

## The Information Commissioner's response to the consultation on changes to the admissions framework

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations (EIR) and the Privacy and Electronic Communications Regulations. He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner's Office (ICO) welcomes the opportunity to comment on the consultation. As many of the specific consultation questions relate to areas outside the ICO's remit, this response relates only to the reference to freedom of information in section 2.21 of the draft School Admission Appeals Code, which states that "...notes and records of the proceedings are not subject to the Freedom of Information Act 2000."

Whilst we accept that appeals panels themselves are not public authorities for the purposes of the Freedom of Information Act 2000 (FOIA), we wouldn't accept the position set out at 2.21 of the draft Code that the notes and records of the proceedings are therefore simply "not subject to" FOIA.

We assume that the stance in section 2.21 follows section 2.41 of the current School Admissions Appeal Code, which seems to adopt two positions which we would not accept:

Firstly that "the admission authority will hold notes on behalf of the panel, in which case the notes will not be held by the authority for the purposes of the Freedom of Information Act". Our position in relation to this issue is set out in our guidance "[Information held on behalf of another](#)" and in our specialist guidance Line to Take "[Held otherwise than on behalf of](#)". We would consider that if the admission authority which is subject to FOIA holds the notes to **any extent** for its own purposes then, regardless of the fact that it may also be holding them on behalf of the panel, the notes will be held by the admission authority for the purposes of FOIA.

Secondly that "the notes will fall within the exemption applying to court or tribunal records" (this in itself appears contradictory to the previously stated

position that the information isn't held, but as stated above we would consider that in all likelihood the information would be held by the admission authority who is subject to FOIA). The ICO's position in relation to this second issue is that we wouldn't accept that the notes of the panel constitute a "court" or "tribunal" record and so this exemption wouldn't apply.

It should also be noted that even if an exemption did apply, this wouldn't mean that "the notes and records of the proceedings **are not subject to** the Freedom of Information Act 2000." Exempt information is still subject to FOIA in that the public authority has to confirm or deny if it is held (unless there is an exemption from that duty as well) and issue a refusal notice explaining why the information is being withheld.

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