

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 June 2011

Public Authority: Parkhall Integrated College

**Address: Birch Hill Road
Antrim BT41 2QH**

Summary

The complainant requested information relating to numbers of pupils and teachers of different religious denominations at Parkhall Integrated College ("Parkhall College"). Parkhall College refused to disclose some of that information under section 40(2) by virtue of section 40(3) (a) and (b) of the Act as it comprised sensitive personal data, disclosure of which would be unfair. The Commissioner considers that section 40(2) by virtue of 40(3)(a) and (b) was correctly engaged in this case. The Commissioner requires no steps to be taken. The Commissioner also finds that Parkhall College breached section 17(1) of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. One of the most significant social developments within Northern Ireland over the last 29 years has been the emergence of integrated schools. Integrated education can best be described as the bringing together in one school of pupils, staff and governors, in roughly equal numbers, from Protestant, Catholic, other faith and no faith backgrounds. There are currently 61 integrated schools in Northern Ireland, of which Parkhall College is one.

The Request

3. On 9 December 2009 the complainant made the following request for information to Parkhall College: -

"Could you please supply me with the following information. This request is being asked for under the Freedom of Information Act.

Total number of intake of Year Eight in September 2009

Number of Protestants

Number of Catholics

Number of others

Total number of pupils as at 1 October 2009

Number of Protestants

Number of Catholics

Number of others

Total number of teaching staff as at 1 October 2009

Number of Protestants

Number of Catholics

Number of others

Thanking you for your assistance in this matter."

4. On 26 January 2010 Parkhall College responded, providing answers to his request. Its letter was a partial refusal notice in that Parkhall College refused to disclose the number of Catholic pupils among the Year Eight September 2009 intake. The reason given was that the number was under five and would therefore be "disclosive". No exemption was specified as a basis for non-disclosure. The remainder of the requested information was disclosed to the complainant with the exception of the religious breakdown of the teaching staff, which was not held by Parkhall College.
5. On 9 June 2010 the complainant requested a review of this decision. His request was acknowledged on 25 June 2010 and the result of the review was provided on 29 June 2010. The reviewer upheld the original decision not to disclose the exact number of Catholic pupils in the Year Eight intake of September 2009.

The Investigation

Scope of the case

6. On 19 August 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider Parkhall College's reasons for not disclosing the specific number of Catholic pupils in the Year Eight September 2009 intake.

Chronology

7. On 31 March 2011 the Commissioner wrote to Parkhall College requesting its submissions in relation to the non-disclosure of the withheld information.
8. Following a detailed telephone call, Parkhall College provided its submissions on 5 April 2011.

Analysis

Exemptions

9. During the Commissioner's investigation, Parkhall College confirmed it was seeking to rely on sections 40(2) and (3)(a)(i) of the Act as a basis for non-disclosure of the withheld information.

Section 40(2): personal information

10. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied.
11. One of the conditions, listed in section 40(3)(a)(i), is where disclosure of the information to any member of the public would contravene any of the data protection principles as set out in schedule 1 to the Data Protection Act 1998 ("the DPA".) The full text of section 40 of the Act is in the Legal Annex at the end of this Decision Notice.
12. During the course of its telephone call with the Commissioner, Parkhall College stated that the withheld information was exempt from disclosure under sections 40(2) and 40(3)(i)(a) as the numbers were small and there was a real risk that individual pupils could be identified from them. Parkhall College was of the view that the information was personal data, and that its disclosure would breach of the first data protection principle.

13. The first data protection principle requires that the processing of personal data is fair and lawful and that,
 - at least one of the conditions in schedule 2 is met, and
 - in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.
14. The Commissioner initially considered whether or not the information in question was in fact personal data.

Is the withheld information personal data?

15. Section 1 of the DPA defines personal data as data which relates to a living individual who can be identified:
 - from those data,
 - or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
16. Sensitive personal data is defined in section 2 of the DPA as personal data which consists of, amongst other things, information as to the data subject's "religious beliefs or other beliefs of a similar nature".
17. It is the Commissioner's view that statistical information relating to people generally has the potential to constitute personal data. This is because some such statistical information can identify individuals. However, the Commissioner believes that statistics of this nature which have been truly anonymised do not constitute personal data and will not therefore engage section 40 of the Act.
18. The Commissioner considers statistical information to be truly anonymised if the data controller (in this case Parkhall College) takes steps to remove any linkage between the statistic and information which could identify an individual.
19. The Commissioner does not accept that, where a data controller holds information which could potentially be used to identify living individuals from the anonymised data, this turns the anonymised data into personal data. Even where the data controller holds that additional 'identifying' information, this does not mean it cannot anonymise that information to the extent that it would not be possible to identify any living individual from that information alone, so it is no longer personal data.
20. The Commissioner draws support for this approach from the House of Lords' judgment in the case of the *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47.

21. However if a member of the general public could identify individuals by cross-referencing the anonymised data with information already in the public domain, then the information will be personal data. Whether it is possible to identify individuals from the anonymised data is a question of fact based on the circumstances of the specific case.
22. Parkhall College has argued that the withheld information in this case is personal data as it constitutes "small figure statistics", disclosure of which could lead to the identification of individual pupils when combined with other information which may be publicly available.
23. The Commissioner is mindful here of the wording of section 1 of the DPA and Article 2 of Directive 95/46/EC (the European directive enacted in the UK by the DPA). Article 2 states that the term personal data, "*shall mean any information relating to an identified or identifiable natural person*". Recital 26 of the Directive states that, "*to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or any other person.*"
24. Bearing this in mind, during the course of the investigation the Commissioner asked Parkhall College to provide evidence as to the other information which would be "reasonably likely" to come into the hands of "any other person" which could lead to the identification of individual pupils if the withheld information were to be disclosed.
25. School pupils are part of a much wider school community which includes pupils' relatives, teachers, the parent teacher association, school governors and so on. In its letter to the Commissioner of 5 April 2011, Parkhall College noted its belief that individual Catholic pupils could be identified by cross-referencing the data with other information to which members of the public, and particularly the wider school community would have access, such as pupil names, the primary schools from which they transferred, their families and the areas and communities they live in. In Northern Ireland's unique political and historically unsettled climate, these factors are all strongly indicative of an individual's religious beliefs.
26. The Commissioner is satisfied that the withheld information falls within the definition of personal data as set out in the DPA. It contains information about living individuals who could be identified from those data. The Commissioner is further satisfied that the withheld information is sensitive personal data under section 2(c) of the DPA as it relates to the religious beliefs of individuals and their families.

Would disclosure breach the first data protection principle?

27. Parkhall College claimed that disclosure of the information would be potentially damaging to the individuals concerned and their families. The Commissioner has considered whether such disclosure would be unfair and as such breach the first data protection principle.
28. 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 conditions 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".*
29. In deciding whether disclosure of the withheld information would be unfair the Commissioner has taken into account a range of factors including the potential consequences of disclosing the information, i.e. what damage or distress would the individuals suffer if the information was disclosed?
30. In most cases the very nature of sensitive personal data means it is most likely that disclosing it will be unfair. As it is information of the most private and personal nature, the reasonable expectation of the data subject is that such information would not be disclosed. The consequences of any disclosure could be distressing to them.
31. However, it remains important to consider all the circumstances of the case. In particular it is important to consider both the reasonable expectations of the data subjects regarding their personal information and whether some or all of that information has already been put into the public domain with the knowledge of the data subject, i.e. despite the data falling into the category of sensitive personal data, it is not sensitive to the data subjects. If either factor is relevant, then it is likely that any disclosure would be fair. The Commissioner has considered whether any of these factors are relevant in this case.
32. The Commissioner is satisfied that the withheld information would not already be in the public domain as the pupils attend an integrated school and therefore their religious beliefs and those of their families would not be publicly obvious as they would have been if the pupils were attending a school affiliated to the Catholic faith.
33. The Commissioner considers that the individual pupils would have a reasonable expectation that their religious beliefs would not be

disclosed. The fact that the pupils and their families made the choice for them to attend an integrated school indicates that they wished to be educated alongside pupils of all denominations and would not expect to be singled out and identified by way of their religious beliefs. The Commissioner believes that it is likely that such identification, which would occur if the withheld information were to be disclosed, would cause distress to the individual pupils and their families.

34. The Commissioner notes that all of the withheld information in this case falls under section 2(c) of the DPA as it relates to individuals' religious beliefs. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Further, having considered all the circumstances of the case and having ascertained that disclosure of this type of information is likely to have a detrimental or distressing effect on the individuals concerned, the Commissioner considers that it would be unfair to disclose the withheld information.

Procedural Requirements

Section 17 – Refusal of request

35. Section 17(1) of the Act states that: -

"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".

36. Parkhall College, in its partial refusal notice to the complainant of 26 January 2010, did not specify that it was relying on the section 40 exemption or why the exemption applied. Therefore, the Commissioner notes that Parkhall College has breached section 17(1) of the Act.

The Decision

37. The Commissioner's decision is that Parkhall College dealt with the following elements of the request in accordance with the requirements of the Act:

- It correctly identified that the withheld information was personal data, disclosure of which would breach the first data protection principle.

38. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- Parkhall College breached section 17(1) of the Act by failing to state its reliance on section 40 of the Act and failing to state its reasons for such reliance.

Steps Required

39. The Commissioner requires no steps to be taken.

Right of Appeal

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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Dated the 29th day of June 2011

Signed

**Faye Spencer
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Section 17 – Refusal of request

Section 17(1) provides that:-

“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.

Section 40 – personal data of third parties

- (2) Any information to which a request for information relates is also exempt information if –
 - (a) it constitutes personal data which do not fall within subsection (1) and
 - (b) either the first or the second condition below is satisfied.
- (3) The first condition is –
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress),

Data Protection Act 1998

4 - The data protection principles.

- (1) References in this Act to the data protection principles are to the principles set out in Part I of Schedule 1.
- (2) Those principles are to be interpreted in accordance with Part II of Schedule 1.

- (3) Schedule 2 (which applies to all personal data) and Schedule 3 (which applies only to sensitive personal data) set out conditions applying for the purposes of the first principle; and Schedule 4 sets out cases in which the eighth principle does not apply.
- (4) Subject to section 27(1), it shall be the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.

SCHEDULE 1 – THE DATA PROTECTION PRINCIPLES

PART I THE PRINCIPLES

- 1 - Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—
 - (a) at least one of the conditions 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.