

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

### **Decision notice**

**Date:** 1 March 2023

**Public Authority:** St. Edburg's Church of England Primary School  
**Address:** Pioneer Way  
Bicester  
OX26 1BF

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

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1. The complainant has requested information from St. Edburg's Primary School ("the School") in relation to applications and admissions to the Reception year entry class in 2022. The School advised that it was withholding the information as it was "personal information", however it did not cite a specific exemption of FOIA to withhold it.
2. The Commissioner's decision is that the School should have cited section 40(2) of FOIA – personal data – to withhold the information and has therefore applied the exemption himself proactively. As the School failed to provide a valid refusal notice, it has breached section 17(1) of FOIA.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

### **Request and response**

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4. On 4 July 2022, the complainant wrote to the School and requested information in the following terms:

"...Therefore, I would like to formally request the following information/documents howsoever recorded:

1. Out of all Applications submitted for admission to the Reception year entry class in 2022 by the closing date in January 2022, how many of the Applicants are living within the 'catchment' area? a. Please provide

the distance (in miles measurement) from the Applicant's address to school for all Applicants.

2. Out of all Applications submitted, how many of the Applicants were considered and offered a place under over-subscription criteria (i) of Admission Policy? Please provide all relevant data.
  3. Out of all Applications submitted, how many of the Applicants were considered and offered a place under over-subscription criteria (ii) of Admission Policy? Please provide all relevant data.
  4. Out of all Applications submitted, how many of the Applicants were considered and offered a place under over-subscription criteria (iii) of Admission Policy? Please provide all relevant data.
  5. Out of all Applications submitted, how many of the Applicants were considered and offered a place under over-subscription criteria (iv) of Admission Policy? Please provide all relevant data.
  6. Out of all Applications submitted, how many of the Applicants were considered and offered a place under over-subscription criteria (v) of Admission Policy? Please provide all relevant data.
  7. Out of all Applications submitted, how many of the Applicants were considered and offered a place under over-subscription criteria (vi) of Admission Policy? Please provide all relevant data.
  8. Out of all Applications submitted, how many of the Applicants were considered and not offered a place under over-subscription criteria (vi) of Admission Policy? Please provide all relevant data.
  9. Please provide the distance (in miles measurement) from the Applicant's address to school for all Applicants who were offered a place to the Reception year entry class in 2022?
  10. Please provide the distance (in miles measurement) from the Applicant's address to school for all Applicants who were not offered a place to the Reception year entry class in 2022?
  11. What policy and procedure are in place to ensure diversity and promoting it within a wider community? Has there been any case of prejudice and/or accusation of such issue within the school since 2010? Please provide all the relevant documents and information."
5. The School responded on responded on 15 July 2022. It provided some in formation in relation to points 1 to 8 and point 11. However, for points 9 and 10, it advised that it could not disclose individual applicants' distances, but gave the furthest and closest distances.

6. Following an internal review the School wrote to the complainant on 15 July 2022. It stated that it had given the maximum detail that it was allowed to do.
7. The Commissioner notes that the complainant has advised that they sent the original request on 31 May 2022. However, from the evidence provided, the School only received the request on 4 July 2022.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 23 July 2022 to complain about the way their request for information had been handled.
9. In this case, the School made it clear that the withheld information is personal data. However, it also explicitly stated to the Commissioner that it was not applying an exemption. Therefore, to avoid any doubt or accidental disclosure, the Commissioner has made the decision to apply section 40(2) of FOIA himself.
10. The Commissioner considers that the scope of this complaint is to determine if the School should have cited section 40(2) of FOIA when refusing to provide the withheld information. The Commissioner will also look to see if the School breached section 17(1) of FOIA when issuing its refusal notice.

## **Reasons for decision**

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### **Section 40(2)– personal information**

11. Section 40(2) of FOIA says that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.
12. In this case the relevant condition is contained in section 40(3A)(a) . 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 UK General Data Protection Regulation ("UK GDPR").
13. 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.

14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

**Is the information personal data?**

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

“any information relating to an identified or identifiable living individual.”

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. 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.
18. 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.
19. In the circumstances of this case, having considered the nature of the request and the School's responses, the Commissioner is satisfied that the information relates to the data subjects. The information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
20. The complainant has argued that the information they require does not release any personal data; it just contains facts to verify.
21. The Commissioner has reviewed the request and responses and he is satisfied that the information relates to individuals, specifically children who attend the school. If the information were to be released, even without a child's name attached to it, due to nature of the request, it is likely that individual children could be identified, along with where they live and the reason they were or were not allocated a place.
22. As the information relates to locations where children live, when combined with other information either already in the public domain, or known to particular individuals, this makes identification possible.
23. The Commissioner is aware that disclosure under FOIA is considered as being made to the world at large, rather than to the requester only, and this includes to those individuals who may have a particular interest in the information (and additional knowledge of the specific area) which is not shared by the wider public.

24. In considering this point, the Commissioner recognises that different members of the public will have different degrees of access to 'other information' which would be needed for re-identification of apparently anonymous information to take place. In the Code of Practice<sup>1</sup> on Anonymisation, he acknowledges that "...there is no doubt that non-recorded personal knowledge, in combination with anonymised data, can lead to identification."
25. 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.
26. The most relevant DP principle in this case is principle (a) – which requires any processing of personal data (in this case the publication of the information) to have a specific lawful basis under data protection law.
27. As the data subjects do not appear to have consented to disclosure, the Commissioner considers that the only other lawful basis would be if publication were necessary to meet a legitimate interest.

### **Legitimate interests**

28. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
29. The Commissioner accepts that the complainant has a legitimate interest in the information and that other members of the public would also have an interest, due to the request relating to the School's admissions policy.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

### **Is disclosure necessary?**

30. 'Necessary' means more than desirable but less than indispensable or absolute necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
31. The Commissioner is cognisant that disclosure under FOIA is disclosure to the world at large. It is the equivalent of the School publishing the information on its website. When considering the necessity test, he is not therefore considering whether providing the information to the requestor is necessary to achieve the legitimate interest, but whether it is necessary to publish the information.
32. The Commissioner is not satisfied in this case that the legitimate interest could be met by less intrusive means and therefore disclosure is necessary..

### **Balance between the legitimate interest and the data subject's interests or fundamental rights and freedoms**

33. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
34. Where the data subjects are children, data protection legislation gives particular weight to their privacy rights– meaning that any legitimate interest must be even more compelling to outweigh the rights of a child than of an adult.
35. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
36. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an

individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

37. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
38. The Commissioner considers that the individuals involved (both the children and their parents), have a strong and reasonable expectation that personal information about them will remain confidential. Disclosure would be contrary to their expectations and could therefore cause them unwarranted damage and distress.
39. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals involved. The Commissioner therefore considers that there is no lawful basis for processing and so the disclosure of the information would not be lawful.

### **Section 17(1)**

40. Section 17(1) of FOIA states:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

41. The Commissioner notes that the School has advised that it "explained that it is not possible to provide the data of individuals in a FOI". However, it then went on to advise that it was "not relying on any exemptions provided by section 22 to 44 of FOIA".
42. As the School has made it clear that the withheld information is personal data, when providing the responses to the complainant it should have cited section 40(2) of FOIA – personal information. Therefore, as the refusal notice did not specify which exemption the information was being withheld under, it has not complied with section 17(1) of FOIA.

## Right of appeal

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43. 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)

44. 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.
45. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**