

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2013

Public Authority: The Governing Body of Reading School

Address: Erleigh Road, Reading. RG1 5LW

Decision (including any steps ordered)

1. The complainant has requested information relating to the 11+ entrance test for Reading School (the school) which took place in October 2012.
2. The Commissioner's decision is that Reading School has correctly applied section 36(2)(c) to part of the request. However, he also finds that the school has incorrectly applied section 40(2) to the other part of the request.
3. The Commissioner requires the school to disclose to the complainant the information withheld under section 40(2) of the FOIA.
4. The public authority must take this step 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 21 January 2013, the complainant wrote to the school and requested information in the following terms:
 - a) *When the current Designated Area was formulated*
 - b) *What the Designated Area was, if any, before this change*
 - c) *How far back the tests have consisted of (Mathematics, English and Reasoning)*

- d) How many questions there are in each of the tests (and since what date)*
 - e) When the change to multiple choice was made*
 - f) How age weighting is calculated and applied to the raw scores*
 - g) When the current method of applying age weighting was introduced*
 - h) The last time the tie breaker was used to determine the granting of a place and on that occasion what the raw and weighted scores were.*
 - i) I would also like anonymised copies of the full test results (just the normalised scores for each test and the age weighting) for the last three years in electronic format.*
6. The school responded on 4 February. Please see Appendix 1 for response and further request and response details.
 7. On 28 May 2013 the complainant wrote to the school governors (see appendix 1).
 8. On 3 June 2013 the complainant contacted the Commissioner to complain about the way his requests for information had been handled.
 9. The Commissioner provided advice to the complainant regarding the complaints process.
 10. The Commissioner also wrote to the school on 13 June 2013 advising that it had not complied with section 17 of the FOIA when issuing its refusal notice dated 4 February 2013. However, rather than asking the school to issue a compliant response, the Commissioner recommended that it should now carry out an internal review and provided appropriate guidance on the process.
 11. Following an internal review the school wrote to the complainant on 10 July 2013. The complainant had raised a number of issues regarding the school's admissions process and these matters were also covered in its response of 10 July 2013.
 12. The school provided some further information but upheld its original position with regard to section 40(2) and section 36(2)(c). Please see appendix 1 for the full response.
 13. During the course of the Commissioner's investigation the complainant was in correspondence with the school seeking further information.

14. The school responded on 21 October 2013 and refused to provide any further information citing section 14 and referring the complainant back to previous correspondence.

Scope of the case

15. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
16. The Commissioner considers the scope of this case to be to determine if the school correctly applied section 40(2) and section 36(2)(c).
17. For clarity this decision notice will focus solely on:
 - a) the application of section 40(2) to the anonymised copies of the full test results for the last three years;
 - b) the application of section 36(2)(c) to the copies of the test question papers.

Reasons for decision

Section 40 – personal information

18. Section 40(2) of the FOIA provides that information which is the personal data of a third party is exempt if a disclosure of the information would breach any of the data protection principles.
19. The first question which the Commissioner has considered is whether the information is personal data for the purposes of the Data Protection Act 1998 (DPA). Personal data is defined in 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."*
20. In its response to the Commissioner, the school explained it considered that the withheld information is personal data in relation to the individual pupils who sat the test.
21. The school explained that the information itself is in the form of test scores and does not identify individuals. However, the school is aware of

a public forum in which parents have discussed individual test scores, and therefore, if the information was to be made public (even in its anonymised form) it would be possible to identify individual children from the score data.

22. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
23. It is clear that the withheld information 'relates' to a living person. It is linked to the pupils and has been used to inform decisions affecting them i.e. whether they were offered a place at the school or not.
24. The second part to consider is whether the withheld information identifies any individual. The Commissioner notes that the withheld information includes the dates of birth of the pupils that took the entrance test.
25. The information to be disclosed will not be classed as personal data if it is effectively anonymised and therefore the section 40(2) FOIA exemption will not apply. This approach was confirmed in the High Court judgment *Department of Health, R (on the application of) v Information Commissioner*¹.
26. The Commissioner issued a Data Protection Code of Practice on anonymisation² in 2012 and he has drawn upon it when making his decision in this case. He has applied the test of whether it is reasonably likely that an individual data subject can be identified – from the data and other information. He has considered what information would be available to a motivated intruder and what knowledge may be used to assist with identification. The Commissioner has also taken into account pages 24-25 of the Code, covering prior knowledge and re-identification. In particular he notes that a relevant factor in considering whether identification will take place is whether the "intruder" will learn anything new.

¹ Department of Health, R (on the application of) v Information Commissioner [2011] EWHC 1430 (Admin) (20 April 2011)

² ICO. Anonymisation: managing data protection risk code of practice (2012).
http://www.ico.org.uk/for_organisations/data_protection/topic_guides/anonymisation

27. The Commissioner accepts that the school would be cautious given the competition for school places. However, having considered the school's arguments he finds that the reasonably likely test is not met. There are a number of variables – the Commissioner accepts that friends, neighbours and other members of the community may know the results of the pupils who took the exam. In addition there were over 600 entrants for the exam and it is unlikely that the parents of all these children took part in the forum.
28. Even accepting that the complainant may be motivated to intrude, the Commissioner does not accept that the withheld information, if in the public domain, would enable identification to take place from the school's data. The fact that other professionals or friends may know all the data behind the statistics, and recognise it from the statistics, should not be classed as identification.

The Commissioner has therefore concluded that section 40(2) was applied incorrectly by the school to the request for the anonymised copies of the full test results for the last three years. The school is therefore required to disclose the information.

Section 36 – prejudice to the effective conduct of public affairs

29. Section 36(2)(c) of the FOIA states that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information would, or would be likely to, prejudice the effective conduct of public affairs. This is a qualified exemption so is subject to the public interest test. However, before considering the public interest, the Commissioner must first consider whether the exemption is engaged.
30. For section 36(2)(c) to apply the qualified person for the public authority must give their reasonable opinion that the exemption is engaged. The qualified person for the school is Dr Philip Mitchell, Chair of Governors.
31. Reading School is a selective boy's school with Academy status. Therefore the qualified person for an Academy falls under section 36(5)(o) of the FOIA, which states that the Qualified Person is a Minister of the Crown, or the public authority itself (in this case, the Academy) in certain cases. The DfE guide entitled "Freedom of Information Act 2000, A Guide for Academies and Academy Trusts" states that it is the "chair of the board of directors of the academy proprietor" who is the qualified person for the purposes of section 36.
32. The school has provided the Commissioner with the required information to demonstrate that the opinion was sought on 8 July 2013 and provided on 9 July 2013. The Commissioner has had sight of the submissions made to the Qualified Person and notes that the Qualified Person was

informed which specific limb of section 36 his opinion was being sought upon, was provided with details of the information falling within the scope of the request and provided with the reasons for this exemption being engaged. The Commissioner accepts therefore that the opinion of an appropriate Qualified Person was properly sought in relation to the application of the exemption. The Commissioner has next gone on to consider whether the opinion of the Qualified Person was a reasonable one.

Was the opinion reasonable?

33. In order to engage section 36(2) the qualified person must give an opinion that the prejudice or harm stated in 36(2)(c) would, or would be likely, to occur. However, that in itself is not enough, and the opinion must also be reasonable. In deciding whether an opinion is reasonable the Commissioner will consider the plain meaning of the word that being: in accordance with reason, not irrational or absurd. If it is an opinion that a reasonable person could hold, then it is reasonable for these purposes. This is not the same as saying that it is the *only* reasonable opinion that could be held on the matter. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only not reasonable for these purposes if it is an opinion that *no* reasonable person in the qualified person's position could hold. The qualified person's opinion does not even have to be the *most* reasonable opinion that could be held; it only has to be *a* reasonable opinion.
34. The school has provided the Commissioner with sufficient evidence to establish that the Chair of Governors has prior knowledge to which the information relates before offering his opinion and was also provided with a verbal description of the information, as well as the arguments for and against disclosing the information. The qualified person gave an opinion that disclosing copies of past exam papers would prejudice the effective conduct of the school.
35. Section 36(2)(c) is however subject to the public interest test. As such the Commissioner has gone on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.
36. Having accepted the reasonableness of the qualified person's opinion that disclosure of the information would be likely to have, the stated detrimental effect, the Commissioner must give weight to that opinion as an important piece of evidence in his assessment of the balance of the public interest test to be disclosed and therefore that section 36(2)(c) is engaged in relation to the withheld information.

37. However, in order to form the balancing judgement required by section 2(2)(b) of the FOIA, the Commissioner is entitled, and will need, to form his own view as to the severity of, and the extent and frequency with which, any such detrimental effect might occur.

Public interest arguments in favour of maintaining the exemption

38. The Commissioner has considered the public interest arguments both for and against maintaining the exemption in this case. When attributing weight to the arguments in favour of maintaining s36(2)(c) he has considered the frequency, severity and extent of the harm identified by the school.
39. The school has argued that it has a policy not to release past questions on the grounds that the questions themselves are often re-used. Releasing past questions would give those who had seen them an unfair advantage, and potentially affect the value of the test scores themselves. This would mean that the school would be unable to set an examination to test the ability of candidates fully and this would prejudice the effective conduct of public affairs by impacting on the standards of entry to a public selective grammar school.
40. The school needs to conduct its affairs in an efficient and cost effective manner, hence the re-use of questions on admissions exams.
41. The school considered that there was no public interest in the questions themselves unless it assists those who wish to sit the entrance test. The school explained that there is an appeals process should anyone identify any unfairness or issues with the questions. Therefore there would be little value in additional public scrutiny of the questions themselves.
42. In addition, the school considered that if the questions were made public, it could be argued that professional tutors would make use of this information and undermine the integrity of the 11+ examination. This would undermine the core business case of the Academy. Publication of these questions would allow students to target and narrow their revision to the detriment of the standard of the quality and scope of education in the Academy.
43. Finally, the school argued that it could make the application process less accessible to those who do not have the financial means to acquire a professional tutor.

Public interest arguments in favour of disclosure

44. The school acknowledges that the disclosure of the requested information would aid transparency.
45. The Commissioner also considers that the public has a legitimate interest in monitoring the academic quality of a school which is in receipt of public funds

Balancing of the public interest

46. The public interest can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. For example, there is a public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes. There is a public interest in good decision-making by public bodies, in upholding standards of integrity, in ensuring justice and fair treatment for all and in securing the best use of public resources.
47. As well as the general public interest in transparency, which is always an argument for disclosure, there may also be a legitimate public interest in the subject the information relates to. In the Commissioner's opinion however that is not a relevant consideration in this case.
48. Section 2(2) of the FOIA refers to the public interest; furthermore disclosures of information under FOIA are in effect to the world at large and not merely to the individual requester. So the requester's private interests are not in themselves the same as the public interest and what may serve those private interests does not necessarily serve a wider public interest.
49. The Commissioner has considered the likely impact of disclosure on the school's ability to assess competence via its entrance examination process and the consequent prejudice to the effective conduct of public affairs.
50. By accepting the exemption is engaged, there is an acknowledgement that the disclosure of this information would prejudice the effective conduct of public affairs. In this case, the school is required to ensure that its examination adequately test pupils' ability and understanding of the areas covered.
51. The school has stated that the preparation of good exam questions is very time consuming and over time, the quality of the test material can deteriorate if the Academy has to develop new test materials at each

round of testing. The entrance tests were devised by professionals in the school including a chief examiner in Maths and Heads of Departments.

52. In addition it has stated that disclosing past papers could make the application process less accessible to those who do not have the financial means to acquire a professional tutor.
53. The Commissioner is mindful of the particular circumstances in this case. The school admissions test is used to select approximately 100 candidates out of several hundred, and candidates are ranked in order of merit. Competition for places is fierce, and the difference between gaining and failing to gain a place may come down to a difference of a few marks. The majority of candidates each year fail to gain a place at the school, and it is understandable that unsuccessful candidates will be disappointed.
54. The Commissioner has also taken into account the fact that whilst there is a general public interest in transparency there is not likely to be a general public interest in the release of examination materials and the public interest will lie with a group of individuals, in this case candidates wishing to take the exam.
55. However, the Commissioner is also mindful that the public interest test as set out in the Act relates to what is in the best interests of the public as a whole, as opposed to interested individuals or groups. The Commissioner is aware that disclosure of past papers into the public domain may lead to increased debate about the admissions test, but is of the view that this would not necessarily serve the public interest. The adequacy of the admissions test is not for the Commissioner to comment on: his decision must relate solely to where the balance of the public interest lies. The Commissioner has therefore to consider the likely impact of disclosure on the school's admissions system, and decide whether it would cause sufficient harm for that balance to lie in maintaining the exemption.
56. In considering this sensitive issue, the Commissioner has had regard to the nature of the information contained within the test papers. The Commissioner is of the view that, if the past test papers were publicly available, more candidates would be likely to gain similar marks, and the school would have increased difficulty in selecting candidates. The Commissioner accepts that the relatively small number of places available at the school means that the academy needs to be able to select candidates effectively, and the admissions test is the academy's method of selection for this purpose.
57. The Commissioner is mindful that there is a presumption of openness running through the Act, and if the public interest test is evenly

balanced, the public interest favours disclosure. However, the Commissioner is of the view that the argument for maintaining the exemption in this case is stronger than the opposing arguments for disclosure of the information requested. Although it is important for educational institutions to be accountable and transparent with regard to their selection processes, it is clear that these processes must be effective. The Commissioner is satisfied that disclosure of the past test papers would undermine the value of the admissions test, and given that the test is the school's chosen selection method, disclosure would significantly harm the effectiveness of the school in selecting suitable candidates.

58. Having taken into account the public interest factors outlined above, the Commissioner considers that on balance the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The school is therefore not obliged to disclose the information withheld on the basis of section 36(2)(c).

Right of appeal

59. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

60. 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.

61. 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, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix 1

The school's response of 4 February 2013 stated that:

- a) We are only expected to keep Governors minutes for a retention period of 6 years. However, it is thought that when the school became Grant Maintained it would have set its own over subscription criteria which would have been after the 1988 Education Act. We believe that this would have been in 1991, however, cannot be certain as our records do not go back that far. Prior to 1989 places were allocated to Reading Borough children only but after 1989 this was made illegal by the Greenwich ruling.
- b) Please see point 1 above.
- c) This information is not held.
- d) The number of questions can vary year on year as the Reading School tests are written by staff in the school. However, assuming you are requesting information on the Year 7 testing, I can confirm that for the past 4 years there have been 50 questions for each paper except in 2012 when there were 40 questions for the Reasoning paper only.
- e) This information is not held.
- f) The age of the child is taken to the nearest completed month e.g. a child born on 03 March 1998 who takes the test on 01 November 2008 will be 10 years and 7 months. His scores will be standardised by taking into account the scores and ages of all the candidates that took the test on the same day. There is no set table because the candidates are compared with their cohort of children who took the test at that school on that day.
- g) Age weighting was first introduced in 2007.
- h) The tie break criteria have not been used in at least 13 years which is as far back as we are able to go.
- i) The public interest test was undertaken regarding this question. Having undertaken this test it was felt that it would not be in the public interest to release this information. The reason for this is that the ranking of the tests is not given out to parents or students as it is the Local Authority that allocate places and rank according to the co-ordinated admissions policy. By releasing this information to you, you have access to information which could be

misleading because it is incomplete. This disclosure is also likely to infringe other legislation, i.e. Data Protection Act as parents of applicants would be able to ascertain who their son is by looking at the results and ranking position.

62. On 16 May 2013 the complainant made a further request for information in the following terms:

I am now in a position to understand that there can be no set table for calculating age weighting but would still like an answer to my original question from January asking to know how this is done.

- a) *As there is no set table could you please provide the formula you use for calculating age weighting? Please could you also provide the additional following information regarding the Y7 day boy entrance tests:*
- b) *The number of questions set in each test for Reasoning, English and Maths for the October 2012 test (2013/14 entry)*
- c) *For the standardised scores in 2013/14 the number of results sent to parents where the boy's standardised English was exactly the same as his standardised Reasoning.*
- d) *For the standardised scores in 2013/14 the number of results sent to parents where the boy's standardised English was exactly the same as his standardised Maths.*
- e) *For the 2013/14 test the standardised score for any boy correctly answered 36 out of 50 questions.*
- f) *Please confirm when the admissions authority refer to standardisation this refers to the universally accepted process used by statisticians everywhere else viz: "Population" in this context is limited to those who took the test on the day and is the mean and standard deviation for all three tests combined.*

63. The school responded on 4 June 2013 stating:

- a) With regards to the marking and standardisation process, the papers are marked by an optical reader, the scores from each paper are then standardised resulting in a mean of 100 and a standard deviation of 15. This is following the standard procedure that has been used in the school for the past five years.

The process ensures that the three scores are equally weighted. An age weighting formula is applied to the sum of the three standardised scores to give a final score for each boy. Unweighted score +134 -

Age in months. (134 is the maximum age in months of the oldest eligible student).

The standardisation process for each test involves adjusting by subtracting the mean of that test then dividing it by the standard deviation of that test. We necessarily standardise each test since each has a separate mean and standard deviation. We use the universally accepted process used by statisticians.

By applying this widely used standardisation process we obtain a distribution with mean 0 and standard deviation 1. This ensures that all tests are compared on an equal weighting basis.

b) The number of questions set for each test were:

Reasoning – 50
English – 50
Maths – 50

As you are aware, the standardised results sent to you in October were incorrect, so I will answer the following questions based on the correct information.

c) The number of results where the boy's standardised English was the same as his standardised Reasoning within two decimal places was: 0

d) The number of results where the boy's standardised English was the same as his standardised Maths within two decimal places was: 0

e) The standardised scores before age weighting for achieving 36 out of 50 were:

English: 112.19
Maths: 112.58
Reasoning: 113.19

64. On 28 May 2013 the complainant wrote to the Governors stating:

"Although the Admissions Authority has previously refused it, we are once again formally requesting under the terms of the Freedom of Information Act 200 that the school governors make available the raw test results. If we are still refused this information we will contact the Information Commissioner's Office to rule on whether it is in the public interest to disclose it. (Note the final ranking is on the applicants' dates of birth which are personal data. We are NOT asking for this personal information."

65. The school wrote to the complainant on 10 July 2013 confirming it had carried out an internal review. It stated that the review meeting had undertaken a thorough review of:
- The FOI requests you had submitted and how the school had responded to them to date, as well as how the school should respond to the request made in your letter of 28 May for the raw scores;
 - The administration of the 2013/14 admissions process, and the information provided to the various parties as part of that process;
 - All elements of the school's admissions policies and procedures;
 - The school's policies and procedures for dealing with FoI requests.
66. The school first addressed the requests covered by the FOI that the complainant considered and been incorrectly answered.
- i. Age Weighting: The process ensures that the three scores are equally weighted. An age weighting formula was applied to the sum of the three standardised scores to give a final score for each boy. The age weighted calculation applied was: Unweighted score +134 minus the Age in months. (134 is the maximum age in months of the oldest eligible student).
 - ii. For 2013/14, the number of results sent to parents where the boy's standardised English was exactly the same as his standardised Reasoning was: 32
 - iii. For 2013/14, the number of results sent to parents where the boy's standardised English was exactly the same as his standardised Mathematics was: 41
 - iv. Electronic copy of the raw test results for entry into Year 7 2013. I can confirm that Reading School holds this information. This information is exempt under section 40 (personal information) of the Freedom of Information Act (FOIA), as the information constitutes third party personal data. Section 40(2) provides that personal data about third parties is exempt information if one of the conditions set out in section 40(3) is satisfied. Section 40 (3) (a) (i) provides that where disclosure would breach one of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (DPA), the disclosure is exempt under the FOIA, and that exemption is absolute, so no public interest test need be applied pursuant to section 2 (3) (f) (ii).

Personal data is defined in section 1 of the DPA, and covers information about a living individual who can be identified from the information. When looking at whether an individual can be identified from the information, any additional information that you, (and any other member of the public when looking at release under the FOIA) holds, is relevant. The school believes that you would be able to identify individuals from the raw data through discussions that have already taken place with other parents on an online forum (where personal information regarding children's test results have already been shared). This would apply equally to other parents who have participated in, or have viewed, the forum, and since release under the FOIA is release to the general public, they would also have access to the personal information of the individual children. Therefore, the school has taken the view that the information requested is personal information.

Having taken this view, the school has then considered whether release of the information would breach any of the Data Protection Principles, and believes that release would breach principle 1, as none of the conditions in Schedule 2 of the DPA have been met, making the processing unfair. As such, the information that you have requested is exempt from disclosure under section 40 (2) and (3) (a) (i) of the FOIA, as third party personal data, where release would breach one of the Data Protection Principles.

v. The request for copies of the test question papers under the FOIA:

Under the FOIA, the school can confirm that it holds the information requested, but takes the view that the information is exempt under section 36 (2) (c), as in the opinion of the "qualified person" under the FOIA, release of that information would, or would be likely to, prejudice the effective conduct of public affairs. The school Admissions Policy clearly states that it does not publish past papers or test papers because the questions are often repeated or varied, and release would give individuals an unfair advantage when taking the tests, and the tests would lose their effectiveness.

This exemption is qualified, and so the school has considered the public interest in releasing the test papers, but maintain the position that the public interest lies in the school being able to conduct open and fair examinations, and this would be prejudiced by the release of the papers, so the public interest lies in maintaining the exemption.