

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 January 2008

Public Authority: Information Commissioner's Office
Address: Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Note: The complaint in this case was made against the Information Commissioner. Since the Commissioner is himself a public authority for the purposes of the Freedom of Information Act 2000 (the "Act"), he is unusually under a duty to make formal determination of a complaint made against himself. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice.

Summary

The complainant requested the job titles and wages of the five most senior staff members in the Information Commissioner's Office (ICO). The ICO disclosed the job titles and salary bands to the complainant but refused to disclose the exact salary details under section 40(2) of the Act 'personal data'. The Commissioner has investigated and found that the ICO was correct to withhold the exact salary details under section 40 as disclosure would breach the first data protection principles. The Commissioner also found that the refusal notice breached the requirements of section 17 of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant has advised that on 15 February 2007 she made the following request for information to the Information Commissioner's Office (ICO):

"Please could you provide the job titles and wages received by the 5 most senior members of staff within the Information Commissioner's Office."

3. The ICO provided a response on 29 March 2007 providing the complainant with the job titles and salary ranges for the five most senior positions with the ICO.
4. The complainant responded on 4 April 2007 informing the ICO that the information provided was not the information requested as the request had been for the wages of the posts and not the salary bands.
5. On 4 May 2007 the ICO completed its internal review and communicated the findings to the complainant. The ICO confirmed that it held the information requested and stated that the job titles had been provided but that the salary details are personal data and disclosure would breach the first data protection principle; the information is therefore exempt under section 40(2) of the Act. However, the ICO did find that whilst disclosure of the exact wages would breach the first data protection principle it was able to narrow down the pay bands it had previously provided to a £5,000 range. The ICO also provided the complainant with all the names and job titles of the Executive Team and salary ranges within £5,000.

The Investigation

Scope of the case

6. On 23 May 2007 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked that the Commissioner reconsider the disclosure of the requested information.

Chronology

7. Having considered all the relevant documents attached to the complaint and the original case file, the Commissioner took internal advice from members of staff at the Information Commissioner's Office who were not involved in the original Freedom of Information (FOI) request and internal review.

Analysis

Procedural matters: Section 17 'Refusal of Request'

8. Section 17(1) states that a public authority which is relying on a claim that the information is exempt, must, within the time for complying issue a refusal notice which:
 - (a) states the fact that information is exempt,
 - (b) specifies the exemption in question, and

(c) states why the exemption applies.

9. Section 10 of the Act provides that a public authority must comply with section 1 of the Act no later than the twentieth working day following receipt of the request. Section 1 states that a person making a request for information is entitled to be informed in writing if the information is held and if so to have the information communicated to him.
10. The complainant made her FOI request on 15 February 2007. On the 29 March 2007 the ICO responded informing the complainant that it was enclosing all the recorded information that had been requested; the letter went onto provide the complainant with the details of how to request an internal review if she was dissatisfied with the response. The information disclosed in this response was the salary ranges for the five most senior positions. Whilst the response did not state what information was being withheld, or which exemption was being applied to withhold any information, the Commissioner considers this response to be a refusal notice. This refusal notice was not issued until 29 March 2007 which is outside of the twenty working days required by section 10 of the Act. The refusal notice also did not state any exemption or clarify what information was being withheld. The refusal notice was therefore in breach of section 17(1) of the Act. The Commissioner does note that, at the internal review the ICO did explain that the exact salary details were being withheld under section 40(2) of the Act.

Exemption: Section 40(2) 'Personal Information'.

11. Section 40(2) provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the DPA.
12. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal information as:

*'...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 intention of the data controller or any other person in respect of the individual.'

13. The Commissioner considers that the details of the salary details of the five most senior staff at the ICO clearly falls within the description of personal data as defined by the DPA. This is because this information relates directly to identifiable living individuals.
14. The ICO have argued that disclosure of the exact salary details would breach the first data protection principle. The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully and
 2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met
15. In considering whether disclosure of the salaries of the five most senior members of staff would be in unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken into consideration the following factors:
- The reasonable expectations of the individuals as to what would happen to their personal data;
 - The seniority of the staff;
 - Whether disclosure would cause any unnecessary or unjustified damage or distress; and
 - The legitimate interest of the public in knowing the salaries weighed, against the effects of disclosure on the members of staff.
16. The Commissioner has reviewed the information and concluded that the individuals would not have had an expectation that their salary details would be disclosed. However, the fact that an individual has an expectation that information held about them will not be disclosed does not necessarily mean that this expectation is a reasonable one. The Commissioner's guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:
- "Information which is about the home of family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."*
17. On the basis of this guidance the Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act. The Commissioner also believes that a distinction can be drawn about the levels of information which junior staff should expect to have disclosed about them compare to what information senior staff should expect to have disclosed about them. This is because the more senior a member of staff the more likely it is that they will be responsible for making influential policy decisions and / or decisions relating to the expenditure of public funds.
18. The information requested is the salary details of the five most senior staff at the ICO. The Commissioner considers it is reasonable to conclude that the five individuals would expect some details about their salary to be placed in the public domain but that it is also reasonable to assume that they would not expect their exact salary details to be made publicly available.

19. Whilst disclosure of a salary band may infringe on a person's privacy there is a distinction between this and disclosure of the exact salary details requested. Disclosure of the exact salary details would clearly lead to a greater infringement into the privacy of the individuals as it would reveal the specific details of the person's financial situation. It is therefore reasonable to consider that disclosure of this information would cause the individuals unwarranted distress or unjustified damage. This approach is supported in the decision FS50092819. In this case the public authority released to the complainant details of the salary bands of a number of doctors, however the complainant wanted to know the gross salaries. The Commissioner found:

"The Commissioner has also considered the effect that disclosing details of the gross salaries would have on the data subjects. The Commissioner believes that a clear distinction can be made between affects of disclosure of the salary band for a specialist registrar and the disclosure of the data subject's gross salary. The Commissioner believes that the disclosure of exact salaries would reveal much more about each individual's personal financial situation than the disclosure of the salary bands would."

20. In considering if there is a legitimate interest in the public knowing this information, the Commissioner has considered that the public has a right of access to information about the efficient and proper use of public money. There is also a legitimate public interest in openness and transparency in public bodies in relation to the amount of money it pays its senior managers. The Commissioner concluded that the legitimate interests of those to whom the information would be disclosed outweigh those of the data subjects with regard to disclosure of the salary band. However, disclosure of the staff members exact salary details would lead to a greater infringement of their legitimate right to privacy that is not outweighed by the legitimate interest of the public.
21. The Commissioner finds that disclosure of the exact salary details would breach the first data protection principle and that the information is therefore exempt under section 40(2) of the Act.

The Decision

22. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

The application of section 40(2) to the exact salary details of the five most senior staff.

23. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

The issuing of a refusal notice with the requirements of section 17(1) of the Act.

Steps Required

23. The Commissioner requires no steps to be taken.

Right of Appeal

19. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 8th day of January 2008

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**