

Appendix 1

Detailed legal reasoning for refusal

Section 40(2): Personal Information

Fewer than 5 applicants

Specifically in terms of the provisions of the Freedom of Information Act 2000 this information is exempt under Section 40(2) as “personal data other than that of the requestor”

The definition of personal data is set out in Section 1 of the Data Protection Act 1998 and provides:

“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;

Richmond Council has applied the reasoning in the following Information Commissioner Decision [FS50543792](#)

Paragraphs 15 &16:

15. The Commissioner has considered the information and the number of individuals involved and has concluded that if the Council were to disclose the exact number in each category, particularly if the numbers for any were one, it could be possible to identify the individuals concerned. By aggregating the information the Council has minimised the possibility of identification.

16. The Commissioner does however note that the chances of any member of the public being able to cross-reference this information to identify specific individuals is not high but given the low numbers involved there is a risk that specific individuals could be identified by a person with knowledge of special educational needs and appeals in the area. The Council has stated that the complainant in this case is an individual who has knowledge of this. In addition, the Commissioner recognises that other individuals, such as parents at schools or Council employees may be able to identify individuals. Therefore, on the balance of probabilities, the Commissioner accepts the information is personal data.

Similarly, we consider a determined individual with other knowledge of this matter may be able to use the specific details to attempt to identify the individuals involved. We therefore consider that this information constitutes personal data.

We have now considered whether disclosure would breach any of the principles of the Data Protection Act.

Such information should only be processed for specified, lawful and compatible purposes and I do not consider this to be a compatible purpose [Principle 2].

Furthermore such information should be processed in accordance with the rights of the data subjects who would have a legitimate expectation that the information would not be disclosed to members of the public [Principle 6].

I consider that the disclosure of this information to members of the public could cause damage or distress to the data subjects. I have given regard to condition 6 of Schedule of 2 of the DPA which provides:

6 (1) the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

In reaching a view I have taken account of the individual's reasonable expectations of what would happen to their personal data, whether disclosure would be incompatible with the purposes for which it was obtained and whether disclosure would cause any unnecessary or unjustified damage to the individual.

In this instance the data subjects would not have any reasonable expectation that the details would be made public.

I have concluded that it is neither in accordance with the Data Protection Act 1998 principles nor in the public interest to release this specific data.

In accordance with the Freedom of Information Act 2000 this letter acts as a Refusal Notice.

You have the right of appeal against our policy. If you wish to appeal please set out in writing your grounds of appeal and send to:

Corporate Complaints and Access to Information Manager
Community Engagement and Accountability Team
Adult and Community Services
3rd Floor Civic Centre
44 York Street
Twickenham
TW1 3BZ
E-mail: foi@richmond.gov.uk

If you are dissatisfied with the outcome of the internal appeal you may appeal further to the Information Commissioner's Office at:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
fax: 01625 524 510
DX 20819

www.ico.org.uk