

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

### **Decision notice**

**Date:** 22 July 2020

**Public Authority:** Northumberland County Council

**Address:** County Hall  
Morpeth  
Northumberland  
NE61 2EF

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

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1. The complainant has requested information about children removed from the school roll from Northumberland County Council. The Council disclosed some of the information but refused to disclose figures fewer than 6, citing section 40(2) of the FOIA – third party personal data.
2. The Commissioner is not satisfied that the withheld information constitutes personal data, and therefore section 40(2) is not engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Disclose the withheld figures.
4. The public authority must take these steps 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.

## Request and response

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5. On 14 June 2019 the complainant wrote to Northumberland County Council and requested information in the following terms:
  1. *'The number of notifications of removal from school roll (e.g. completion of notification forms) made to the local authority in each of the following school years, 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 to date, broken down by school.*
  2. *The number of notifications of removal from school roll made to the local authority in each of the following school years, 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 to date, broken down by the reason given for removing the child from the school roll.*
  3. *The number of child missing education (CME) notifications made to the local authority in each of the following school years, 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 to date.*

*Please provide the information as a CSV or spreadsheet file.'*
6. On 16 July 2019 the Council responded, providing some information but withholding the information where the numbers of children were fewer than 6, citing section 40(2) of the Freedom of Information Act 2000 – third party personal data. It also did not supply the information in the format requested and data was absent for some years.
7. The complainant requested an internal review and the Council sent the outcome of its review on 14 August 2019, upholding its original position. It provided the information in the format requested and addressed the missing data. It continued to rely on section 40(2) for the withheld information.

## Scope of the case

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8. The complainant contacted the Commissioner on 16 August 2019 to complain about the way her request for information had been handled. She did not consider that individuals could be identified from the withheld figures, and therefore they did not constitute personal data.
9. The Commissioner considers the scope of the case to be whether the Council has correctly identified the withheld information as personal data, and therefore entitled to apply section 40(2) of the FOIA to it.

## Reasons for decision

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### Section 40 personal information

10. 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.
11. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. 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 General Data Protection Regulation ('GDPR').
12. 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.
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

### ***Is the information personal data?***

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

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

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.
16. 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.
17. 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.

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

18. The Council has withheld two sets of figures: where the numbers of children removed from each named school's roll by year is fewer than 6, and where the reason for removal from all schools across the County Council by year is fewer than 6. The reason for removal is not broken down by school.
19. Although the figures do not immediately reveal which children they relate to, the Council is concerned that due to the low numbers, there is a risk of individuals being identified.
20. The Council has drawn attention to the DfE's guidance on sharing pupil data<sup>2</sup> where it states the requirement to ensure *'the appropriate levels of suppression are applied to make sure there is only an extremely remote risk of identification'*.
21. The Council believes that presenting such low numbers for each school or reason for removal allows for a conceivable possibility that individual children could be identified, either due to knowledge about a particular school year group or specific school/community. The knowledge may be derived from other published sources or individual knowledge within communities, or a combination of both.
22. The Council has explained that several schools in question are very small, with small class sizes and are based in rural or coastal areas with a very low population density, meaning many people know each other and the majority of people in their community or school.
23. The Council has considered the ICO's Code of Practice on 'Anonymisation: Managing Data Protection Risk', and the requirement to take account of the ways and mean that an 'intruder' could match data from other sources to identify individuals, but also acknowledges *'the risk of re-identification through data linkage is essentially unpredictable because it can never be assessed with certainty what data is already available or what data may be released in the future.'* It goes on to explain:

*'In our circumstances some sources of information are more obvious than others, for example the range of information and statistics currently and prospectively available in the public domain produced by the DfE, OFSTED, Local Education Authority and relating to schools standards, pupil numbers etc, may well*

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<sup>2</sup> <https://www.gov.uk/guidance/data-protection-how-we-collect-and-share-research-data#sensitivity>

*be a factor. However in this context we have much more specific concerns relating to local knowledge within small communities, as referred to above, and which could also include local newspaper and social media campaigns...'*

24. The Council acknowledges that small numbers in themselves are not a reason for suppression, but it considers combined with other local knowledge and/or statistical information, there is a real chance that individual children and their families could be identified.
25. The complainant does not consider that simply because the numbers are low, children may be identified. If children are identifiable, the complainant believes that this is because they have themselves self-identified. She does not think that the number of individuals in itself would lead to identification.
26. Having viewed the withheld information, the Commissioner is unable to see how individual children could be identified from numeric data alone. Even if it is known that only one child was removed from a named school, the Commissioner cannot see how this could identify that individual. If a child has left a school outside of normal transfer processes (e.g. transition to secondary school), this may be known to classmates and their families, but this is already available information and not something that would come to light through release of the withheld information.
27. The Commissioner has produced guidance on personal data<sup>3</sup> to assist organisations in identifying whether information directly or indirectly constitutes personal data. In this case the Council considers that whilst the figures do not themselves identify individuals, they could be combined with other statistical and local information to indirectly identify children. However, the Council's reference to other data or general in nature and it has not supplied the Commissioner with any specific data, already released or that might be released, to support this position. Turning to local information within communities and newspapers or social media, the Council acknowledges that this is hypothetical, and as already noted, a child leaving a school will already be known within that school to classmates.
28. The Commissioner notes that the two categories of suppressed data are mutually exclusive i.e. it is not possible to cross reference the reason for

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/what-is-personal-data-1-0.pdf>

removal with the numbers of notification by school. This means that if only one child left due to being educated at home, this could not be linked to a child attending a named school. Consequently, the reason for removal from a school roll could be not be combined with local knowledge about who has left a school to identify why that child left.

29. The Commissioner is therefore not satisfied that individual children could be directly or indirectly identified from the suppressed figures and as such it cannot be considered personal data under Section 3(2) of the DPA. As a result section 40(2) of the FOIA is not engaged.

## Right of appeal

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30. 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: 0300 1234504

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)

31. 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.
32. 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 .....**

**Andrew White**  
**Head of FOI Complaints and Appeals**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**