

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2025

Public Authority: Education Authority
Address: 40 Academy Street
Belfast
BT1 2NQ

Decision (including any steps ordered)

1. The complainant requested from Education Authority (EA) information held by the school or EA relating to [name of school redacted] staff. EA relied on section 40(5B) (third party personal information) of FOIA to refuse to confirm or deny whether it holds the information requested.
2. The Commissioner's decision is that EA correctly relied on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information relating to the request. The Commissioner does not require EA to take any steps as a result of this decision.

Request and response

3. On 20 March 2024 the complainant wrote to EA and requested information in the following terms:

"To shed light on this series of events, we wish to make a further SAR and/or FoI request for all information held by the school or Education Authority relating to the following:

1. When [school name redacted] was informed that [name redacted] had to be removed from having contact with children;
 - a. a copy of the discussion and risk assessment undertaken to ascertain what risk [redacted] pupils had been exposed to in the [school name redacted] setting;
 - b. the details of this risk assessment, including the dates and names of those involved, including but not limited to, [school name redacted] staff, EA staff and anyone else in a professional or lay capacity;
 - c. what was the outcome of this risk assessment?
 - d. what steps were taken to ensure the mental and physical well-being of their immediate and former pupils?
 - e. We would like copies of the minutes of any meeting held within [school name redacted], the EA or any other location or organisation, which discussed the above risk assessment;
 - f. We would like an unredacted copy of the child protection log when this was discussed with Board Of Governors;
 - g. We request a copy of the risk assessment carried out regarding the exposure of our child to an adult who was known (retrospectively) to be a threat.
 - h. We request a copy of any correspondence with, or reports provided by, or to, the EA "Crisis Intervention Team" when evaluating the situation and a report of the subsequent steps taken;
 - i. If the EA Crisis intervention team was not involved in this situation, please provide the advice/guidance which [school name redacted] relied upon to come to this decision.

- j. When the decision was made not to inform parents of a possible previous or existing risk to their children:
 1. Who signed off on the decision?
 2. What was the rationale for this decision?
2. Further, please supply minutes of any meetings involving [school name redacted] staff, to include but not limited to, Board of Governors meetings (both full committee and sub-committee) and Education Authority, in which the matters of [name redacted] inappropriate behaviour towards [school name redacted] pupils or other children, and/or anyone else, was reported and discussed."
4. On 16 May 2024 EA responded. It said it can neither confirm nor deny whether it holds the information requested and cited section 40(5B) of FOIA to the request.
5. On 8 June 2024 the complainant asked for an internal review.
6. On 28 June 2024 EA provided its review response and maintained its original position.

Reasons for decision

7. The following reasoning covers why the Commissioner considers EA is entitled to rely on section 40(5B) of FOIA, to refuse to neither confirm nor deny whether it holds information relating to the request.

Section 40 – personal information

8. For EA to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, two criteria must be met:
 - confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
 - providing this confirmation or denial would contravene one of the data protection principles
9. Details about how section 40 of FOIA works, can be found in the decision notice support materials page of the Commissioner's website:
 - <https://ico.org.uk/action-weve-taken/decision-notice-support-materials/>

Would confirmation or denial the requested information is held constitute the disclosure of a third party's personal data?

10. The request concerns staff and pupils at a named school. The Commissioner is satisfied that a named individual is clearly identified, and confirming or denying whether the information is held, would result in the disclosure of third party personal data to the world at large.
11. The Commissioner deems it is appropriate to consider if confirming or denying whether EA hold the requested information, would result in the disclosure of information relating to the criminal convictions and offences of a third party.
12. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA 2018, personal data relating to criminal convictions and offences includes personal data relating to:
 - (a) The alleged commission of offences by the data subject; or
 - (b) Proceedings for an offence committed or alleged to have been committed by the data subject of the disposal of such proceedings including sentencing.
13. Criminal offence data can also relate to allegations that are unproven. It is not necessary to prove that the data subject has committed a criminal offence, only that the information (if held) relates to a criminal offence of which they have been accused.
14. In this case, the Commissioner acknowledges the background to the matter and that if held, information would constitute criminal offence data. The basis of the complainant's information request, is the school in question was informed that the data subject had to be removed from contact with children and what actions were taken by the school, including queries around specific actions as noted within the complainant's request. The request clearly states the name of the third party, and as it is inextricably linked and, if held, it would be the personal data of more than one third party.
15. EA confirmed the requested information, if held, would be criminal offence data because it relates to allegations of a criminal offence.
16. Given the context and wording of the request, the Commissioner is satisfied that confirming or denying whether the requested information is held would result in the disclosure of information relating to criminal convictions / offences of a third party.

17. The complainant argued EA's response to 'neither confirm or deny' is completely unsatisfactory given the seriousness of the query. They believe information could be disclosed and with any names redacted.
18. However, criminal offence data is particularly sensitive and it warrants special protection. The Commissioner's guidance on personal data is clear that criminal offence data may only be processed in response to a FOIA request if one of the stringent conditions of Schedule 1, Parts 1 to 3, of the DPA 2018 can be met.
19. Only two conditions will be relevant to allow a public authority to lawfully disclose criminal offence data under FOIA. These are:
 - consent from the data subject; or
 - the processing relates to personal data which has clearly been made public by the individual concerned.
20. If a relevant condition cannot be met, a public authority must not disclose the information, as disclosure would be unlawful and therefore in contravention of principle (a).
21. As regards the conditions for processing set out above, the Commissioner has seen no evidence or indication that were the information held, the data subject has specifically consented it being disclosed to the world in response to the FOIA request or that they have deliberately made this data public.
22. Having regard for the restrictive nature of the Schedule 1, Parts 1 to 3 conditions, the Commissioner does not consider that any of the conditions for processing can be met.
23. As none of the conditions required for processing criminal offence data are satisfied, there can be no legal basis for confirming whether or not the requested information is held. Providing such a confirmation or denial would breach principle (a) and therefore the second criterion of the test set out above, is met.

Conclusion

24. The Commissioner concludes that EA is entitled to refuse to confirm or deny whether it holds the requested information, and correctly applied section 40(5B) of FOIA.

Right of appeal

25. 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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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