

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2013

Public Authority: Wirral Metropolitan Borough Council

Address: Wallasey Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. The complainant has requested the raw scores required to attain specified standard scores on grammar school application tests from Wirral Metropolitan Borough Council ("the council"). The council refused the request citing section 40(2) of the FOIA.
2. The Commissioner's decision is that section 40(2) of the FOIA is not engaged, and therefore cannot be used to withhold the information. The Commissioner also identified that the council issued a refusal notice outside of 20 working days, and therefore breached section 17(1).
3. The Commissioner requires the council to take the following step to ensure compliance with the legislation:
 - Disclose the withheld information, after first redacting information that confirms whether or not children in each cohort attained a specific standard score.
4. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 13 April 2013, the complainant wrote to the council and requested information in the following terms:

"For the 11 plus papers taken in September 2012, please can you supply the raw scores for each paper, broken down by birth month, required to give a standardised score of 118 and to give a standardised score of 140?"

6. The council responded on 18 May 2013. It refused the request under section 40(2) of the FOIA.
7. Following an internal review the council wrote to the complainant on 17 June 2013 and upheld its position.

Scope of the case

8. The complainant contacted the Commissioner on 19 June 2013 to complain about the council's refusal of the request.
9. The Commissioner considers the scope of the case to be whether the council was correct to rely on section 40(2) of the FOIA to withhold the requested information.
10. For clarity, the complainant has requested information about the scoring of two tests that children sat in the 2012/2013 academic year in order to apply for non-Catholic grammar schools under the authority of the council. Children are given a 'standard' score for each test, which is calculated by considering the actual 'raw' score that a child attained in conjunction with the age of the child (which is considered in months). This system is designed to ensure fairness in the application process.

Reasons for decision

Section 40(2) – Personal data

11. Section 40(2) provides that:

"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."

12. Section 40(3) provides that:

"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 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"

Is the withheld information personal data?

13. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") 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 data controller or any person in respect of the individual"

14. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. The Commissioner has therefore considered the arguments provided by the council, and the nature and context of the withheld information.

The council's position

15. The council has informed the Commissioner that the withheld information provides the raw scores that a child would need to attain in two tests to be given the standardised scores of 118 and 140. As previously described, the raw score (which is the actual mark that a child attained on a test) is weighted differently based on the specific age of the child so as to ensure fairness, and the withheld information shows the extent of this weighting.

16. The council have suggested that should it release this information into the public domain, then any individuals who became aware of a specific child's standard score and exact age, such as through private disclosure by a parent, would then be able to identify the raw score that the child had attained in the test.

The Commissioner's assessment

17. The Commissioner has considered the withheld information against the two-part definition of 'personal data' provided by the DPA.

18. The first part of the definition requires that living individuals must be directly identifiable from the data itself.

19. Having appraised the withheld information, the Commissioner does not consider that it is possible to identify specific children. This is because the information is comprised only of the formulas that the council would need to follow in order to reach the standard scores of 118 and 140.
20. The second part of the definition requires that living individuals must be directly identifiable from the data with the use of other information that is likely to be available to the data holder.
21. In the circumstances of this matter, the council has advised that should it release the formulas that it uses, it would mean that an individual would be able to calculate a child's raw score, providing that a parent or guardian had already disclosed the standard score and the child's exact age. While the Commissioner appreciates the council's caution in this matter, he considers that a child's standard score is a representation of the raw score, and that the disclosure of one will automatically encompass the disclosure of the other. The formula or method of working by which one score is calculated from the other does not in itself release personal data.
22. The Commissioner has therefore concluded that the withheld information is not personal data, and that the exemption provided by section 40(2) is not engaged.

Section 17(1) – Refusal of request

23. Section 17(1) of the FOIA requires that a public authority wishing to rely on an exemption must issue a refusal notice within the time for compliance provided by section 10(1).
24. In this case the Commissioner has identified that the council issued a refusal notice outside 20 working days, and therefore breached the requirement of section 17(1).

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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.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.

Signed

Andrew White
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