

24 July 2015

S Santhi

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Our Ref : R/020

Your Ref :

Dear S Santhi

## **Internal Review of Freedom of Information Act Request ref F/445**

Thank you for your e-mail to Alison Townsend in which you requested an internal review of Ofqual's handling of your request for information made under the Freedom of Information Act 2000 (the Act). The request under review was received by Ofqual on 5 June 2015 and Ofqual responded to it on 24 June 2015 under our reference F/445. I have undertaken this review, having not been involved in the previous decisions relating to your request, and am writing to let you know the outcome of my review.

To conduct the review, I met the members of staff responsible for co-ordinating the response to your request. I sought to satisfy myself that Ofqual had released all of the information that falls under your request and that any exemptions engaged had been applied correctly.

### **Request under review**

You requested the following information:-

*Could you kindly provide the age of youngest person who took GCSE mathematics examination in 2014 and 2015 what was the result if available?*

Ofqual explained that it did not hold this information for the 2015 examination series and declined to provide the information for the 2014 examination series. We explained that the exemption at section 40(2) of the Act has been engaged in relation to this information and the reasons for this were explained.

### **Request for review**

In your request for an internal review, received on 25 June 2015, you stated:-

*I am not happy with the response provided because I am simply requesting age and marks obtained. I do not believe either age or marks would constitute to be personnal information.*

*Therefore, I kindly request you to review this response.*

On 4 July you contacted Ofqual again and stated:-

*I wish to bring to your kind attention that there are many legal precedents in which a child age , location and offence committed has been published without any legal difficulty even though "uniqueness" of the matter involved. Therefore publishing age and marks score would not cause any legal issue.*

*The uniqueness did not make any legal issue to publish the age and other details.*

### **Internal Review**

In my review I considered the points that you raised and the arguments you have made for release.

You refer to the publication in certain circumstances of the location in which a criminal offence was committed by a child and the age of the child convicted of that offence. I note that such publication reflects an exception to the general rule encompassed in section 49 of the Children and Young Persons Act 1933 which places reporting restrictions on information that is likely to lead to the identification of a child or young person involved in relevant proceedings.

Your statement that "*there are many legal precedents in which a child age , location and offence committed has been published without any legal difficulty*" is therefore irrelevant, because the context is entirely different to the present circumstances and is inaccurate because it overlooks the fact that reporting of this type is by exception.

I then turned my mind to the arguments made by Ofqual and examined the information that has been withheld from publication.

The Information Commissioner publishes a number of key definitions including the definition of personal data on its website at <https://ico.org.uk/for-organisations/guide-to-data-protection/key-definitions/> . Personal data is defined as:-

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.

There can be only one candidate that is the youngest and, as explained in the response, they are among a small group of people of the same age. It is possible that



each candidate in that age group achieved a different grade and so, publishing the age and grade could allow the candidate to be identified. It follows that the age and grade of the youngest GCSE Mathematics candidate is personal data as defined at part (a) of the ICO definition.

I also note that Ofqual holds this information for the purposes of its regulatory activities and the candidate concerned has not consented to the publication of this information nor would that candidate have any reasonable expectation that Ofqual would publish it.

The ICO explains the principles behind the Freedom of Information Act on its website at <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/> . On this page it explains that public bodies should consider any information they release under the Act as if it were being released to the world at large. I also note that you have made this request via a website that publishes requests and responses to them and these can be viewed by any person with access to the internet. Whilst you may not be able to identify the individual concerned it is possible that the information could be accessed by someone that can.

I also considered two policies published by Ofqual that relate to the publication of data

- Rounding Policy - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/422200/2015-04-15-rounding-policy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/422200/2015-04-15-rounding-policy.pdf)
- Statement on Confidentiality - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/422205/2015-04-15-statement-on-confidentiality.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/422205/2015-04-15-statement-on-confidentiality.pdf)

In the both of these policies Ofqual explains that it considers private information to be information that:

- relates to an identifiable legal or natural person;
- is not in the public domain or common knowledge; and
- would cause them damage, harm or distress if the information were made public.

Withholding the information requested is in line with both of these published policies.

The role of the internal review process is to review the handling of a request for information, to check that all relevant information has been released and that any exemptions engaged have been used appropriately. In this instance I am content that this is the case.

If you are dissatisfied with the outcome of the internal review, you have a right to appeal to the Information Commissioner at:-

FOI/EIR Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

Website: [www.ico.gov.uk](http://www.ico.gov.uk)

There is no charge for making an appeal.

Yours sincerely

A handwritten signature in black ink, appearing to be 'MH' followed by a large, sweeping loop.

**Matthew Humphrey**  
Associate Director, Legal Moderation and Enforcement