

Pupil records and information

by PLC Public Sector

Practice notes | **Maintained** | England, UK, Wales

This note sets out the various obligations that schools have in relation to the collection and dissemination of pupil information. It also gives details of the requirement on schools to keep curricular and educational records for pupils and to make these records available for inspection.

Schools have several specific obligations in relation to the collection and dissemination of information. As most schools are public bodies, they are subject to the *Freedom of Information Act 2000* (FOIA 2000) and, as *data controllers*, all schools are subject to the *Data Protection Act 1998* (DPA 1998). In addition, teachers owe a common law duty of care to safeguard the welfare of their pupils. This duty is acknowledged in the provisions governing disclosure of information about pupils.

Legislation governing access to pupil information

The following legislation provides individuals with rights to access pupil information:

- The *Education (Pupil Information) (England) Regulations 2005 (SI 2005/1437)* (Pupil Information Regulations) give parents of pupils at maintained schools the right to access their children's *educational records* and set out when such requests may be refused. In Wales, the same right is provided under the *Pupil Information (Wales) Regulations 2011 (SI 2011/1942)* (Welsh Regulations).
- The *DPA 1998* applies to all schools as data controllers holding *personal data* about pupils (see *Practice note, Overview of UK Data Protection Regime: Personal Data* and *Practice note, When is data "personal data" for the purposes of the Data Protection Act 1998?*).
- The *FOIA 2000* applies to all schools which are public bodies and permits the public to access any information held by them, subject to certain exemptions. Specifically, information need not be disclosed under the FOIA 2000, if to do so would breach the principles of the DPA 1998 (see *Practice note, Freedom of information*).

Additional requirements apply to schools in respect of disseminating pupil information to specific bodies, notably under *section 537A* of the *Education Act 1996*, and regulations made thereunder which are beyond the scope of this note.

Duty to keep curricular records and provide school reports

Under the *Pupil Information Regulations*, the governing body of a school is responsible for ensuring that the school maintains *curricular records* in respect of each pupil, which are updated at least annually (*regulation 4*).

A curricular record is a formal record of a pupil's academic achievements, the pupil's other skills and abilities and their progress in school, including reports, as detailed in *Schedule 2* to the Pupil Information Regulations. A pupil's educational record includes the curricular record.

Where the pupil is under consideration for admission to a new school, including an independent school, 16 to 19 academy, or further or higher education institution, the curricular record must be sent to the "responsible person" within 15 days of receipt of a request ([regulation 5](#)). The record sent must not include the results of any assessment of the pupil's achievements. The responsible person is defined as:

- The head teacher of an independent school.
- The governing body of any other school.
- The person responsible for the conduct of any further education institution or higher education institution or other place of education or training to which a pupil transfers or may transfer.

Individual pupil information may also be disclosed to the proprietor of an academy where the school at which the relevant pupil was registered in converted into an academy (see [Legal update, Regulations made in respect of Academies Act 2012](#)).

Every parent is entitled to receive an annual report in respect of their child(ren). Parents also have the right to make arrangements to discuss the content of the report with the child's teacher. "Parent" is defined in [section 576](#) of the Education Act 1996 as someone with [parental responsibility](#) or who has care of the child. Therefore, absent parents with parental responsibility have the right to receive reports. When a child reaches 18 years of age and is not proposing to leave school by the end of the school year to which the report relates, the head teacher should give the report to the pupil and to the parent, if the head teacher considers there to be special circumstances which make it appropriate.

In respect of any pupil who has ceased to be of [compulsory school age](#) and is proposing to leave or has left the school, the head teacher should give the school leaver's report to the pupil concerned.

Educational records

Meaning of educational record (England)

The right of access under the [Pupil Information Regulations](#) applies to educational records, defined in [regulation 3](#) as any record of information which:

- Is processed by or on behalf of the governing body of, or a teacher at, any school maintained by a local authority and any special school which is not so maintained.
- Relates to any person who is or has been a pupil at any such school.
- Originated from or was supplied by or on behalf of:
 - any employee of the local authority which maintains the school or former school attended by the pupil to whom the record relates;
 - in the case of a voluntary aided, foundation or foundation special school or a special school which is not maintained by a local authority, a teacher or other employee at the school or at the pupil's former school (including any educational psychologist engaged by the governing body under a contract for services);
 - the pupil to whom the record relates; and
 - a parent of that pupil.

It therefore includes the curricular record and also includes:

- Any education, health and care (EHC) plan, formerly a *statement of special educational needs*.
- Any personal education plan.

Educational records do not include information which is processed by a teacher solely for the teacher's own use, such as lesson plans.

Meaning of educational record (Wales)

Regulation 3 of the Welsh Regulations defines the curricular record as containing the information set out in schedule 2 to the regulations, essentially the pupil's results, reports on progress, fluency in Welsh and attendance. Regulation 3 also defines the educational record as any record of information, including a pupil's curricular record, which:

- Is processed by or on behalf of the governing body of, or a teacher at, any maintained school or special school not maintained by a local authority.
- Relates to any person who is or has been a pupil at the school.
- Originated from or was supplied by or on behalf of:
 - an employee of the local authority which maintains the school;
 - in the case of a voluntary aided, foundation or foundation special school or a special school which is not maintained by the local authority, a teacher or other employee at the school (including an educational psychologist engaged by the governing body under a contract for services);
 - the pupil to whom the record relates; and
 - a parent of that pupil.

Educational records do not include information which is processed by a teacher solely for the teacher's own use, such as lesson plans.

Right of access under the Pupil Information Regulations

Regulation 5 of the Pupil Information Regulations provides that the governing body must make a pupil's educational record available for inspection or provide a copy of the record within **15 school days** of a parent's written request. The time for response includes any time taken to seek third party consent.

The school cannot charge to make the record available for inspection. Charges for copying the educational record are set by the governing body and must not exceed the cost of supply (*regulation 5(3)*). The same requirements apply to Wales (*regulation 5(2), Welsh Regulations*).

The right is available to a parent within the meaning of *section 576* of the Education Act 1996, that is, any person who has parental responsibility for the child or who has care of them. For more information, see *Practice note, Parental responsibility for education*.

The rights to access a pupil's personal data are essentially the same under both regulation 5 of the Pupil Information Regulations and [section 7](#) of the DPA 1998, although not all of the pupil's personal data held by a school is contained in their educational record; for example, notes made by teachers for their own use or information provided by the parent of another child fall outside the scope of the definition. The principle difference is that the [Pupil Information Regulations](#) give specific rights to **parents** to access their child's educational record. By comparison, parents accessing their child's personal data under the [DPA 1998](#) are exercising the **child's** right of subject access on the child's behalf. Therefore, the pupil cannot prevent a parent from accessing their educational record under the Pupil Information Regulations, as they could if they objected to their parent exercising this right under section 7 of the DPA 1998, assuming the child in question is sufficiently mature to make such a decision.

The House of Commons Library has published briefing paper on the rights of parents to receive information about their child's education (see [Legal update, House of Commons publishes briefing paper on parental decision making and access to pupil records](#)).

Pupil Information Regulations do not apply to non-maintained schools

The Pupil Information Regulations do not apply to non-maintained schools, such as academies ([regulation 4, Pupil Information Regulations](#)). Parents of children at non-maintained schools wishing to access information must therefore make a subject access request for information under the [DPA 1998](#) (see [Subject access requests under section 7 of the DPA 1998](#)), or refer to:

- Annual written reports from the school (for example, those required by paragraph 24(1)(f) of [Schedule 1](#) to the [Education \(Independent School Standards\) \(England\) Regulations 2010 \(SI 2010/1997\)](#)).
- Information on the school's website (for example, academies' funding agreements require certain information to be published on their websites, including on the school's curriculum provision and performance).

Subject access requests under section 7 of the DPA 1998

The [DPA 1998](#) applies to all personal data held by a school, including academies and independent schools. Under [section 7](#), all [data subjects](#) are entitled to know what personal data is held about them and to receive a copy of it. The right is available to pupils, parents, staff and anyone else whose personal data is held by a school. For information about responding to a request from a member of school staff, see [Practice note, Data subject access requests in employment](#).

Anyone with parental responsibility may make a [subject access request](#) in respect of their child. However, if the child is aged 12 and over, their consent should be obtained before the school discloses their personal data to a parent, as this is the age at which a child is deemed able to make a subject access request for themselves (see [ICO's Subject Access Code of Practice](#)).

While the right to access information under the [Pupil Information Regulations](#) is limited to the information contained in the educational record, the right under section 7 extends to all personal data held about the data subject. This could include information contained in unfiled correspondence and even informal notes made by teachers. The time limit for providing information pursuant to a subject access request is 40 days. In practice, schools responding to requests under either regime will not distinguish between them and will disclose all the personal data relating to the child that they are able to find and extract.

The maximum fee that may be charged for a print copy of information, provided pursuant to a subject access request, is set out in the [Data Protection \(Subject Access\) \(Fees and Miscellaneous Provisions\) Regulations 2000 \(SI 2000/191\)](#):

Number of pages	Maximum fee	Number of pages	Maximum fee
1-19	£1	100-149	£10
20-29	£2	150-199	£15
30-39	£3	200-249	£20
40-49	£4	250-299	£25
50-59	£5	300-349	£30
60-69	£6	350-399	£35
70-79	£7	400-449	£40
80-89	£8	450-499	£45
90-99	£9	500+	£50

Any charges made for copying information supplied under the Pupil Information Regulations must not exceed the cost of supply ([regulation 5\(3\)](#)).

On 17 September 2012, the Information Commissioner's Office (ICO) issued a report giving schools practical advice on how to comply with the DPA 1998. The report sets out a series of recommendations to help schools meet their obligations under the DPA, each recommendation links to further information on the ICO's website. They cover areas such as:

- Fair processing.
- Security. Subject access requests.
- Data sharing.
- CCTV.
- Photographs.

For more information, see [Legal update, ICO report provides data protection advice to schools](#).

Exempt information

Restrictions on disclosure of information

Under [regulation 5](#) of the Pupil Information Regulations, schools may refuse to disclose information to a parent in two circumstances:

- Where the school would have no right to disclose the information to the pupil under the *DPA 1998*.
- Where the pupil would not be entitled to see the information under *section 7* of the DPA 1998 (see *Practice note, Overview of UK data protection regime: Right of access*) or any Order made under *sections 30(2)* or *38(1)* of the DPA 1998. This includes correspondence which is legally privileged (see *Practice note, Privilege: an overview*), examination marks before publication, examination scripts and adoption records, to which a separate statutory regime applies.

The Secretary of State has made the Orders permitted under section 30 of the DPA 1998 and restricted access to educational records through the *Data Protection (Subject Access Modification) (Education) Order 2000 (SI 2000/414)* (Order).

The Order applies to educational records, as defined in *Schedule 11* to the DPA 1998, which mirrors the definition contained in the *Pupil Information Regulations*. Schedule 11 defines educational record for England, and Wales, Scotland and Northern Ireland.

The Order prevents the disclosure of the following:

- Personal data processed by a court and consisting of information supplied in a report or other evidence given to the court in the course of proceedings to which the *Magistrates' Courts (Children and Young Persons) Rules 1992*, the *Magistrates' Courts (Criminal Justice (Children)) Rules (Northern Ireland) 1999*, the *Act of Sederunt (Child Care and Maintenance Rules) 1997*, the *Children's Hearings (Scotland) Rules 1996* or the *Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013* apply, where, in accordance with a provision of any of those Rules, the information may be withheld by the court in whole or in part from the data subject (*regulation 4*).
- Personal data where the disclosure would be likely to cause **serious harm to the physical or mental health or condition** of the data subject or any other person (*regulation 5(1)*).
- Information as to whether the data subject is or has been the subject of or may be at risk of **child abuse** if disclosure **would not be in the best interests** of that data subject, where the request is made by:
 - someone with parental responsibility for the data subject concerned; or
 - someone who has been appointed by a court to manage the affairs of the data subject because they cannot manage their own affairs (*regulation 5(2)*).

"Child abuse" includes physical injury (other than accidental injury) to, and physical and emotional neglect, ill-treatment and sexual abuse of, a child (*paragraph 5(2), Order*).

Challenges to decisions made under the Order can be brought under section 7 of the DPA 1998.

Third party information and data subject access requests

Often the information contained on a pupil's or member of staff's records includes information about or supplied by a third party. Third party information falls into three categories:

- **Information that has a third party as its focus.** For example, a letter relating to a different person from the applicant (or the applicant's child) who is the subject of the file. This is not the personal data of the applicant

if it does not identify them and relate to them in some way and therefore does not fall within the right of subject access.

- **Information that mentions another person in passing**, such as letters which include details of the special educational needs provision for a number of children in the school including the applicant's child. This information should be edited to blank out names other than the applicant's.
- **Information that originates from a third party**. For example, letters from doctors, the school, or a relative of the applicant. Consent should be sought from the third party for the disclosure of this information. If consent is refused, the information should not be disclosed unless it is reasonable in all the circumstances to do so in spite of the lack of consent. This decision must be taken with reference to the third party's own rights under the *DPA 1998*.

Third party information and the FOIA 2000

A school may also receive a request from a member of the public, such as parents or journalists, about another individual, for example another pupil, parent or teacher. All requests for information which are not for the applicant's own personal data, or the personal data of their child, where the parent is exercising the right of subject access on their child's behalf, should be considered as requests made under the *FOIA 2000* (see *Practice note, Freedom of information* and *Checklist, Responding to FOI requests*).

Personal data are exempt from disclosure under the FOIA 2000, if disclosure would breach any of the principles of the *DPA 1998*. If an exemption applies and the public interest test under the FOIA 2000 determines that the exemption should be maintained, a school could refuse to disclose information or seek consent to disclose it from the third party concerned. Any refusal to disclose information must be made within 20 working days of the request and refer to the exemption relied on (and, if relevant, a consideration of the public interest test) and provide details of the right to appeal. For details of template response letters published by the Ministry of Justice, see *FOI standard form correspondence*.

Section 68 of FOIA 2000 inserted a provision into the DPA 1998 expanding the definition of personal data contained in *section 1* enabling individuals to access personal data about themselves which is not held in a structured file. However, the request must contain a description of the data and the request may be refused under *section 12* of FOIA 2000, if compliance would exceed the appropriate fee under the FOIA 2000 (currently, for schools, £450 or two and a half days of one staff member's time) (*regulations 3 and 4, Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004*).

The time limit for responding to requests under the FOIA 2000 is 20 school days.

Procedure for responding to a request for information under the Pupil Information Regulations or section 7 of the DPA 1998

- Check whether the applicant is entitled to see the information. Is the applicant a pupil or a parent of the child (that is, someone with parental responsibility or who has care of the child).
- Collate the requested personal data (see *Practice note, When is data "personal data" for the purposes of the Data Protection Act 1998?*) which is likely to consist of letters from or about the data subject, reports and general documents referring to the data subject.

- Obtain the required fee, if any.
- Seek consent from any third parties whose personal data is included in the requested information, or delete their personal data from the copies of the record.
- Ensure you comply with the statutory time limits, that is, 15 school days for requests made under the *Pupil Information Regulations* and 40 days for subject access requests made under the *DPA 1998*.
- Send the information to the applicant together with an index showing what has been disclosed and removed, or invite the applicant to come and view the data.

For more information, see *Checklist, Responding to FOI requests* and *Practice note, Data subject access requests in employment*.

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