

From: [Foi Enquiries](#)
To: [REDACTED]
Subject: FOI-16-0749 - Education Policies
Date: 05 July 2016 12:25:13
Attachments: [Further Information - Right to Review & Appeal.pdf](#)

Dear [REDACTED],

Thank you for your information request of 8 June 2016. Aberdeen City Council (ACC) has completed the necessary search for the information requested.

I would like information on the interpretation or misinterpretation of the Data Protection Act 1998 and the Pupil Educational (Scotland) Regulations 2003.

What I would like is the section of Aberdeen City Council procedure, guidelines etc which was deemed by the Council as a point of confusion within the procedures and what has now been legally clarified regarding this point?

In 2014 there was an unintentional breach where sensitive personal pupil information was inappropriately disclosed to parents. This occurrence served to highlight the lack of clarity regarding the sharing of personal sensitive data.

The following information highlights the main areas over which clarification was required in order to provide guidance to school staff in the sharing of information about pupils.

Definition

What is sensitive personal data?

Section 2 of the Data Protection Act 1998 defines sensitive personal data as:

- Information as to a person's physical or mental health or condition
- Their sexual life
- The commission or alleged commission of any offence by them
- Any criminal proceedings
- Their religious beliefs or other beliefs of a similar nature
- Their political opinions
- Their racial or ethnic origin
- Trades union membership.

Legislation and Policy

The Data Protection Act 1998, the Pupils' Educational Records (Scotland) Regulations 2003, the Child and Young People (Scotland) Act 2014, Getting It Right For Every Child

A young person of 12 or more is assumed to have capacity to make their own subject access request under the Data Protection Act.

They have the right to be asked for their permission to allow anyone (including their parents) to access their personal data, before any disclosure is made.

To be clear, any request for access to personal data by the parent(s) of a child over the age of 12 can only be agreed if the child gives consent.

The educational service is best provided when done in partnership with both the child and their parent(s) or carer(s). Staff work to have an open dialogue with families regarding many routine non confidential issues which affect a child's education.

However the focus and provision and the national policy of Getting it Right For Every Child, (which has been underpinned by sections of the Children and Young People Act (Scotland) 2014) places a clear emphasis on information sharing when a child's wellbeing is being negatively affected by any circumstances. The information sharing that is encouraged by the act and the associated guidance is to share information with the child's 'named person', not their parents.

Parent's Rights

Parents have the right to information about their child's education but this right does not supersede or overwrite the child's right to privacy over their sensitive personal data. This would include the majority of information concerning their wellbeing.

In regards to educational records, the position is governed by the Pupils' Educational Records (Scotland) Regulations 2003.

The parents' right to information about their child's education generally overrides the individual pupil's data protection rights, even if the pupil has attained the age of 16 and has become a young person in educational terms.

These regulations require schools to disclose a pupil's educational records to parents upon receiving a request from (a) parent(s) for disclosure of those records. When a request of this nature is received by a school they should provide the parents with a copy of the record.

'Educational Records' means any record of information including a chronology for a child (but excluding any information contained in a Child's Support Plan) which:

- Is processed by or on behalf of the school;
- Relates to any person who is or has been a pupil at the school;
- Relates to the school education of that person; and
- Originated from or was supplied by a teacher, any other Education Authority employee (e.g. Educational Psychologist) or the pupil to whom the information relates, or a parent of that pupil.

An 'Educational Record' does not include information which is kept and intended to be kept by a teacher or by an employee of the responsible body solely for their own use.

Regulation 6

There are certain circumstances, however, whereupon a school should not disclose any information.

This restriction is governed by Regulation 6 of the 2003 Education Act. It sets out certain circumstances where the school should not disclose any information in response to a parental

request. These circumstances include any information which is sensitive personal data as set out above.

The regulations state that:

‘The responsible body shall not disclose any information which is sensitive personal data’. To release information which is regarded as sensitive pupil data is a breach of the regulations and furthermore could be construed as a “breach of confidence”.

In addition, under Regulation 6, circumstances in which information should not be disclosed includes information, which would, in the opinion of the school be likely to cause significant distress or harm to the pupil or any other person. For example this might include a record of school attendance which might document a child’s regular absence, albeit agreed with the school, ie for religious reasons, of which the parents were unaware.

Making the decision about whether or not to disclose information involves an exercise of judgement based on the knowledge and evidence that the professional has, as to the likelihood of ‘significant’ distress or harm (i.e. not minor, transient or superficial in nature) being caused to the pupil or any person which could include a parent.

Confidentiality

If there are concerns regarding a child’s wellbeing then the Named Person should always be informed, providing appropriate and proportionate information which should be noted in the child’s chronology.

In most circumstances a member of school staff will be able to respect the wishes of the child when they share information and or seek support, however, when there are child protection concerns, information should be appropriately shared and establishment child protection procedures followed without delay.

We hope this helps with your request.

Yours sincerely,

Nicky Leiper
Information Compliance Officer

INFORMATION ABOUT THE HANDLING OF YOUR REQUEST

ACC handled your request for information in accordance with the provisions of the Freedom of Information (Scotland) Act 2002. Please refer to the attached PDF for more information about your rights under FOISA.

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