

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 October 2017

**Public Authority:** Air Balloon Hill Primary School  
**Address:** Hillside Road  
Bristol  
BS5 7PB

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to Female Genital Mutilation (FGM). The Air Balloon Hill Primary School (the School) refused to provide the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.
2. The Commissioner's decision is that the School has correctly applied section 40(2) of FOIA to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### Request and response

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4. On 5 April 2017 the complainant made a ten part request for information under the FOIA:
  1. *Please specify the date when the position of "FGM - Female Genital Mutilation lead" was created by your organisation.*
  2. *Please specify the reasons why it was felt this position had become necessary in your particular organisation.*
  3. *Please specify how many employees prior to you have been responsible for this role.*
  4. *Your role states that you are the FGM Lead which suggests you manage a team. Please provide information on how many people form*

*part of this team whom are trained on FGM and who actively monitor and look out for it in the school.*

*5. Please specify whether any associated Health, Social Workers or Teachers have ever failed to comply with the legal mandatory reporting procedural in line with the Government legislation (eg failure to report, failure to do so within the timeframes for doing so etc).*

*Note: The following questions are split by those cases before and after the Mandatory Date: [The Commissioner has not copied the duplicate questions from 6b, 7b, 8b and 9b that cover the period after the Mandatory date.]*

*6. FGM at risk*

*As you are no doubt aware, depending on the circumstances of the case the police or local authority may wish to consider applying for an FGM Protection Order (FGMPO) either to protect the girl or to protect other girls who may be at risk of attack (e.g. siblings). An FGMPO is a civil order which may be made for the purposes of protecting a girl at risk of FGM or protecting a girl against whom an FGM offence has been committed from any further acts of violence.*

*a. Please provide all information including the quantity of cases before the Mandatory Date where you have believed a girl may be at risk of being subjected to FGM:*

*i. Please specify quantity of referrals made to the police or any other body.*

*ii. Please specify both the ethnicity and religious/non-religious group the potential victims would identify with.*

*iii. Please provide all information as to the resulting outcome. (The police are required to provide you with feedback on the outcome of the case, including an update on any safeguarding action taken, prosecutions and subsequent convictions.)*

*7. FGM visually identified physical signs*

*a. Please provide all information including the quantity of cases before the Mandatory Date where physical signs have been observed which appear to show that an act of FGM has been carried out on a girl under 18 where you had no reason to believe that the act was necessary for the girl's physical or mental health or for purposes connected with labour or birth.*

*i. Please provide all information including the quantity of cases concerning what action was taken including whether it was reported to the parents, the police or any other body (please specify)*

*ii. Please specify both the ethnicity and religious/non-religious group the victims would identify with.*

*iii. Please provide all information as to the resulting outcome (ie quantity of prosecutions and subsequent convictions. The police are required to provide you with feedback on the outcome of the case, including an update on any safeguarding action taken.)*

**8. FGM disclosure by the victim**

*a. Please provide all information including the quantity of cases before the Mandatory Date which have been disclosed by a victim under 18 that an act of FGM has already been perpetrated towards her.*

*i. Please provide all information including the quantity of cases concerning what action was taken including whether it was reported to the parents, the police or any other body (please specify)*

*ii. Please specify both the ethnicity and religious/non-religious group the victims would identify with.*

*iii. Please provide all information as to the resulting outcome (ie quantity of prosecutions and subsequent convictions. The police are required to provide you with feedback on the outcome of the case, including an update on any safeguarding action taken.)*

**9. FGM disclosure by anyone other than the victim**

*a. Please provide all information including the quantity of cases before the Mandatory Date which have been disclosed by anyone other than the victim (eg parent, guardian, sibling, friend etc) that an act of FGM has already been perpetrated.*

*i. Please provide all information including the quantity of cases concerning what action was taken including whether it was reported to the parents, the police or any other body (please specify)*

*ii. Please specify both the ethnicity and religious/non-religious group the victims would identify with.*

*iii. Please provide all information as to the resulting outcome (ie quantity of prosecutions and subsequent convictions. The police are required to provide you with feedback on the outcome of the case, including an update on any safeguarding action taken.*

*10. If there have been no convictions or prosecutions as a result of actual cases of FGM reports in 6 - 9 can you explain in detail what the difficulties are in securing such, either in your own considered experience or which has been conveyed to you by the police or other body?*

5. On 18 May 2017 the School provided a response to Q1, Q2, Q3 and Q4. It refused to confirm or deny that it holds any information relating to parts 5 to 10 of the request citing section 40(5) (Personal Information).
6. On 22 May 2017 the complainant stated that she did not wish to receive any personal data and resubmitted the request in the form of a Matrix so that numerical figures could be inserted.
7. On 26 June 2017 the School accepted the letter of 22 May as a request for an internal review. It provided further information for Q2 and a response to Q5 ('Within ABHPS zero teachers have failed to comply with legally mandatory reporting procedures') and upheld its decision to apply the exemption at section 40(5) to parts 6 to 10 of the request.

### **Scope of the case**

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8. On 30 June 2017 the complainant contacted the Information Commissioner to complain about the way her request for information had been handled and after providing further documents the case was accepted for investigation on 23 August 2017.
9. During the Commissioner's investigation the School revisited the request and reviewed its response to the complainant citing section 40(2) (Third party personal data). The Commissioner asked that the complainant be informed and this was done on 20 October 2017.
10. The Commissioner considers the scope of this case to be to determine if the School has correctly applied section 40(2) FOIA to the withheld information.

## Reasons for decision

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### Section 40(2)

11. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').

12. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means 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 intentions of the data controller or any other person in respect of the individual.’

13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

14. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances.

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

15. As explained above, the first consideration is whether the withheld information is personal data. All of the information requested relates to the School's safeguarding duties surrounding actual and suspected incidences of FGM. In addition to information on the number of reported/suspected cases, information is also requested as to the religious beliefs and ethnic identity of the children concerned.

16. The Commissioner's guidance on what is personal data<sup>1</sup> states that if information 'relates to' an 'identifiable individual' it is 'personal data' regulated by the DPA.
17. The information in this case doesn't directly identify individuals. However, just because the name of an individual is not known, it does not mean that an individual cannot be identified. The aforementioned guidance states the following:

'A question faced by many organisations, particularly those responding to Freedom of Information requests, is whether, in disclosing information that does not directly identify individuals, they are nevertheless disclosing personal data if there is a reasonable chance that those who may receive the data will be able to identify particular individuals.'

It also states:

'The starting point might be to look at what means are available to identify an individual and the extent to which such means are readily available. For example, if searching a public register or reverse directory would enable the individual to be identified from an address or telephone number, and this resource is likely to be used for this purpose, the address or telephone number data should be considered to be capable of identifying an individual.'

When considering identifiability it should be assumed that you are not looking just at the means reasonably likely to be used by the ordinary man in the street, but also the means that are likely to be used by a determined person with a particular reason to want to identify individuals. Examples would include investigative journalists, estranged partners, stalkers, or industrial spies.'

18. In this case, the School has explained that the potential numbers involved are very small:

*'Our concern has always been that, due to the very small numbers of the individuals to which this information relates, and the limited numbers of pupils within this single school to which this information could relate, there is a real risk that identification of the individuals concerned may occur. FGM as a practice is only prevalent in a relatively*

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<sup>1</sup><https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf> & [https://ico.org.uk/media/for-organisations/documents/1549/determining\\_what\\_is\\_personal\\_data\\_quick\\_reference\\_guide.pdf](https://ico.org.uk/media/for-organisations/documents/1549/determining_what_is_personal_data_quick_reference_guide.pdf)

*small number of communities from certain countries... Therefore, it is possible that some of the identifying characteristics of the individuals concerned may be visually discernible, such as the gender, race, ethnic origin and religious beliefs of those involved and may enable them to be identified.*

*Further, given that the information additionally relates to the commission of a crime, there is a real risk that misidentification of the individuals concerned may also occur and the attendant risks which this carries.'*

19. Given the above explanation, and having viewed the withheld information, the Commissioner is satisfied that the information withheld under section 40(2) is information from which living data subjects would be identifiable.

### **Sensitive personal data**

20. Any consideration of fairness must first determine whether the requested information is defined as sensitive under the DPA. Section 2 of the DPA defines sensitive personal data as information which relates to:
- (a) racial or ethnic origin
  - (b) political opinions
  - (c) religious beliefs
  - (d) trade union membership
  - (e) physical or mental health
  - (f) sexual life
  - (g) criminal offences, sentences, proceedings or allegations.
21. The requested information potentially falls into five of these categories of sensitive personal data (a, c, e, f and g). Having viewed the withheld information the Commissioner considers it is clearly sensitive personal data.
22. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Further, as disclosure of this type of information is likely 'to have a detrimental or distressing effect' on the data subject, the Commissioner considers that it would be unfair to disclose the requested information.

### **Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure**

23. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individuals. Therefore,

in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.

24. In this case, the Commissioner considers that the legitimate public interest is provided by Mandatory Reporting. The Commissioner also notes that the School has directed the complainant to request the statistical information from Avon and Somerset Police as they collate statistics from a far wider pool of data and there is a reduced risk of identification.
25. The Commissioner is satisfied that the legitimate public interest in this case does not outweigh the interests of the data subjects.

### **Conclusions**

26. The Commissioner is satisfied that the withheld information is sensitive personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. The Commissioner upholds the School's application of the exemption provided at section 40(2) of the FOIA.



## Right of appeal

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27. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**