

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 January 2013

**Public Authority:** City of York Council  
**Address:** The Guildhall  
York  
YO1 9QN

### Decision (including any steps ordered)

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1. The complainant requested information from the City of York Council ("the council") relating to staff working at primary schools. The council provided the information, with the names of the schools redacted. The complainant said that she wanted the council to identify three schools in particular. The council refused to disclose that information using section 40(2) of the Freedom of Information Act 2000 ("the FOIA"), the exemption relating to third party personal data.
2. The Commissioner's decision is that the council correctly withheld the information using section 40(2) of the FOIA.
3. He does not require any steps to be taken.

### Request and response

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4. On 23 April 2012, the complainant requested information from the council in the following terms:

*"I am requesting the following information for each academic year from 2005 onwards for each primary school in York please:*

- 1) *Turnover rates*
- 2) *Staff absences in terms of a '% of lost time' and 'average days lost per employee'*
- 3) *% of absences due to work related stress*
- 4) *Gender split"*

5. The council responded on 10 May 2012. It said that it was able to provide the information dating back to September 2009 and it had attached a spread sheet showing that information.
6. The complainant replied on 11 May 2012 and asked the council to identify the information that related to three primary schools; St Lawrence's, Badger Hill and Osbaldwick Primary.
7. The council responded on 15 May 2012. It said that it was refusing to disclose the information on the basis that individuals could be identified and this would breach the Data Protection Act 1998 ("the DPA"). The council relied on the exemption under section 40(2).
8. The complainant wrote to the council again on 17 May 2012 asking the council to review its decision.
9. The council replied on 3 July 2012 and said that it wished to maintain its position.

### **Scope of the case**

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10. On 1 August 2012, the complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider whether the council had correctly refused to identify the three primary schools. In particular, the complainant argued that it would not be possible to identify information relating to individuals if the information was disclosed.
11. For clarity, the Commissioner noted that the spread sheet provided by the council did not cover all the precise information requested by the complainant on 23 April 2012 and it also includes some additional information that was not requested initially. No specific concerns were raised by the complainant in relation to these points. The Commissioner understands that the complainant essentially would like the council to disclose a copy of the information from the spread sheet with the three schools identified. He has therefore decided to treat the complainant's request of 11 May 2012 as comprising a request for information in its own right and this has formed the subject of this notice.

## Reasons for decision

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### Section 40(2) – Third party personal data

12. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

### Is the withheld information personal data?

13. Personal data is defined by the DPA as any information relating to a living and identifiable individual.

14. For clarity, the spread sheet provided by the council contained the following headings:

- School
- Total FTE days lost to sickness (FTE stands for full time equivalent)
- School FTE
- Sickness days lost/FTE
- FTE days loss [sic] due to 'stress'
- Percentage days lost to 'stress'
- Female
- Male
- HC (total of male and female)
- Number of leavers
- Turnover

15. The Commissioner would like to highlight that the definition of personal data is based on the identification or likely identification of an individual. The risk of identification must be greater than remote and reasonably likely for information to be classed as personal data under the DPA.

16. Clearly, a school name in isolation will not identify any individuals. However, the Commissioner must consider whether, when combined with the other information shown in the spread sheet, there is a risk that individuals may be identified. The Commissioner is able to take into account what other individuals may know that may lead to the identification of individuals indirectly.

17. The council appeared to be most concerned about the disclosure of figures relating to staff absences due to sickness and in particular, stress. Clearly, the reasons for an individual being absent from work would be their personal data if they may be identified. The council said that it was concerned about the risk of identification arising when the

information was combined with knowledge that staff members at the school, pupils or parents may have about staff absences. The Commissioner accepts that indirect identification could arise in this way. He has had regard to the size of the schools and the fact that the information is relatively recent. He decided that in the circumstances, the risk of identification of an individual is a real and significant risk and is more than remote. The Commissioner therefore accepts that this information should be deemed to be personal data in accordance with the definition under the DPA.

18. The Commissioner considered that the spread sheet contained other information of such a general nature that in the Commissioner's view, it would not constitute personal data in isolation. However, although the Commissioner considered that in isolation this information was not personal data, the Commissioner has taken into account the fact that the council has already disclosed a version of the spread sheet with the school name redacted. Therefore, in view of the information that has already been disclosed, this information becomes personal data because of the risk of identifying individuals through the connection with the staff sickness figures.

### **Would disclosure breach the Data Protection Principles?**

19. 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. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations**

20. The Commissioner considers that the individuals would have reasonably expected the information to be kept private and confidential in line with well-established expectations surrounding information of this type. Although the information relates to the individuals' professional lives in one sense, certain information attracts an expectation of confidentiality. The council has conceded that sometimes staff, pupils and parents will be made aware that the reason for an absence is because of general sickness however it said that this will be done on an ad hoc, discretionary basis. There were no particular circumstances apparent to the Commissioner that would suggest that these individuals would expect information about their absence from work to be disclosed under the FOIA, and certainly not specific information indicating that the reason for the absence was stress.

21. In relation to the figures relating to stress-related absence in particular, the Commissioner considers that this is sensitive personal data relating to an individual's mental health or condition in accordance with section 2(e) of the DPA. Information falling within the category of "sensitive personal data" relates to the most personal aspects of an employee's working life and the expectation of confidentiality is correspondingly high. This is reflected by the greater conditions attached to any processing of sensitive personal data as outlined in Schedule 3 of the DPA.

### **Consequences of disclosure**

22. In view of the reasonable expectations described above, the Commissioner was satisfied that disclosure of the information could be distressing to the individuals concerned.

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

23. There is always some public interest in the disclosure of information held by public authorities. This helps to promote the general aims of encouraging transparency and accountability. More specific to this particular case, there is a public interest in identifying schools where particular problems may exist, resulting in high absentee rates. Disclosure of information of this type may also encourage public authorities to tackle such problems.
24. However, the Commissioner was not satisfied that the legitimate public interest in disclosure outweighs the legitimate right to privacy of the staff concerned in the circumstances. He has taken into account the size of the schools and the age of the information to determine the risk of identification, and he accepts that if identification did occur, it could be distressing. He notes that the council has made the information available, albeit that it has redacted the names of the schools concerned. In the Commissioner's view, this strikes a fair balance between protecting the right to privacy of the employees concerned and being transparent about sickness absence in schools. The Commissioner was satisfied that the legitimate public interest in transparency about these issues has been met to a reasonable extent by the council and further disclosure, when there is a risk of identifying individuals, would not be proportionate. The case against disclosure of stress-related absence is particularly strong as it is sensitive personal data according to the DPA. None of the conditions in Schedule 3 would be satisfied in this case.

## Right of appeal

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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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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.

**Signed .....**

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