

Information Tribunal supports school's position to refuse an FOI request for assessment data of other students

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Following the awarding of qualifications based on determinations made by staff at examination centres over the past two years during the Coronavirus pandemic, a number of students and their parents have sought to challenge the awards. In doing so, examination centres have received increasing numbers of Freedom of Information (FOI) requests from those seeking to challenge the final awards they have received or the overall process generally.

Examination centres have been asked to share details of grades awarded to students as well as details of the marks on which the final grade was based. Whilst individual students could ask examination centres to confirm what factors were taken into account for the final grades they were awarded, grades for other students, whether internal assessments or final assessments, have never been shared without the consent of those to whom they relate.

This position has been backed by the First Tier Tribunal in a recent challenge by a parent of a student who asked one of our clients. The school was asked to provide him with the following information for all students in Year 10 who took economics in the academic year 2019/2020 - but with their name redacted:

1. April report: Trial exam grade
2. November report: Trial exam grade and predicted grade
3. June (Year 9) report: Trial exam grade and current grade

This was followed by an additional request within four days for the actual final grade given to each student for the subject.

The school disclosed an anonymised version of the information requested in a randomised format rather than the format the parent had requested, due to concerns about breaching the General Data Protection Regulation GDPR. The parent argued that he required the information to be provided per pupil so that the consistency of the grading information could be considered. The school opposed this on the basis that some of the individuals would be recognisable and relied on the exemption under Section 40(2) of the FOI relating to personal data of third parties.

The parent reported the matter to the Information Commissioner, who accepted that some individuals would be identifiable, such as those with particularly low grades or high achievers. In addition it determined that, whilst there was a legitimate interest in ensuring grades were determined consistently and in line with Ofqual guidance, it was not necessary for all the information to be disclosed, and the legitimate interests were met by the information disclosed as it was, i.e. in an anonymous manner.

The parent appealed the Information Commissioner's decision to the First Tier Tribunal. The Tribunal considered that the information requested was personal data if disclosed in a non-randomised format, as individuals would be identifiable. The Tribunal also accepted

that the parent was pursuing legitimate interests in wishing to check consistency to support any appeal against the grade the school had awarded his child.

However, on considering whether the information requested was reasonably necessary for the purposes of the legitimate interests being pursued by the parent, the Tribunal determined it was not as they only formed part of the picture, as the school had also considered individual factors when determining the final grade which, in turn, had been moderated. This meant that they would not provide an accurate way of assessing any inconsistencies, and so would not assist the parent or others for this purpose, and only further the legitimate interests in a limited way.

The Tribunal applied a balancing test to determine whether the prejudice to the rights and freedoms or legitimate interests of the parent warranted processing and determined that, as the data related to children, the privacy rights of the students should be given additional weight. The Tribunal stated individual students may not wish to share this information publicly and had no expectation that it would be. In addition, disclosure under the FOI Act (to the world at large) would cause distress to students who were low achievers and/or vulnerable, or they may be challenged by others in respect of their grades.

The Tribunal dismissed the parent's appeal and concluded Section 40(2) of the FOI Act could be relied on by the school, as the disclosure of the information was unwarranted as a result of the prejudice to the privacy rights of the children involved.

This is a reassuring decision for schools for this year too, given the increasing FOI requests they receive scrutinising the manner in which grades have been awarded. A copy of the full decision can be found [here](#).

We supported the school throughout this matter, both in responding to the parent and then the Information Commissioner. Should you receive similar requests or challenges, please do not hesitate to contact [Daljit Kaur](#) or [Dai Durbridge](#), who would be happy to provide advice tailored to the individual request.

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