

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 March 2023

Public Authority: Oxford Spires Academy
Address: Granville Road
Oxford
OX4 2AU

Decision (including any steps ordered)

1. The complainant has requested from Oxford Spires Academy ("the school") information regarding GCSE mock exam results. The school refused that request under section 40(2) of FOIA (personal data) as it considered that disclosure would identify individual students.
2. The Commissioner's decision is that the school correctly applied section 40(2).
3. The Commissioner does not require the school to take any steps.

Request and response

4. On 14 July 2022, the complainant wrote to the school and requested information in the following terms:

"Please provide data of ranking order for GCSE mock results for the 2020 batch.

The data should include the mock result of each assessment taken and the actual awarded Centre assessed grade (CAG) and also include the students' specific ethnicity, no other personal information is needed.

Please provide this information for the whole cohort in the subjects, Business Studies, English Language, English Literature, Maths, Chemistry and Religious Education.

To check alignment with other year groups please provide the same information for years 2019 (actual exam assessed) and 2021 (CAGs).

Business Studies results for GCSE year 2020 were moderated from actual assessed mock exams as advised by the school.

Under the Freedom of information Act (2000), please provide data for the difference in moderated grades from actual assessed exams for all ethnic groups. Data to include the whole cohort showing mock examined grade vs moderated awarded grades alongside the specific ethnicity of the student.

Fisher Family trust (FFT) can be used as a benchmark to see what would be expected by a cohort of students in terms of results.

Under the Freedom of information Act (2000), please provide data FFT vs CAG for the percentage of Caucasian students vs percentage of non-Caucasian/BAME students achieving level 7, level 8 and level 9 independently for the subjects, Business Studies, English Language, English Literature, Maths, Chemistry and Religious Education. Please include FFT reference data."

5. The public authority responded on 22 July 2022. It stated that it would not provide the information requested as it would enable the complainant to identify individual students. It therefore withheld the information under section 40(2) of FOIA (personal data).
6. Following an internal review the public authority wrote to the complainant on 19 October 2022. It maintained its original position in respect of section 40(2) of FOIA.

Reasons for decision

Section 40 personal information

7. 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.
8. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of

¹ As amended by Schedule 19 Paragraph 58(3) DPA

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').

9. 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.
10. 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?

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

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

12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. 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.
14. 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.
15. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the data subjects. The school explained that the complainant requested data because he is not happy with the grades his daughter received in 2020. The school also advised the complainant would be able to identify individual students with ethnicity data and number of students in a particular class such as business studies.
16. The school provided the Commissioner with a copy of the withheld information. This consists of 3 spreadsheets for the years 2019, 2020 and 2021. Each contains a table which sets out the requested data in three columns and tabs for subject. The first column consists of ethnicity data, the second column consists of predictive grade and the third the result obtained by students in individual subjects. Therefore, in the withheld information, each particular student has their grades listed. The school explained that the complainant has other information from his

daughter, which together with the withheld information, would have led to the identification of individual students.

17. The school explained that the complainant had previously requested information through a subject access request and "some data (without ethnicity) has been provided as have independent data analysis reports demonstrating that there has been no discrimination or other errors".
18. It therefore argued that the disclosure of the information in relation to the entire cohort would enable the identification of some, if not all, of the individuals and their predicted and resulting grades.
19. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the data subjects. While the names of the data subjects are not involved in this instance, the Commissioner accepts the school's argument that the data, combined with information the complainant could obtain from his daughter, could identify individual students. The Commissioner also notes the context of the request in that the complainant is likely to have some existing knowledge that may be combined with the information in question in order to enable students to be identified from the requested information.
20. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
21. 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.
22. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

23. 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".

24. 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.
25. 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.

Lawful processing: Article 6(1)(f) of the GDPR

26. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”².

27. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-

i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

28. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

29. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

² Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

30. Further, 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. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
31. In bringing this matter to the ICO the complainant stated that he requires the data so that he could determine consistency in the way that the final mark was awarded for each student in comparison to his daughter.
32. By way of background, the school stated that although FOIA is purpose blind, it is assumed that the complainant wishes to compare the results of students who completed their GCSEs in the same year as his daughter and he is dissatisfied with the final grades awarded to her.
33. In the circumstances of this case, the Commissioner recognises that there is a legitimate interest in ensuring that the school determined the students' final grades consistently and in line with the guidance set out by Ofqual. The Commissioner also acknowledges that the unusual circumstances and controversy around the awarding of GCSE grades in 2020 indicates a legitimate interest in the information requested.

Is disclosure necessary?

34. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
35. The school explained that, if the purpose of this request is to track the grades, this information would have no, or very limited value due to the various factors which are integral to any student's predicted and actual grades. The school said that it appears that the reason for this request was that the complainant was unhappy with his daughter's GCSE results following the publication of Centre Assessed Grades as final GCSE grades in summer 2020. The complainant believed that there was discrimination in the way the grades were awarded and wanted the data to show if this did in any way occur.
36. The Commissioner acknowledges the school's position that internal assessment and report data is not typically intended to be shared with the world at large and that students have a reasonable expectation that this information would remain confidential to them and their teachers. The Commissioner notes that due to the impact of Covid19, schools

were required to determine final grades as exams had been cancelled. He notes that there is a legitimate interest in understanding how the school reached these Centre Assessed Grades. However, the Commissioner notes that the school has signposted parents to the Ofqual guidance and their right to appeal.

37. From the information provided, this request does appear to stem from a personal matter in that the request directly relates to the GCSE grades of the complainant's daughter. The Commissioner understands that the complainant wishes to have sight of this information so that he can understand more about the grading for GCSEs. However, the Commissioner notes the school's position that several factors were taken into account when determining these grades and the requested information may not demonstrate a full picture of this process. The Commissioner also notes that the final GCSE grades which demonstrate the school's performance are published as required.
38. Ultimately, the Commissioner does not consider that disclosure of this information is necessary. The school has provided as much information as possible in order to meet the legitimate interests identified while protecting the personal data of the students involved, including via other means such as subject access requests and complaints made by the complainant to the school.
39. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.
40. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it therefore does not meet the requirements of principle (a).
41. The Commissioner has therefore decided that the school was entitled to withhold the information under section 40(2).

Right of appeal

42. 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

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

43. 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.
44. 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

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