



Ein cyf/Our ref ATISN 11407

08 August 2017

Dear ,

ATISN 11407 – reading and numeracy test scores

Thank you for your emails of 19 July to the Welsh Government which requested information under the Freedom of Information Act (2000): You asked for:

Results of the Welsh Government National Reading and Numeracy tests for St Marys RC Catholic Primary School, Wyndham Crescent, Canton Cardiff as follows:

English reading test age standardised scores
Numeracy procedural test age standardised scores
Numeracy reasoning test aged standardised scores

All three scores to be grouped per anonymised pupil.

Year 4 results for tests taken in 2017 to be anonymised.

I have decided that all of this information is exempt from disclosure under section 40(2) ('personal information') of the Freedom of Information Act and is therefore withheld. The reasons for applying this exemption are set out in full at Annex 1 to this letter.

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or Email: FreedomofInformationOfficer@wales.gsi.gov.uk

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. However, please note the Commissioner will not normally investigate a complaint until it has been through our own internal review process. The Information Commissioner can be contacted at:

Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF

The request you sent me contains personal information about you – for example, your name and address. I will only use this personal information in accordance with the Data Protection Act 1998 to deal with your request and any matters which arise as a result of it. I will keep your personal information and all other information relating to your request for three years from the date on which your request is finally closed. Your personal information will then be disposed of securely.

Any information released under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 will be listed in the Welsh Government's Disclosure Log (at <http://wales.gov.uk/about/foi/responses/?lang=en>).

Yours sincerely,

Annex 1

I have decided to withhold the following information:

Information being withheld	Section number and exemption name
<p>Results of the Welsh Government National Reading and Numeracy tests for St Marys RC Catholic Primary School, Wyndham Crescent, Canton Cardiff as follows:</p> <p>English reading test age standardised scores Numeracy procedural test age standardised scores Numeracy reasoning test aged standardised scores</p> <p>All three scores to be grouped per anonymised pupil.</p>	<p>Section 40(2) Personal information</p>

Information released in response to a FoI request is released to the World at large and not just to the person making the request. Whilst a requester may have a strong, and legitimate, interest in obtaining the information, we need to consider the effects of making the requested information freely available to anyone and everyone.

As a consequence, our arguments are not a reflection on what we think the requester may do with the requested information but rather what any person may choose to do with that information.

Section 40 of the Freedom of Information Act sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”.

We have concluded that, in this instance, the information on examination results by subject amounts to third party personal data.

Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles. We consider the principle being most relevant in this instance as being the first.

The first data protection principle.

This states:

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.

We consider that the information highlighted falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle.

The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner's Office (Personal information (section 40 and regulation 13) v 1.4) states:

If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

"The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA" (paragraph 63).

Our analysis of the ICO's key considerations in assessing 'fairness', as set out in the Guidance, are below

- *Whether the information is sensitive personal data and the possible consequences of disclosure on the individual ;*

We believe that the public release of anonymised pupil level data for a single class in a single school, when taken in conjunction with other information that could be reasonably supposed to be available, could result in individual pupils being identified from the data. Releasing this information makes it available to all parents of the pupils in year 4, and it is reasonable to assume that some of these parents will have sufficient additional information to be able to identify pupils other than their own from the dataset. To that end, we believe the information falls within the description of personal data as defined by the DPA.

Disclosing information that allows an individual's age standardised score to be identified may be unfair, particularly when it could be used to make judgements about the pupil. The information is collected for statistical and research purposes only.

- *The reasonable expectations of the individual, taking into account: their expectations both at the time the information was collected and at the time of the request; the nature of the information itself; the circumstances in which the information was obtained; whether the information has been or remains in the public domain; and the FOIA principles of transparency and accountability;*

This information is not currently in the public domain. In the fair processing notice issued to parents we undertake to use this "personal information for research (carried out in a way that ensures individual children and young people cannot be identified) and for statistical purposes, to inform, influence and improve education policy and to monitor the performance of the education service as a whole." We believe that individuals have an expectation that the information we hold about them will be protected and placed into the public domain in such a way that could allow them to be identified.

- *Whether there is any legitimate interest in the public or the requester having access to the information and the balance between this and the rights and freedoms of the individuals who are the data subjects.*

We do not believe that there are any legitimate public interests in having access to this information when balanced against the assurances we have made regarding our use of the data in the fair processing notice and our duties to protect confidentiality. Parents of pupils at the school, or prospective parents, can access specific information about the performance of the school by contacting the Headteacher. Wider public interest in assessment is satisfied by the publication of aggregate teacher assessment data on the My Local School website.

Thus, we believe release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.