

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 April 2023

Public Authority: The Governing Body of Ashley Down Schools Federation

Address: Ashley Down Primary School
Downend Road
Bristol
BS7 9PD

Decision (including any steps ordered)

1. The complainant has requested information relating to striking teachers. Ashley Down Schools Federation ("the School") refused to provide the requested information because to do so would breach the data protection principles.
2. The Commissioner's decision is that the School was correct to rely upon section 40(2) as its basis for refusing to provide the requested information. However, the School breached section 17 (refusal of request) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 8 March 2023, the complainant wrote to the School and made a request for information.

"Can you please provide the following information.

1. How many teachers were on strike on the last strike. Can this be provided as a number and a percentage of staff.
2. How many teacher the school currently believes will be on strike on Wednesday and Thursday.
3. The steps the school has taken to astatine (sic) this number."

This request appears to have been prompted following communication from the School that it would close on 15-16 March 2023, due to strike action.

5. The School responded on 9 March 2023. It explained why it had made the decision to close and also explained that 'Although the teachers in the National Education Union are not required to give us any notice of their intention to strike, they have told us in advance so that parents can make arrangements.'
6. On 9 March 2023 the complainant responded and expressed concern that the School's reply didn't answer their specific questions.
7. On 14 March 2023 the School responded. It explained that, following confirmation from their Data Protection Officer, 'from a GDPR perspective I am not able to provide specific numbers and percentages of teachers on strike.'
8. On 14 March 2023 the complainant responded and explained, 'The number of teachers who were on strike in February has no GDPR information attached to it so can be provided.'
9. The School responded on 15 March 2023, explaining that 'As Trade Union membership is a considered Special Category Data under Article 9, revealing this information would create significant risks to the individual's fundamental rights and freedoms under GDPR.'
10. It reiterated this position on 27 March 2023 and advised the complainant, if they were unhappy, to raise a complaint with the Commissioner.

Scope of the case

11. The complainant contacted the Commissioner on 27 March 2023 to complain that the School had failed to comply with their request for 'the number of staff which were on strike on the following strike days. Thursday 2nd March, Wednesday 15 and Thursday 16th March. I asked for this as a number and as percentage of staff.'
12. The complainant hasn't raised any complaint about the School's handling of part 3 of the request. Furthermore, the Commissioner is satisfied that the School answered this question in its response to the complainant of 9 March 2023.
13. The Commissioner considers that the scope of his investigation is to consider whether the School is entitled to withhold the information requested in parts 1 and 2 of the request.

Reasons for decision

Section 40(2) – personal information

14. Section 40(2) exempts information from disclosure if it's the personal data of any individual (other than the requestor) and disclosure would contravene one of the data protection principles.
15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable from that information.
16. 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.
17. The complainant is correct; on the surface the request asks for statistics in relation to striking teachers and not any personal data. However, the Commissioner must consider whether any teachers could be identifiable, either directly or indirectly, from this information.
18. In its response of 27 March 2023 the School explained:

“...just providing the overall number of teachers does not in itself constitute personal data, when this is applied to the small number of teachers in a school setting, they advise that this has the potential to identify individuals. The ICO is clear that information cannot be

disclosed where the revealed information has the potential to be combined with other related information already in the public domain.”

It also quoted the Commissioner’s guidance¹ which states:

“This is referred to as the ‘mosaic’ or ‘jigsaw’ effect. It means that on its own the requested information might not be harmful. However, if disclosed, it could be pieced together with other information already known, thereby increasing the likelihood of prejudice. This is why it is important that the content of the information is considered in the context of its disclosure.”

19. The Commissioner notes that, had the School remained open on the days in question, it would have been fairly obvious how many teachers were on strike. However, on the strike day(s) in question the School was closed so the Commissioner must consider what ‘other information’ could be pieced together with the requested information, to identify which teachers did take strike action, and from that, which intend to in the future.
20. Looking at the School’s website (and bearing in mind that this request appears to relate to one specific primary school, rather than the federation as a whole), the Commissioner is satisfied that the requested information relates to a small population of teachers. When dealing with small numbers, this always increases the possibility that anonymised data can be turned back into personal data.
21. The Commissioner has considered the possibility that teachers had discussed the possibility of a strike, and their intentions, with each other or parents’ informally in the run up to the action in question. Furthermore, prior to its announcement that it would close, the School might have contacted the parents’ of children in specific classes to advise them to make alternative arrangements for their child, owing to their teacher’s absence.
22. Also, the Commissioner is aware that certain individuals will be more public than others in their support of industrial action and may choose to advertise their support through discussions, their own social media channels, or on the picket lines etc.
23. If an individual has a suspicion that a specific teacher was on strike, and this suspicion was confirmed as a result of this FOI request, that would count as reidentification and different members of the public will have different degrees of access to ‘other information’ which would be needed

¹ [Information in the public domain | ICO](#)

to turn apparently anonymous information into personal data. In the Code of Practice² on Anonymisation, the Commissioner acknowledges that '...there is no doubt that non-recorded personal knowledge, in combination with anonymised data, can lead to identification.'

24. Furthermore, when considering whether anonymised data can be turned back into personal data, the Commissioner must consider how attractive this information is to any 'motivated intruders.'³ At this point the Commissioner would like to make it clear that neither he, nor the School, are suggesting that the complainant will try and use this information to identify the teachers who were on strike. However, disclosure under FOIA is disclosure to the world at large. Industrial action invokes strong emotions on both sides and this withheld information may be of particular interest to certain parents or colleagues in this relatively small school.
25. Whilst he accepts the complainant has no intention to try and identify the teachers in question, on balance, the Commissioner expects public authorities to adopt a more rigorous form of risk analysis in cases where reidentification may have significant effects on the data subject(s) concerned. If a teacher is identified as having taken part in strike action, it's a reasonable assumption that they will be part of a trade union which is special category data. .
26. Furthermore, as referred to by the School in its response of 15 March 2023, article 9 of the UK GDPR defines 'special category' data as being personal data which reveals racial, political, religious or philosophical beliefs, and the 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 and finally, trade union membership.
27. Special category data is afforded special protection and can only be processed (in this instance, disclosed in response to a request received under FOIA) if one of two specific conditions in Article 9 are met: (a) explicit consent from the data subjects) or (e) (data made manifestly public by the data subjects).
28. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being

² [Anonymisation: managing data protection risk code of practice \(ico.org.uk\)](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/11-anonymisation)

³ [Anonymisation: managing data protection risk code of practice \(ico.org.uk\)](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/11-anonymisation)

disclosed to the world in response to a FOIA request or that they have deliberately made this data public.

29. 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 FOIA.

Procedural matters

Section 17 – refusal of request

30. Section 17 of FOIA states that, if refusing to provide information under FOIA, a public authority must issue a valid refusal notice within twenty working days of receipt of the request. This refusal notice must explain that the information is exempt, under which exemption and explain why. This notice must also provide the complainant with details of any internal complaints procedure for reviewing any requests made under FOIA and advise the complainant of their right to complain to the Commissioner.
31. The Commissioner accepts that it was not clear, from the outset, if this request was being dealt with under FOIA or as normal course of business. However, he notes that at no point during the handling of this request did the School confirm that it was relying upon section 40(2) in order to withhold the requested information, or provide the complainant with details of any internal complaints procedure for reviewing this decision. Therefore the Commissioner has found a procedural breach of section 17.

Right of appeal

32. 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

33. 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.
34. 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

Alice Gradwell
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Information Commissioner's Office
Wycliffe House
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