predict the scores which could have been the highest scoring assignment?

[Q6] - Details of specialist advice given to the Religion department regarding how they should consider grades for those with special educational needs.

[Q7] - Details of how the Religion department and comparable subjects adjusted the formula used to predict grades for those students who were resitting AS units."

11. The School responded on 3 December 2020, confirming the requests as above and perhaps mistakenly giving two of the requests the same number - 3. It refused to comply with Q1 and Q5 under section 12(1) of FOIA. The School released information relevant to Q2, Q3.1, Q3.2, Q6 and Q7, this included the CCEA guidance discussed above.
12. A complex correspondence between the School and the complainant continued, in the course of which the complainant submitted other multi-part requests on the same subject – the summer assessments.
13. The complainant provided the Commissioner with a copy of the School's acknowledgement of a draft request for an internal review that the complainant sent to the School by accident on 7 December 2020. This review request appears to concern the request of 10 November 2020.
14. The complainant has also provided the Commissioner with a copy of an internal review the School provided on 16 December 2020 (the date on which the complainant then complained to the Commissioner). In that review response the School advised it had considered the requests that it had set out in a table in a letter to the complainant of 13 November 2020. One or two of the requests that the School goes on to discuss are broadly similar to one or two that will be discussed in this notice, but they are not exactly the same. Given the volume and complexity of the complainant's correspondence with the School, the situation regarding the internal review is not clear.
15. However, in its subsequent submission to the Commissioner dated 7 March 2022, the School advised that it had withdrawn its reliance on section 12(1) with regards to Q1 and Q5 of the request being considered in this notice. The School advised the Commissioner that in the intervening period and as a result of its ongoing correspondence with the complainant, which had continued to include other requests, it had disclosed most of the information requested in Q1 and "all" the information it holds that is relevant to Q5.
16. The School said that the only remaining information it holds within scope of Q1 is the information in relation to English and that it was content to disclose this to the complainant.

## Scope of the case

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17. The complainant first contacted the Commissioner on 16 December 2020 to complain about the way their request for information had been handled.
18. In order to identify the focus of their complaint, the Commissioner had a lengthier correspondence than is usual with the complainant about their communications with the School up to 16 December 2020.
19. In correspondence to the complainant on 14 February 2022 the Commissioner asked the complainant to confirm that the scope of their complaint was the School's response to Q1, Q5, Q2 and Q.3.2 of their requests of 10 and 13 November 2020. In a response on 15 February 2022, the complainant confirmed that to be their focus.
20. In light of the fact it is no longer relying on section 12(1), the Commissioner's investigation has focussed on whether, on the balance of probabilities, the School holds any further information within scope of Q1, Q2, Q3.2 and Q5 of the request of 10 and 13 November 2020.

## Reasons for decision

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21. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to them if it is held and is not exempt information.
22. In addition to the School's written submission, the Commissioner also had a discussion with the School on 7 April 2022 in which it provided further detail. Taking these and the complainant's submissions into account, the Commissioner will discuss each of the four parts under consideration in turn.
23. Q1 is as follows:

"Details for how comparable exam - based subjects such as Politics, English, Sociology, History and Economics derived their grades. If this was the same formula as used by the Religion department could you please detail this for each subject i.e. the broad group e.g. October exam, mock and 4 best essays homework or class work. Did these subjects use the same essays and exams for everyone or were they bespoke for each student?"

24. The Commissioner observes that an element of this request is framed more as a 'Yes/No' question (albeit the answer may not be a straightforward 'Yes' or 'No') ie "Did these subjects use the same essays and exams for everyone or were they bespoke for each student?". The Commissioner had advised the complainant that FOIA concerns only information a public authority may hold in recorded form; FOIA does not oblige a public authority to answer general questions, provide explanations or give opinions, or to create new information in order to respond to a request. The Commissioner considers that an applicant should have an idea what recorded information they are expecting to receive from a public authority when they submit a request to it.
25. However, as noted above, the School confirmed in its submission and telephone conversation that, with regard to Q1, it has now disclosed the information for Politics, Sociology and History and has prepared the English information. The School has confirmed that it does not teach Economics and so does not hold that information.
26. At the time of their original complaint to the Commissioner the complainant had not received any information within scope of Q1 of their request as the School was relying on section 12 at that point. The School has confirmed that, in the intervening 15 months it has released the majority of the relevant information it holds and is ready to release the remainder. The School has confirmed it holds no other recorded information within scope of Q1. The Commissioner has not been presented with evidence or reasoning that would lead him to believe otherwise and so he is satisfied, on the balance of probabilities, that the School holds no relevant information other than that which it has disclosed and/or discussed with the Commissioner. But because the School has not yet communicated the English information it has not yet complied with section 1(1) of FOIA with regard to Q1.
27. Q2 of the request is as follows:

"How each comparable subject considered special educational needs. If the answer again is 'in line with CCEA instructions' can you please detail which of those particular instructions were used."
28. In its response to this question of 3 December 2020 the School had attached the relevant sections of the CCEA guidance and the full copy of that guidance. In its submission the School confirmed that it had sent to the complainant the only information it holds ie the CCEA guidance. And in its discussion with the Commissioner, the School explained that paragraph 47 of CCEA's 'Technical Information – Supplementary Questions and Answers' guidance is the section most relevant to Q2. Having considered the request the Commissioner considers that the

recorded information the School disclosed to the complainant addresses the request, as framed. The Commissioner is satisfied that the School has complied with section 1(1) of FOIA with regard to Q2.

29. Q3.2 of the request is as follows:

“Did any subjects in the school, including Religion, use teacher judgement to adjust the ranking of any pupils when the data did not seem to correctly reflect what the student would have achieved at A2 had they sat the exam.”

30. Again, the Commissioner does not consider this is a well framed request for recorded information. However, in its response of 3 December 2020 to this question the School had again referred to the CCEA guidance which it was disclosing and provided a little more narrative detail including that its approach had been broadly the same for each subject.

31. In its submission the School confirmed that the only recorded information it holds that is relevant to Q3.2 is contained in the CCEA's 'Head of Centre' guidance – pages 4/5 in particular - which the Commissioner understands the School has also disclosed to the complainant. The School confirmed this position in its discussion with the Commissioner.

32. For the reasons given regarding Q2, the Commissioner considers that the School's response to Q3.2 addresses that request and that the response complied with section 1(1) of FOIA.

33. Finally, Q5 is as follows:

“Did any of the comparable subjects use 'best day' to predict the scores which could have been the highest scoring assignment?”

34. As with Q1, the School had originally relied on section 12(1) of FOIA to refuse this request because of the time need to collate a high volume of complex information. And as with Q1, the School subsequently withdrew its reliance on that exemption.

35. In its submission to the Commissioner the School repeated that the CCEA's 'Head of Centre' guidance, which it has disclosed to the complainant, is the “only” information it holds that is relevant to Q5.

36. The Commissioner has noted that the situation had gone from a high volume of complex information being within scope of Q5 to just the CCEA guidance being in scope. However, the School had also explained in its discussion with the Commissioner that Q1 and Q5 were, in effect, requesting the same information but in different ways. It had been able to prepare the information within scope of Q1 in the intervening period

and, to the degree that Q1 and Q5 are for the same or similar information, that information is also relevant to Q5, in addition to the CCEA guidance.

37. Having considered both Q5 and Q1, the Commissioner is satisfied on the balance of probabilities, that the School has identified all the recorded information it holds within scope of Q5 and has disclosed the majority of it. Only the English information remains undisclosed but therefore, as with Q1, the School has not fully complied with section 1(1) with regard to Q5.
38. Finally, the Commissioner has considered the supporting material the complainant has provided to him, and their submissions. He appreciates that the complainant may consider that the School should hold further information within scope of their request, but the School has explained to the Commissioner that the in the fast-moving and unprecedented circumstances caused by the pandemic and the lockdown, it had simply relied on, and applied, the CCEA guidance.

## **Other matters**

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39. As has been discussed, FOIA concerns only information that a public authority holds in recorded form. The Commissioner has published guidance<sup>1</sup> for prospective applicants on how to word a request for information to get the best result.

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<sup>1</sup> <https://ico.org.uk/your-data-matters/official-information/>



## Right of appeal

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40. 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: 0203 936 8963

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)

41. 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.
42. 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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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