

Dealing with requests for information relating to subject grading

This year, schools are required to assess the grades students would have been likely to have achieved in their GCSE, AS and A level exams. As not all schools are fully open, we have set out guidance on both Freedom of Information, and Subject Access Requests in case you receive either or both types of requests over the next few months.

12 June 2020

Please note: the information contained in this legal update is correct as at 8 February 2021

This year, schools are required to assess the grades students would have been likely to have achieved in their GCSE, AS and A level exams. To ensure fairness and enable individuals to understand how their proposed grades were calculated and submitted to the examining bodies, there is likely to be an increase in the number of requests made to schools for information. Requests may include general statistics or specific data in relation to a particular student.

As not all schools are fully open, we have set out guidance on both Freedom of Information, and Subject Access Requests in case you receive either or both types of requests over the next few months.

1. Freedom of Information requests

Some schools have already received general requests for statistics concerning students and the grades achieved in previous years, based on various characteristics.

All Freedom of Information requests should be responded to within 20 school days. Whilst some schools may have difficulty in complying due to staff not being available or access to some data within the request being located in school, the Information Commissioner has not been able to extend the time frame within which requests should be responded to. Therefore, you should seek to provide any information you hold, if you do not consider it exempt from disclosure, within the 20 day limit.

If this is not possible, you should write to the requestor and explain why you are unable to provide the information within the timeframe and detail when you expect to be able to provide the data. The Information Commissioner's Office (ICO) will then take into account any difficulties you have in complying with the request should the requestor put in a complaint.

In the event you consider any exemptions may apply e.g. an individual is recognisable, you consider personal data is being requested or the request will take you more than 18 hours to locate, you should seek legal advice.

2. Requests for personal data / Subject Access Requests relating to grading

If a student is not happy with the final grade they have been awarded or they were expecting, they or their parents may approach the school for information on what was shared with the examination bodies to enable the result to be determined.

As those who will be graded for GCSE, A or AS Levels will be over the age of competence, you should consider the age you have set within your data protection policies for seeking a student's consent when processing their personal data.

If the student is over this age, you should ensure you have their consent to process their personal data where a Subject Access Request (for their data) is made by a parent or carer. The individual's permission should also be obtained where personal data relating to their assessments is being requested by parents or carers outside of the standard information you would usually share about them with parents/carers more generally.

The requests for the personal data of a particular student may include the work the staff member has based their grade on. This may also include homework assignments, assessments, mock exams or other records, as well as details relating to where a teacher has ranked the student within the subject as opposed to their peers.

In 2020 Ofqual made it clear that schools and colleges should not share provisional grades or rank orders in order to protect the integrity of the process. They stated that exam boards would investigate any inappropriate disclosure as potential malpractice. They also published a letter to all students informing them they were not entitled to this information as it is confidential and that they should not ask teachers or the school for it. This may not be sufficient to stop such requests being made and as such school leaders should inform staff what steps they should take if they are approached by students or parents.

Whilst the current situation concerning grading is new and unique, there is provision under the Data Protection Act 2018 on which schools can rely to refuse a request for such personal data at this time. Paragraph 25 of Schedule 2 of the Act provides that if you are asked to disclose personal data consisting of marks or other information you have processed for the purposes of determining the results of an exam or in consequence of determining the results of an exam, before the date on which exam results are announced, you have until the end of five months from the date of the request, or until the end of 40 days from the date on which the results were announced. The ICO has confirmed the application of this provision for these requests.

Accordingly, you can refuse to respond to any request received prior to results day that related to the specific data of an individual before their examination results are issued quoting the exemption mentioned in Paragraph 25 above.

If you receive a Freedom of Information or Subject Access Requests and would like to discuss your options with one of our legal experts please [contact us](#).

Contact



Dai Durbridge

Partner

dai.durbridge@brownejacobson.com

+44 (0)330 045 2105

Related expertise

Data protection guidance for schools and trusts

Freedom of information

