

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 July 2009

Public Authority: The Governing Body of Bedgrove Junior School
Address: Ingram Avenue
Aylesbury
Buckinghamshire
HP21 9DN

Summary

The complainants requested recorded information from the public authority about the SATs results of its Year 5 pupils. They also requested some of its policies. The Commissioner has determined that some information has been correctly withheld by virtue of section 40(2). This information consists of the names of children and letters relating to their teaching requirements. He did however find that an anonymised version of the information should have been provided and the school breached sections 1(1)(b) and 10(1) in not disclosing this information within the statutory timescales. The Commissioner has also found breaches of sections 9(3), 17(1)(b) and 19(1)(a) of the Act. The Commissioner has provided guidance to the public authority about various aspects of handling freedom of information requests. The Commissioner requires no more remedial steps to be taken in this particular case.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The Commissioner notes that the Governing Body of the school is the public authority for purposes of the Act.
3. Between 14 July 2007 and 6 December 2007, the complainants and the public authority entered into a prolonged series of correspondence in relation to

information about SATS results held by the public authority. The text of the relevant requests has been reproduced in Annex A of this notice. However, in summary, the following requests that are of relevance to this Decision Notice were made. The Commissioner has numbered the requests for ease of reference:

Request 1 - On 14 July 2007 the complainants requested information about the SATs grades attained by year 5 for the academic year 2006 /07. This request was withdrawn by the complainants on 16 July 2007, after the public authority advised the complainants that a fee of £60 would be chargeable for this information.

Request 2 - On 16 July 2007 the complainants made a request for copies of the teachers' records for the same SATs tests.

Request 3 - On 11 September 2007 the complainants requested the 'Monitoring' and the 'Marking' policy documents specified in the public authority's publication scheme.

Request 4 – On 18 November 2007 the complainants requested (a) class and set analyses for a certain year group for the academic year 2006/07, together with (b) 'a mapping of numerical values to grades, if this is required to understand the analyses.'

The Investigation

Scope of the case

4. On 29 February 2008 the complainants contacted the Commissioner to complain about the way their requests for information had been handled. On 23 April 2008 the complainants explained what they wanted in light of the communications between themselves and the public authority.
5. The Commissioner agreed with the complainants that he would investigate the substantive issue of the public authority's failure to provide any outstanding requested information, and that he would also consider issues the complainants had raised in their letter of 29 February 2008 about the public authority's procedural handling of the requests.
6. The requested information that the complainants identified as outstanding at this point was:
 - Request 1 - combined scores for English as quoted on the annual report.
 - Request 4 – numerical information that can be found on the year group database and a mapping of the numerical mark to SATs grades for this data.

7. The complainants also maintained that an explanation of how to interpret some management data that had been sent to them should have been provided under the public authority's section 16 duty to provide advice and assistance, and that therefore this information was also outstanding.
8. The Commissioner notes that Request 1 was withdrawn by the complainants on 16 July 2007. In correspondence with the Commissioner the complainants stated that they had only withdrawn this request because of the proposed charge and that they still wished to be provided with the outstanding combined scores for English. In the course of the ICO investigation this information was provided to the complainants. In light of the above the Commissioner has not included this item in his decision on the substantive issue of the public authority's failure to provide outstanding requested information. This Notice will therefore only address the public authority's compliance with section 1 of the Act in relation to the identified outstanding information for request 4.
9. The complainants also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

10. On 1 April 2008 the Commissioner contacted the complainants and informed them that the case was allocated to a case officer and that the Commissioner would deal with their complaints against the public authority, as specified in their letter of 29 February 2008 in a single case.
11. On 16 April 2008 the Commissioner wrote in detail to the public authority. He asked detailed questions about what was held by the public authority, about its publication scheme and about the procedural failings. He also provided advice about how to deal with requests in the future. He received a response on 23 April 2008.
12. On 13 May 2008 the Commissioner had a detailed phone call with the public authority to improve his understanding of how the information was held, what the public authority was to do on the matters about which it was unclear, and what would happen next.
13. On 28 May 2008 the Commissioner wrote again to the public authority. On 29 May 2008 the Commissioner emailed the complainants to update them on the progress of their complaint.
14. On 13 June 2008 the public authority replied to the Commissioner's detailed questions about how the information was held and the operation of its publication scheme. It also provided the Commissioner with a copy of the combined English results that it had sent to the complainants.
15. On 20 June 2008 the Commissioner emailed the complainants to update them on the progress of the complaint. He confirmed what was said in a telephone conversation on 23 June 2008. On 24 June 2008 the complainants answered the

Commissioner's enquiries about the handling of their request and confirmed the reasons why they wanted a Decision Notice.

16. On 24 June 2008 the Commissioner wrote to the public authority to clarify some facts that were necessary for this Notice to be accurate. On 22 July 2008 the Commissioner wrote to the public authority to make a further enquiry about the redacted information. On 23 July 2008 the public authority responded.
- 17.. On 16 July 2009 the Commissioner contacted the public authority to enquire about whether it was prepared to disclose an anonymised version of the information it held for request 4(a). It released this information by email on 23 July 2009.

Analysis

Request 4

18. In the course of the Commissioner's investigation the public authority provided the Commissioner with the following detail about how it holds SATs results:
 - Each child receives a numerical score on their test paper. The test papers are taken home by the child and the public authority does not retain a copy of these test papers.
 - The public authority prior to letting the children take the test paper home transfers the scores for all Maths and English components into an alphabetical grade (i.e. 3a, 3b etc.) and this is held in a suspension file for each child.
 - The suspension folders contain all nine results for each child: Reading Test results, Reading Teacher Assessment, Writing Test result, Writing Teacher Assessment, English Teacher Assessment, Maths Test Result, Maths Teacher Assessment, Science Teacher Assessment and their overall alphabetical grades for English.
 - This information is also partially held in the records that the individual teachers keep in various formats within their planners. The public authority does not require staff to do this so information taken from this source may not be complete.
 - The public authority also converts these alphabetical grades into numerical data, which is stored on a database. This 'tracking data' is used by the public authority to track the progress of each child. This information assesses children in decimal numbers up to 5 and is not the same as the information contained in the suspension files or the teacher's records.
 - The public authority also has performance management data that relates to the improvement in performance of sets or classes of children. This data was provided to the complainants on 5 December 2007.

Request 4(a) - the set and class analyses

19. From the correspondence in this case the Commissioner has established that that the outstanding information the public authority had failed to provide in relation to Request 4(a) was the numerical information held in the 'tracking data' database. The public authority released an anonymised version of this database to the complainants on 23 July 2009.

Redacted information - Section 40(2)

20. The Commissioner has considered whether the information redacted should have been released under the Act.
21. The information that was redacted consists of the names of the students and also letters which indicate whether the child is in a special group at school (such as high achievers or special needs groups).
22. The public authority has informed the Commissioner that the redacted information is exempt from the Act by virtue of section 40(2). This is because it is the personal information of the children and potentially also their teachers.
23. Section 40(2) provides an exemption for information which is the personal data of a third party. Section 40(2) is contingent on two conditions and the public authority has informed the Commissioner that it is withholding the recorded information under section 40(2) by virtue of section 40(3)(a)(i) of the Act. This condition requires firstly for the information to be personal data under the Data Protection Act 1998 (DPA) and secondly that the disclosure of it would contravene a data protection principle.
24. The full text of section 40 can be found in the Legal Annex at the end of this Notice.

Is the information 'personal data'?

25. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as:

'...data which relate to a living individual who can be identified
a) from those data, or
b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

26. The Commissioner has viewed the information that has been withheld. He believes that both the names and the information about whether the child is in a special group at school are clearly the personal information of the children.

Does the disclosure of the information contravene any data protection principles?

27. Having concluded that the information falls within the definition of 'personal data', the Commissioner must then consider whether disclosure of the information breaches any of the eight data protection principles as set out in schedule 1 of the DPA.
28. In this case the public authority has informed the Commissioner that it is the first data protection principle that it believes would be contravened by releasing the withheld information.
29. The first data protection principle requires that the processing of personal data should be fair and lawful and that at least one of the conditions in Schedule 2 of the DPA must be met. The term 'processing' has a wide definition and includes disclosure of the information under the Act to a third party.
30. In considering whether disclosure of this information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- The individuals' reasonable expectation of what would happen to their personal data and whether disclosure would be incompatible with the purposes for which it was obtained;
 - Whether disclosure would cause any unnecessary or unjustified damage to the individuals;
 - Whether disclosure can be expected in the context of the UK education system.
 - Legitimate interests of the public in knowing this information and the necessity for the public to have confidence in the way performance is managed in schools.
31. The public authority stated that disclosure of the withheld information would be unfair. It informed the Commissioner that it believed that the release of the withheld information would be unfair to the children. It does not think that the children would have had a reasonable expectation of the withheld information being released in this case. Instead there was an expectation of confidentiality and privacy, as the children's academic performance is an issue for the school and their parents. The Commissioner is convinced that the reasonable expectations are a persuasive factor in indicating that the release of this information would be unfair.
32. The Commissioner has considered in detail the submissions of the public authority and in particular whether it felt that the release of the information would

- cause unnecessary or unjustified damage to the individuals involved. Having considered the information the Commissioner is satisfied that the release of it could potentially cause unnecessary and unjustified damage to the privacy of the children in this case. His view is that while there is a clear interest that the school should be transparent about performance, the Commissioner believes that the potential detriment to the data subject outweighs this interest in this instance.
33. The Commissioner has considered the information about SATS results that is typically released into the public domain. He notes that the only information that is typically released is about the numbers of pupils in each subject that have achieved level 4 and above in their SATs results. The fact this information is available does not mean that it would be less unfair for a breakdown to be provided by child with their names.
34. In finally considering the legitimate interests of the public, the Commissioner believes that these interests favour the maintenance of privacy in this case. The Commissioner appreciates that it is important that information about performance should be available so that the parents can take an informed choice about their child's education but he considers that the anonymised version of the information is equally useful for both prospective and current parents. He therefore does not see this factor as outweighing the children's privacy interest in this case.
35. In considering how the factors balance, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the children. The central reason for this conclusion is that the legitimate expectations of the children are that the information would not be provided and the overriding of these expectations cannot be justified in this case. As the release of the information would be unfair, the first data protection principle would be contravened and the information therefore engages the section 40(2) exemption.
36. As the Commissioner has found that disclosure would be unfair and therefore in breach of the first data protection principle there is no need to consider whether the release would also be unlawful, or if the processing of the personal data would meet one of the conditions of Schedule 2 of the DPA.
37. The Commissioner has also not been required to determine whether the information is also the personal data of the children's teachers.
38. The Commissioner therefore upholds the public authority's application of section 40(2) by virtue of section 40(3)(a)(i) to the information redacted from the database.

Delay in complying with the Act

39. Section 10(1) of the Act provides that:

'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'

40. There is a special Statutory Instrument for the time allowed for Schools to comply with the Act. This is Statutory Instrument 2004 No. 3364: The Freedom of Information (Time for Compliance with Request) Regulations 2004.

41. Regulation 3(2) states that for the school sector:

' Where this regulation applies, subsections (1) and (2) of section 10 of the Act have effect as if any reference to the twentieth working day following the date of receipt were a reference to either-

(a) the twentieth working day following the date of receipt, disregarding any working day which, in relation to the school referred to in paragraph (1), is not a school day, or

(b) the sixtieth working day following the date of receipt,

whichever occurs first.'

42. The complainants made request 4(a) on 18 November 2007. On 21 November 2007 the public authority confirmed that it held numerical data and informed the complainants that it would charge them £60 to provide the data in a suitably anonymised format. On 5 December 2007 it confirmed this position. After the intervention of the Commissioner an anonymised version was provided to the complainants by the public authority on 23 July 2009.

43. The School therefore clearly exceed 20 school working days and 60 normal working days in complying with section 1(1)(b) in and providing the numerical data in response to request 4(a) . The Commissioner therefore finds the public authority in breach of section 10(1) in relation to this information.

44. Section 1(1)(b) (full wording in the legal annex) requires that, if the requested information is held by the public authority, it must be disclosed to the complainant unless a valid refusal notice has been issued. As disclosable information that was relevant to the request was held by the public authority, and was not provided until 23 July 2009 then the Commissioner also finds that the public authority has breached section 1(1)(b) of the Act in relation to the provision of the numerical data.

Failure to cite an exemption upon which it relied

45. In its correspondence with the complainants the public authority relied upon section 9 to maintain that the tracking data information could only be provided upon payment of a fee, and only then in an anonymised format. In the course of the Commissioner's investigation the public authority relied upon section 40(2) to justify its anonymisation of the tracking data. In failing to cite to the complainants the exemption that it relied upon in order to withhold information the public authority has breached section 17(1)(b) of the Act.

Request 4(b) - 'Mapping numerical values to grades, if this is required to understand the analyses.'

46. On 21 November 2007 the public authority informed the complainants that it did not hold this information. The public authority has confirmed to the Commissioner during this investigation that it does not hold any information to provide further explanation about the 'tracking data.'
47. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Information Commissioner v Environment Agency* (EA/2006/0072). In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not certainty, but rather whether on a balance of probabilities the information is held.
48. The Commissioner having analysed the tracking data against the grades believes that the fit between the grades and the marks is self explanatory in this case.
49. The Commissioner has also asked the public authority and has been informed that the Headmaster is the only person that is required to use this data and that the reason that no further recorded information is held is because the Headmaster is able to analyse the information without the need to refer to any additional explanatory information.
50. The Commissioner believes on the balance of probabilities that the public authority does not hold any further recorded information that is relevant to this request. He believes that this is the case because of the nature of the figures and the explanation provided by the public authority.

Section 16 – Duty to provide advice and assistance

51. Part of the complaint made to the Commissioner on 29 February 2007 was the public authority had refused to explain what management data that had been provided on 5 December 2007 meant. The complainants stated that "We believe that we should be supported in understanding the information provided – advice and assistance is surely required?" The complainants reiterated this part of their complaint to the Commissioner on 23 April stating "The data is meaningless without the explanation and therefore we require the explanation" .

52. Section 16 of the Act provides that:

'(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make or have made, requests for information to it

(2) Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection(1) in relation to that case.'

53. The section 45 Code provides guidance on a number of issues. Guidance regarding the discharge of the duty to provide advice and assistance under section 16 of the Act is covered in Part II of the Code which comprises paragraphs 3 to 15. Nowhere within these paragraphs does the Code state that a public authority should provide an explanation of information which it provides. Therefore, although the Commissioner considers that it would have been good practice for the public authority to have provided such an explanation, he does not find the public authority in breach of section 16 for failing to do this.
54. The Commissioner notes that in an e-mail to him of 25 June 2008 the complainants stated that they did not find it credible that no recorded information, providing the explanation they required, already existed. The Commissioner has not made any finding on this issue. This is because the complaint made to him on 29 February 2008 was that an explanation should have been provided under the section 16 duty to provide advice and assistance. The complaint was not that the public authority had failed to provide this information in response to a specific request made under the Act and the complainants did not specify that any such request had been made to the public authority.

Section 19 – Publication Schemes

55. The complainants complained to the Commissioner that the public authority was not providing information in accordance with its publication scheme.
56. The Commissioner requested a copy of the publication scheme from the public authority and determined that it had been modified from the (pre-2009) model scheme. In practice this meant the public authority was operating an unapproved scheme.
57. In failing to obtain approval for the modified publication scheme the public authority has breached section 19(1)(a) of the Act.
58. On 12 September 2007, in response to Request 3, the public authority informed the complainants:
- 'Thank you for your request. We charge £1 nominal cost for policies. Please forward £2.00 to the school and we can send you the copies you requested.'*
59. On 28 September 2007 the complainants paid the £2 charge and the public authority e-mailed them the requested policies.
60. The Commissioner considers that as the public authority was operating an unapproved scheme, any charges made in accordance with that scheme would be invalid. In the absence of an approved publication scheme the Commissioner considers that any charges applied would need to be made in accordance with section 9(3) of the Act.

Section 9- Fees

61. In relation to Request 1 the public authority advised the complainants on 16 July 2007 that they would only provide information upon payment of a fee of £60. This fee equated to 2 hours of staff time, calculated at a supply teacher rate, to cover the costs of putting the requested information into a chart of results which did not reveal individual pupils identities. The complainants did not wish to pay this fee so they withdrew Request 1 and, in an attempt to reduce costs, they submitted Request 2.
62. In relation to Request 2 on 18 July 2007 the public authority advised the complainants that they would have to pay a fee of £15, which equated to ½ an hour of staff time, to cover the costs of compiling a list of the requested information and taking steps to ensure that individual pupils could not be identified. Although the complainants objected to the charging of this fee and maintained throughout that it was not a valid charge under the Act, they did pay this amount to the public authority on 20 July 2007.
63. In relation to Request 4(a) on 21 November the public authority advised the complainants on 21 November 2007 that it would charge them £60 to produce the information in format suitable to be sent to them. This equated to 2 hours of staff time to amend the information so as to comply with the Data Protection Act. The complainants disputed the application of this fee on 3 December 2007. On 5 December 2007 the public authority confirmed its stance that this fee was payable, and on 6 December 2007 it again confirmed its view that anonymisation of the data was necessary in order to comply with the Data Protection Act.
64. Section 9 of the FOIA provides for the issue of a 'fees notice' where a public authority intends to make a charge in accordance with fees regulations issued by the Secretary of State.
65. The appropriate regulations are Statutory Instrument 2004 No. 3244 'The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.'
66. The fees regulations set out what charges can be made by a public authority in a number of different circumstances:

Regulation 4 – applies where a public authority proposes to estimate whether the cost of complying with a request would exceed the appropriate limit and is used where a public authority is considering refusing the request under section 12 of the Act.

Regulation 5 – applies where a public authority is considering refusing an aggregation of a number of requests under section 12 of the Act.

Regulation 6 – sets out the maximum fee that can be charged under section 9 of the Act.

Regulation 7 – sets out the fees that can be charged under section 13 of the Act, in a situation where the costs of compliance exceed the appropriate limit, and the public authority is therefore not obliged to comply with the request, but it is willing to do so upon payment of a fee.

67. In this case the public authority has at no point suggested that the costs of complying with any of the requests would exceed the appropriate limit of £450. The Commissioner therefore considers that the regulation that is applicable in this case is regulation 6.

68. Regulation 6 provides that;

(1) Any fee to be charged under section 9 of the 2000 Act by a public authority to whom a request for information is made is not to exceed the maximum determined by the public authority in accordance with this regulation.

(2) Subject to paragraph (4), the maximum fee is a sum equivalent to the total costs the public authority reasonably expects to incur in relation to the request in-

(a) informing the person making the request whether it holds the information, and

(b) communicating the information to the person making the request.

(3) Costs which may be taken into account by a public authority for the purposes of this regulation include, but are not limited to, the costs of-

(a) complying with any obligation under section 11(1) of the 2000 Act as to the means or form of communicating the information,

(b) reproducing any document containing the information, and

(c) postage and other forms of transmitting the information.

(4) But a public authority may not take into account for the purposes of this regulation any costs which are attributable to the time which persons undertaking activities mentioned in paragraph (2) on behalf of the authority are expected to spend on those activities.'

69. As regulation 6(2) only allows for the costs of (a) informing the person making the request whether it holds the information, and (b) communicating the information to the person making the request, and regulation 6(4) does not allow any staff time even in relation to these activities, the Commissioner considers that the fees notices issued by the public authority in response to Requests 1, 2, and 4 were not in accordance with section 9(3) of the Act. He therefore finds the public authority in breach of section 9(3) of the Act.

70. As stated under the section 19 analysis provided above, as the public authority was operating an unapproved publication scheme, the Commissioner considers that section 9 of the Act would also apply to the charges proposed by the public

authority in relation to the request for information listed in the (unapproved) publication scheme (Request 3).

71. The Commissioner asked the public authority about its position in relation to charging under its publication scheme and was told that the position was informed by pragmatism in that the public authority for convenience had a position of charging £1 per policy since it saved the inconvenience of counting the number of pages.
72. Regulation 6 of the Fees Regulations indicate that the public authority can only charge for the actual costs of informing an applicant if information is held and communicating the information. In this case the public authority has applied a nominal fee rather than charging for actual disbursements.
73. The Commissioner therefore finds that in relation to Request 3 the public authority did not provide a valid fees notice and breached section 9(3) of the Act.

The Decision

74. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - Request 4(a) - The public authority correctly applied section 40(2) to the information redacted from the tracking database.
 - Request 4(b) -In accordance with the requirements of section 1(1)(a), the public authority correctly informed the complainants that it did not hold recorded information with regard to 'Mapping numerical values to grades, if this is required to under the analyses.'
 - Section 16 – the public authority did not breach section 16(1) of the Act by failing to provide an explanation of management data that it had provided.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- Request 4(a) - The non-provision of the anonymised version of the tracking database within the time of statutory compliance was a breach of sections 1(1)(b) and 10(1).
- Request 4(a) - The failure to specify that information was being withheld under s40(2) was a breach of section 17(1)(b).
- Requests 1, 2, 3 and 4 - In issuing non-compliant fees notices the public authority breached section 9(3).
- In not obtaining approval for its publication scheme, the public authority breached section 19(1)(a) of the Act.

Steps Required

75. The Commissioner requires no further remedial steps to be taken.

Other matters

76. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Internal review

77. The Commissioner notes that the public authority did not conduct its internal review into its handling of the complainants' requests in accordance with the recommendations of part VI of the section 45 Code of Practice.
78. The Commissioner has therefore advised the public authority to familiarise itself with the section 45 Code of Practice, details of which can be found at:
79. The Commissioner would also encourage the authority to familiarise itself with his Good Practice Guidance No 5, which advises on the timescales for internal reviews:

<http://www.dca.gov.uk/foi/reference/impref/codepafunc.htm>

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_5.pdf

Publication Schemes

80. Since the investigation of this complaint, the Commissioner has revised his approach to the adoption and approval of publication scheme. A new model scheme, applicable to all public authorities came into effect on 1 January 2009. Authorities are required to adopt the model scheme and produce a guide to the specific information they hold, and which is contained within any of the scheme's seven classes. The Commissioner expects authorities to ensure that the information can be easily identified and accessed by the public. Detailed guidance on the scheme can be found at:

http://www.ico.gov.uk/Home/what_we_cover/freedom_of_information/publication_schemes/.aspx

81. For smaller authorities, including schools, the Commissioner has provided a template 'guide to information' which is designed to be downloaded, completed and used without further modification. Copies of the 'guide to information' for schools can be found at:

http://www.ico.gov.uk/documents/library/freedom_of_information/detailed_specialist_guides/schools_england_mps_final.pdf

Right to Appeal to the Information Commissioner

82. The public authority did not advise the complainants of their right to appeal to the Information Commissioner. Although the requirement in section 17(7) of the Act to provide details of the right to complaint to the Information Commissioner only applies in relation to requests which are refused under a part II exemption or by virtue of section 12 or section 14, the Commissioner considers that it would be good practice to also advise applicants of this right when a section 9 fees notice is issued.

Fees charged

83. The Commissioner notes that in response to invalid fees notices the complainants paid the public authority charges of £15 and £2. Whilst the Commissioner has no powers to order the refund of these amounts he would suggest that as a gesture of goodwill the public authority should refund this money.

Right of Appeal

84. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 30th day of July 2009

Signed

**Lisa Adshead
Senior FOI Policy Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex A: Text of requests

1. On 14 July 2007 the complainants requested the following information from the public authority:

'We take this opportunity to request the numbers of children in year 5 that attained each of the science/English/maths SATs grades for the end of year in both test and teacher assessment – together with the total number of pupils [sic] in Year 5. For example:

| Grade | Test | Teacher Assessment |
|---------------------|------|--------------------|
| 5A | 2 | 3 |
| 5B | 5 | 7 |
| 5C | 10 | 9 |
| 4A | 20 | 14 |
| 4B | 30 | 27 |
| | | |
| 2A | 1 | 0 |
| Not tested/assessed | 2 | 0 |
| Total | 99 | 99.' |

- 2.. On 16 July 2007 the complainants requested:

'Copies of the teachers' records for the test will allow us to put together the information we need without troubling [teacher redacted]. We realise that the names of the children will need to be removed. Can you please provide this information?'

3. On 11 September 2007 the complainants requested the following information in accordance with the public authority's publication scheme:

'Please could you email to me the following two documents:

*Monitoring
Marking*

As listed in Annex A – "further documents held by the school." '

4. On 18 November 2007, the complainants made a new request for information:

'Can you please send these class and set analyses for [person redacted]'s year group (Yr 5 2006/2007) please? Please also send the mapping of numerical values to grades, if this is required, to understand the analyses?'

Legal Annex

Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

1 (1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

(4) The information—

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.

(5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).

(6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Section 9 - Fees

(1) A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a “fees notice”) stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1).

(2) Where a fees notice has been given to the applicant, the public authority is not obliged to comply with section 1(1) unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant.

(3) Subject to subsection (5), any fee under this section must be determined by the public authority in accordance with regulations made by the Secretary of State.

- (4) Regulations under subsection (3) may, in particular, provide—
- (a) that no fee is to be payable in prescribed cases,
 - (b) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and
 - (c) that any fee is to be calculated in such manner as may be prescribed by the regulations.
- (5) Subsection (3) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information.

Section 10 - Time for compliance with request

- (1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
- (2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.
- (3) If, and to the extent that—
- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
 - (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,
- the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.
- (4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.
- (5) Regulations under subsection (4) may—
- (a) prescribe different days in relation to different cases, and
 - (b) confer a discretion on the Commissioner.
- (6) In this section—
- “the date of receipt” means—
 - (a) the day on which the public authority receives the request for information, or
 - (b) if later, the day on which it receives the information referred to in section 1(3);

- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom

Section 12 - Exemption where cost of compliance exceeds appropriate limit

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

Section 16 - Duty to provide advice and assistance

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

Section 17 - Refusal of request

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

Section 19 - Publication schemes

(1) It shall be the duty of every public authority—

(a) to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a “publication scheme”),

(b) to publish information in accordance with its publication scheme, and

(c) from time to time to review its publication scheme.

(2) A publication scheme must—

(a) specify classes of information which the public authority publishes or intends to publish,

(b) specify the manner in which information of each class is, or is intended to be, published, and

(c) specify whether the material is, or is intended to be, available to the public free of charge or on payment.

Section 20 - Model publication schemes

(1) The Commissioner may from time to time approve, in relation to public authorities falling within particular classes, model publication schemes prepared by him or by other persons.

(2) Where a public authority falling within the class to which an approved model scheme relates adopts such a scheme without modification, no further approval of the Commissioner is required so long as the model scheme remains approved; and where such an authority adopts such a scheme with modifications, the approval of the Commissioner is required only in relation to the modifications.

(3) The Commissioner may, when approving a model publication scheme, provide that his approval is to expire at the end of a specified period.

(4) Where the Commissioner has approved a model publication scheme, he may at any time publish, in such manner as he thinks fit, a notice revoking his approval of the scheme as from the end of the period of six months beginning with the day on which the notice is published.

(5) Where the Commissioner refuses to approve a proposed model publication scheme on the application of any person, he must give the person who applied for approval of the scheme a statement of the reasons for his refusal.

(6) Where the Commissioner refuses to approve any modifications under subsection (2), he must give the public authority a statement of the reasons for his refusal.

(7) Where the Commissioner revokes his approval of a model publication scheme, he must include in the notice under subsection (4) a statement of his reasons for doing so.

Section 40(2) - Personal information of third parties

...

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

...

(7) In this section—

“the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

“data subject” has the same meaning as in section 1(1) of that Act;

“personal data” has the same meaning as in section 1(1) of that Act.

Statutory Instrument 2004 No. 3244: The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

Estimating the cost of complying with a request – general

4. - (1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the

appropriate limit.

(2) A relevant request is any request to the extent that it is a request-

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act^[3], and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

Maximum fee for complying with section 1(1) of the 2000 Act

6. - (1) Any fee to be charged under section 9 of the 2000 Act by a public authority to whom a request for information is made is not to exceed the maximum determined by the public authority in accordance with this regulation.

(2) Subject to paragraph (4), the maximum fee is a sum equivalent to the total costs the public authority reasonably expects to incur in relation to the request in-

(a) informing the person making the request whether it holds the information, and

(b) communicating the information to the person making the request.

(3) Costs which may be taken into account by a public authority for the purposes of this regulation include, but are not limited to, the costs of-

(a) complying with any obligation under section 11(1) of the 2000 Act as to the means or form of communicating the information,

(b) reproducing any document containing the information, and

(c) postage and other forms of transmitting the information.

(4) But a public authority may not take into account for the purposes of this regulation any costs which are attributable to the time which persons undertaking activities mentioned in paragraph (2) on behalf of the authority are expected to spend on those activities.