

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 July 2017

**Public Authority:** Essex County Council  
**Address:** County Hall  
Chelmsford  
Essex  
CM1 1QH

### Decision (including any steps ordered)

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1. The complainant has requested information regarding the number of pupils who have received funding for transport from Great Chesterford to Joyce Frankland Academy/Newport Free Grammar School. The Commissioner's decision is that Essex County Council has correctly applied the exemption for third party personal data at section 40(2) of the FOIA. She does not require the public authority to take any steps to ensure compliance with the legislation.

### Request and response

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2. On 27 July 2016, the complainant wrote to Essex County Council ('the council') and requested information in the following terms:  

"How many pupils received funding from Essex County Council for transport from Great Chesterford to Joyce Frankland Academy/Newport Free Grammar School, Newport in the school years 2016/17, 2015/16 and 2014/15?"
3. The council responded on 18 August 2016 and confirmed holding the information. It said that the number of children is less than five and refused to provide it citing the exemption for personal data at section 40(2) by virtue of section 40(3)(a)(i).
4. On 12 September 2016, the complainant requested an internal review.
5. The council provided an internal review on 27 September 2016 in which it maintained its original position.

## Scope of the case

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6. The complainant contacted the Commissioner on 10 October 2016 to complain about the way his request for information had been handled.
7. The Commissioner has considered application of the exemption for personal data at section 40(2) of the FOIA to the requested information.

## Reasons for decision

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### Section 40(2)

8. 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').
9. 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.”
10. 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.

### Is the withheld information personal data?

11. As explained above, the first consideration is whether the withheld information is personal data. The information requested is the number of pupils who have received funding for transport to school.

12. 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.

13. The information in this case doesn't directly identify individuals. However, 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."

14. In this case, the council explained that Great Chesterford is a small to medium sized village and that the overall volume of children travelling is therefore likely to be considerably less than that of a larger town. It said that it has tried to ascertain how many other children travel on the bus/train, but it does not have records of the numbers of children who

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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)

travel and pay for their own transport. Therefore, it said it has no way of knowing whether the children who are funded are the only children using the transport, in which case they could easily be identified, or whether there are a number of other children taking the same transport to the same school. It also said that as the request is asking for children travelling to a named school, the children would be easily identifiable by their school uniform.

15. Given the above explanation, particularly the small volume of children travelling a particular route, within a particular timeframe, and the fact that their school uniform identifies them as pupils of the specified school, the Commissioner considers that it is reasonably likely that individual children could be identified by observation of the transport.
16. It is clear to the Commissioner that the information in this case 'relates to' the above individuals as it indicates that such individuals receive funding for school transport.
17. Therefore, the Commissioner is satisfied that the requested information in this case constitutes personal data.

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

18. In its response to the Commissioner's enquiries, the council said that disclosure of the information would contravene the first data protection principle.
19. The first data protection principle states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

  - (a) at least one of the conditions in schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."
20. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

### **Nature of the information and reasonable expectations**

21. The information in this case relates to the provision of funding for school transport. As such it relates to individuals' and their families personal, and likely financial, circumstances.
22. The Commissioner considers that the individual's in this case would reasonably expect that information regarding their personal circumstances would not be disclosed to the public at large.

### **Consequences of disclosure**

23. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.
24. The council said that it cannot know the circumstances of the children involved or any vulnerabilities they may have, and cannot know the reason behind the request, so disclosure could potentially be putting children at risk.
25. Taking the above into account, the Commissioner's view is that disclosure of the withheld information would result in the loss of privacy and could potentially cause further harm or distress to the individuals if the information is used to identify them as vulnerable in some way. Even without any identification as vulnerable individuals, the Commissioner considers that disclosure would cause distress due to the loss of privacy, particularly as she has found that disclosure of the information requested would not have been within their reasonable expectations.

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

26. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with specific interests.
27. The complainant has not submitted what the specific interests are in this case. However, the Commissioner recognises that there is a legitimate public interest in the expenditure of public money.
28. The Commissioner is aware that there is more general information regarding funding of school transport in the public domain and considers that this goes some way towards meeting the public interest in the expenditure of public money.

### **Conclusion on the analysis of fairness**

29. Taking all of the above into account, the Commissioner concludes that it would be unfair to the data subjects to release the requested information. Disclosure would not have been within the individual's' reasonable expectations, and the loss of privacy could cause unwarranted harm or distress. She acknowledges that there is a legitimate interest in the expenditure of public money but does not consider that this outweighs the individuals' rights to privacy. She considers that the individual's rights and freedoms are not outweighed by the legitimate public interest in disclosure, and accepts that disclosure of the personal data in this case could cause damage and distress and would be unfair and unnecessary in the circumstances. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i).
30. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, she has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

## Right of appeal

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31. 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)

32. 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.
33. 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**