

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 February 2021

**Public Authority:** Beths Grammar School  
**Address:** Hartford Road  
Bexley  
Kent  
DA5 1NE

#### Decision (including any steps ordered)

---

1. The complainant requested from Beths Grammar School ("the school") information regarding exam grades. The school disclosed the information in an anonymised format. The complainant requested the information be provided in a different format. The school refused that request under section 40(2) of the 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 3 October 2020 the complainant wrote to the school and requested information in the following terms:

*"...the following information for all students who were in year 10 with [name redacted] that took Economics;*

*1. April report: Trial exam grade*

*2. November report: Trial exam grade and Predicted grade.*

*3. June (Yr 9) report: Trial exam grade and Current grade*

*In the same manner in which you providing the grades for [name redacted] in your first response to my email."*

5. For reference, the school had previously disclosed the complainant's son's grades to him in the following format:
  - *April report: Trial exam grade – [grade redacted]*
  - *November report: Trial exam grade – [grade redacted]. Predicted grade: [grade redacted]*
  - *June (Yr 9) report: Trial exam grade – [grade redacted]. Current grade: [grade redacted]*
6. The complainant was of the view that the school were correct to withhold each student's name but that he wanted the information in the format received for his son, where all grades were provided that related to one particular student.
7. On 7 October 2020 the complainant wrote to the school and submitted a further request:
  4. *"...the actual final grade given for each student for Economics."*
8. The school responded to both requests on 17 September 2020. It disclosed an anonymised version of the requested information, with names redacted and with the information presented in a randomised format. This took the form of six data sets. It stated that it would not be providing the information in the format requested because to do so would breach the General Data Protection Regulation (GDPR). It therefore withheld this information under section 40(2) of the FOIA (personal data).
9. On the same day the complainant wrote to the school and expressed dissatisfaction with the response. He stated that, while he considered the school was correct to withhold each student's name, it should not have randomised the numbers and sets. He stated that he particularly requested the results to be disclosed in the same format that he had received for his son's results in order to determine the consistency of the schools grading format.
10. The complainant contacted the Commissioner on 8 October 2020 to complain about the way his request for information had been handled. The Commissioner contacted the school on 27 October 2020 and asked it to undertake an internal review of the request.

11. On 11 November 2020 the school issued its internal review decision. It maintained its original position in respect of section 40(2) of the FOIA.

### **Scope of the case**

---

12. In bringing this complaint to the ICO, the complainant stated that he, *"requested for a series of results to be published in a certain order, to be able to determine consistency in the way a final mark was awarded for each student. The school sent the results, but randomised the order preventing me from being able to determine consistency"*.
13. The scope of this notice is to determine whether the school has correctly applied section 40(2).

### **Reasons for decision**

---

#### **Section 40 - Personal information**

14. 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.
15. 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").
16. 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.
17. 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?

---

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

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

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

19. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
20. 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.
21. 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.
22. As explained above, in the information disclosed to the complainant, the students are randomised for each data set. The information disclosed to the complainant consists of six separate tables. Each table has two columns. The first column, labelled "randomised student" lists the students as "Student 1" through to "Student 65". The second column, labelled as the specific exam (e.g. "GCSE Final Exam Grade 2020") lists the individual grades achieved for that exam. The data therefore only associates one grade at a time with one student at a time. The school explained that "Student 1" in one table, will not be the same individual as "Student 1" in another table, and so on. This means that Student X's result for one exam are in no way linked to Student X's result for another exam. Therefore these grades are seen in isolation and a picture cannot be built of any given particular student's overall achievement. This is unlike the information that had previously been disclosed by the school to the complainant about his son where all of his son's grades were provided at once.
23. The school provided the Commissioner with a copy of the withheld information. This consists of one table which sets out the requested information, with student names redacted. The withheld information provided to the Commissioner consists of one table with seven columns. The first column consists of the student number and the following six columns consist of the grade result from each separate exam. Therefore, in the withheld information, each particular student is linked to all six of their individual grades because of the format of the table. The school explained that the requested grades concern a mixed ability group. It added that some students share their assessment grades with others, or marks can be announced in class.

24. In its initial response to this request the school stated that it disclosed the following:
- *"published examination data (Centre Assessed Grades) for GCSE Economics in summer 2020 which will be made available for the world at large on the school's website (in September 2021)."*
  - *"5 sets of internally generated data (reports and trial exams), which are only available for the data subjects and their parents, and staff within the school. Not the world at large. "*
25. The school added that although the Centre Assessed Grades were internally generated, by the time GCSE grades were published, these grades were the final exam-board grades, and would therefore be available to the world at large.
26. In responding to the request, the school explained that it had anonymised and randomised student grades into the numbers 1-65 in the six data sets it disclosed. It explained that the student numbers are not the same across each of the data sets stating, *"for example, Student 1 in the Economics Early Entry Year 10 – GCSE Final Exam Grade 2020, is not the same as Student 1 in the other data sets"*. It explained that disclosing all data for each student, in a similar format to the report data disclosed to the complainant about his son, would have led to the identification of individual students.
27. In its internal review response the school stated that, on the basis that the complainant had requested information about all students who were in year 10 with his son who took economics, each of the students would have been known to the complainant and/or his son.
28. The Commissioner asked the school to explain why it considered the unrandomised information to be personal data. In response, the school stated:
- "There is a likelihood that [the complainant's] son would have access to that information for some of the other students. That information may well be shared amongst other students in the year group and their parents. They too, might draw inaccurate conclusions and be able to work out the grades for peers who may otherwise not wish to share the same publicly. This personal academic data, is sensitive to the students and their parents. Students could become identifiable from sets of grades."*
29. 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 historical predictions and ultimate resulting grade.

30. The school explained that it assumed in a request for data in relation to every student, there are inevitably going to be outliers at either end of the spectrum of results. It argued that this would enable the complainant/the complainant's son to identify these individuals and consequently learn of their predictions/grades. It added that the complainant or his son may know one or two of the data elements in relation to specific students, and that this data together with that requests, would results in the complainant being able to identify the individuals and the remaining data sequences.
31. The school ultimately stated that this academic data is the personal data of each of those students. It argued that disclosing the unrandomised information in the format requested by the complainant would mean that individuals in the cohort could be identified by their academic progress. It argued that if this document which details grades in an unrandomised order was disclosed, that students would become identifiable, specifically those who are either low or high achievers. The school's position therefore is that the examination grades are personal data when associated to individuals who can be identified.
32. 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 six grades combined could identify individual students, especially those either low or high achievers. 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. This information therefore falls within the definition of personal data in section 3(2) of the DPA.
33. 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.
34. The most relevant DP principle in this case is principle (a).

***Would disclosure contravene principle (a)?***

35. 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".*

36. 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.
37. 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***

38. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" lawful bases for processing listed in the Article applies.

39. 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"*<sup>2</sup>.

40. 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;

---

<sup>2</sup> 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"*.

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

41. 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*

42. 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.
43. 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.
44. In bringing this matter to the ICO the complainant stated that he requires the results in the same format that were provided for his own son so that he could determine consistency in the way that the final mark was awarded for each student. The complainant also expressed that, in his view, the school have contradicted their position by relying on section 40(2) of the FOIA to withhold the information while simultaneously disclosing a randomised version.
45. By way of background, the school stated that although the FOIA is purpose blind, it is assumed that the complainant wishes to track the academic progress of the cohort of students studying GCSE Economics with his son given the dissatisfaction expressed by the complainant at the final grade awarded.
46. The school acknowledged that the complainant may allege he has a legitimate interest in pursuing the disclosure to consider whether his son has been disadvantaged or treated differently to other students in any way. However, the school explained that the requested information does not take into account the other factors the school staff considered outside of those set out in the table for each individual student. The school argued that the rights and freedoms of the other students not to have their grade or themselves identified outweighs any legitimate interest.
47. The school also identified that disclosure would demonstrate some openness and accountability in relation to how the final grades were



reached. It acknowledged that it could also be used to evidence fairness across the cohort.

48. 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?*

49. "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.
50. 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 son's Economics GCSE result following the publication of Centre Assessed Grades as final GCSE grades in summer 2020. The complainant had enquired about appealing his son's grade. Following school policy and guidance from Ofqual<sup>3</sup>, the school reviewed the grade but concluded that there were no grounds for an appeal. The school advised the complainant on the next steps should he remain dissatisfied, but stated that it was not aware of the complainant pursuing this further. The school stated that the complainant *"has assumed that in arriving at Centre Assessed Grades, teachers only took into account internal report grades and trial exam grades."*
51. In determining the complainant's son's grade, the school stated that it followed Ofqual guidance<sup>4</sup>. The school stated that this guidance discusses the professional judgement of teachers using information from

---

<sup>3</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/908368/Summer\\_2020\\_grades\\_for\\_GCSE\\_AS\\_and\\_A\\_level\\_110820.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908368/Summer_2020_grades_for_GCSE_AS_and_A_level_110820.pdf)

<sup>4</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/887018/Summer\\_2020\\_Awarding\\_GCSEs\\_A\\_levels\\_-\\_Info\\_for\\_Heads\\_of\\_Centre\\_22MAY2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887018/Summer_2020_Awarding_GCSEs_A_levels_-_Info_for_Heads_of_Centre_22MAY2020.pdf)

a range of sources and that the guidance does not indicate a formulae or a weighting for any component. It argued that disclosing the information requested in the format requested does not give a full picture as to how Centre Assessed Grades were determined.

52. The school stated that it responded to the complainant's initial concerns about the grades from Ofqual guidance and school policy. It also issued information to parents and students wishing to challenge grades. The school explained that the Ofqual guidance states that students and parents cannot solely challenge a grade because they disagree with it. The school explained that the timeframe and grounds on which grades could be appealed was limited and the disclosure of this information in the format requested would not have assisted as it was not the full picture. The school stated that the right of appeal for the complainant to appeal the grade awarded to his son had passed and there is no further benefit to the complainant from disclosure of this information.
53. The school stated that it considered other ways of disclosing the information whilst protecting the data subjects' rights and freedoms, such as grouping numbers of students on particular grades across the six data sets. However it argued that:

*"as student academic performance changes across the two years of the GCSE course, grouping grades across the six data sets in a way that was meaningful whilst not identifying the academic performance of individuals, was not possible. Therefore, disclosing the information as six individual data sets, and anonymising and randomising the data subjects enabled the school to comply with section 3(2) of the Data Protection Act 2018. The School did not have a legal basis to release the grades of identifiable individuals to the world at large including consent."*

54. It furthered this by stating that students do not generally disclose their grades, and that if disclosed to the world at large, this may cause some distress to particular students. It added that the school does not have the consent of students to disclose their grades to other individuals stating, internally generated assessment data is only shared with data subject, their parents and members of staff and that it is highly sensitive academic information. It added, *"internal assessment data, at the time it was produced was not intended for the purpose that it eventually served in summer 2020."* It argued that teachers, their students and parents would not expect this to be in the public domain. It explained that GCSE and A Level results data are a measure of school performance

and as such the school is publicly accountable for these results. Therefore, final results data are shared with the world at large but published in an anonymised format on the school's website<sup>5</sup>.

55. The school maintain that disclosure would be in breach of Data Protection legislation and that it is not necessary to provide the information in the format the complainant has requested. The school also stated that the students would have no expectation that internal data would be disclosed and they are generally informed that grades are confidential between them and the school. Therefore, disclosure in the format requested would cause considerable distress and anxiety amongst the cohort because, *"some students may feel they have to justify the grades they were awarded to their peers. To have such personal data out in the public domain therefore impacts on the students' rights and freedoms."*

56. Finally, it argued that if disclosed,

*"vulnerable and low achieving students would face potential embarrassment / and stress if identified [...] In addition students may be tackled by other students in respect of their grades which would impact on their interests, wellbeing and their right to have grades kept confidential between the school and any one particular student etc."*

#### Commissioner's conclusion

57. 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. She 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.

58. From the information provided, this request does appear to stem from a personal matter in that the request directly relates to the complainant's son's grades. The Commissioner understands that the complainant wishes to have sight of this information so that he can understand more

---

<sup>5</sup><https://www.beths.bexley.sch.uk/page/?title=Performance+%28Exams+and+Assessment+results%29&pid=12>

about the grading for GCSE Economics. 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 an appeal by the complainant against the GCSE Economics grading was not upheld. The Commissioner further notes that the final GCSE grades which demonstrate the school's performance are published as required.

59. 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. The Commissioner is satisfied in this case that there are less intrusive means of achieving the legitimate aims identified and that these aims have been met in the school disclosing an anonymised version of the six data sets.
60. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, she 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).
61. The Commissioner's view
62. The Commissioner has therefore decided that the school was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

## Right of Appeal

---

63. 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)

64. 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.
65. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**