

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2011

Public Authority: The Governing Body of Stockport College

Address: Wellington Road South
Stockport
SK1 3UQ

Decision (including any steps ordered)

1. The complainant has requested the redundancy details for the previous Vice Principal of Stockport College ('the College'). The College explained that it believed that sections 40(2) [third party personal data] and section 41(1) [confidentiality] applied to the information and a complaint was referred to the Information Commissioner ('the Commissioner').
2. The Commissioner's decision is that the College has applied section 40(2) appropriately to the disputed information. It also complied with the procedural provisions of the FOIA. He requires no steps to be taken.

Request and response

3. On 30 January 2011 the complainant wrote to the College with a request asking for a number of items. The relevant part of the request that was referred to the Commissioner was worded as follows:

'A breakdown of all Senior Management team members and any new appointees, including any bonuses, incentives, expenses and other payments made to each over the past twelve months.'

Please list information separately for:

...

Deputy Principal (include redundancy, duties/itinerary forthcoming).'

4. The College issued its response on 23 February 2011 explaining that it believed this information was exempt under section 41 [confidentiality].
5. On 18 March 2011 the complainant requested an internal review and challenged *'the college's refusal to disclose the Deputy Principal's redundancy details and nothing else'*.
6. On 8 April 2011 the College communicated the results of its internal review. It did not provide the complainant with the information. It now explained that it believed that sections 40(2) [third party personal data] and section 41(1) applied to the disputed information.
7. However, it did explain that the Deputy Principal was made redundant and that he only received what he was entitled to under its redundancy policy at the time. It provided a copy of that policy.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. On 2 September 2011 the complainant agreed that the scope of the Commissioner's investigation will be to consider the following:
 1. *Whether the College has appropriately withheld the information pertaining to the redundancy of the Deputy Principal correctly under section 40(2) or 41(1), or whether this information should be disclosed to the public; and*
 2. *Whether the College has complied with the procedural provisions of the Act.*
10. Any disclosure under the FOIA would be a disclosure to the public at large. While the complainant has additional personal reasons for having the information, the Commissioner can only judge whether the information can be disclosed to the public at large. He can only consider the status of the withheld information and cannot determine whether the complainant's other arguments have any force.

Reasons for decision

11. For information to be withheld properly, it is only necessary for one exemption to have been applied appropriately to it. The Commissioner has considered section 40(2) ['the third party personal data exemption'] of the FOIA first. It states that:

'Any information to which a request for information relates is also exempt information if –

(a) It constitutes personal data which do not fall within subsection 40(1); and

(b) Either the first or the second condition below is satisfied.'

12. In summary, the conditions specified are either that disclosure would contravene one or more data protection principles, or that the information would not be available to the data subject if he made a Subject Access request under the Data Protection Act ('DPA') for it.
13. 'Personal data' is defined by section 1(1) of the DPA. The withheld information comprises of the redundancy details of the College's ex-Vice Principal. The information does constitute the ex-Vice Principal's personal data because it relates to an identifiable living individual. It also does not constitute the complainant's own personal data. The Commissioner is satisfied that this information is personal data and therefore section 40(2)(a) is applicable.
14. In relation to section 40(2)(b) the College's main arguments have been focussed on why disclosure would contravene the first data protection principle.
15. The first data protection principle has three components. These are that the disclosure of the information to the public must be:
 - fair to the data subject;
 - in accordance with one or more conditions in Schedule 2 of the DPA; and
 - lawful to the data subject.
16. All three conditions must be satisfied for the first data protection principle not to be contravened and the exemption not to apply.

Is the disclosure of the information unfair to the data subject?

17. In accordance with his decision issued on **FS50286813** (Stroud District Council), the Commissioner has looked to balance the consequences of any release of personal data and the reasonable expectations of the data subject with general principles of accountability and transparency.
18. To do so, he has specifically borne in mind the following factors:
 - The individual's reasonable expectations of what would happen to their personal data – including the individual's seniority;

- Whether the information relates to the public or private life of that individual;
 - Whether disclosure would cause any unnecessary or unjustified damage to the individual; and
 - The legitimate interests of the public in knowing these details weighed against the effects of disclosure on the data subject.
19. The College has argued that its ex-Vice Principal had a reasonable expectation that the information concerning his redundancy would not be disclosed.
20. The College provided information about how these expectations were engendered, but it is necessary for the Commissioner to discuss these matters in a confidential annex as to do otherwise would disturb the integrity of the withheld information. However, he can say that in the circumstances of this case, he is satisfied that the individual had these expectations.
21. To assess reasonableness, the Commissioner has received the College's submissions, the complainant's submissions, considered the sort of information that has been requested (alongside the withheld information itself) and the individual's seniority. His detailed analysis is also contained in the confidential annex. However, he can say the following:
- he is satisfied that the ex-Vice Principal had the expectation that the withheld information would not be released;
 - The College drew the Commissioner's attention to the fact that the information requested is HR information and in previous decisions, the Commissioner has accepted that there is a genuine expectation that this sort of information would remain private. The Commissioner agrees that the information can be characterised as HR information and that there is an expectation of privacy in relation to information of this sort; and
 - in previous decisions the Commissioner has accepted that the more senior a role occupied by a data subject the greater the prospect that disclosing information about that individual's public duties will be warranted or fair. This is based on the understanding that increasing seniority corresponds with an individual's increasing responsibility for making influential policy decisions and decisions that will directly affect the expenditure of significant amounts of public funds. In this case it is common ground that the individual held a senior role. His role was both public facing and had a public profile. The Commissioner therefore

appreciates that in normal circumstances a high degree of scrutiny would be expected. However, for reasons discussed in the confidential annex, he is satisfied that a high level of further scrutiny would not be expected in this case.

22. For the reasons specified in the confidential annex (and alluded to above) the Commissioner is satisfied that the ex-Vice Principal's expectations that the disputed information would not be disclosed are reasonable in this case.
23. The Commissioner considers that the disputed information concerns both ex Vice Principal's private and public life. It affects his private life because it concerns a great part of his identity, may concern his specific financial standing and potentially could affect his future employability. It also affects his public life because he was employed by a body with public responsibilities that is funded by the tax payer. The Commissioner also considers that as the information becomes more specific, it becomes more private and less fair to disclose to the public.
24. The College has explained that in its view the disclosure of information would be likely to cause the specified individual damage and distress. Firstly, it would erode their trust and confidence in the College doing what it said it would with his personal HR data. Secondly, it would reopen a matter that may be distressing to the individual. The Commissioner considers that information relating to the termination of employment is inherently sensitive to a data subject. There is a possibility that the individual may have found the redundancy process difficult and would reasonably assume that the matter would not be reopened now. The Commissioner considers that there is force in these arguments, but can only explain why in the confidential annex.
25. He considers that he is supported by the Information Tribunal's findings in *Pycroft v Information Commissioner and Stroud District Council* (EA/2010/0165), which found that even confirming that an individual had been made redundant goes beyond information directly concerning the individual's public role or decision making process. In this case the College confirmed that the individual was made redundant, but offering further details about the redundancy would for similar reasons go beyond what directly concerns the individual's public role.
26. When assessing the legitimate interests of the public, the Commissioner considers that taxpayers will have a natural, and legitimate, interest in knowing how a publicly funded organisation allocates its funding and how it remunerates its staff, including when they depart from it. The Commissioner considers that there is also a weighty public interest in knowing the process by which the College makes its staff redundant and how it deals with its employment matters more generally. This is

particularly pronounced in this case because the sum may constitute a considerable sum and there is controversy attached to it. This controversy emanates from redundancies being made due to the College having financial problems and the cause of those problems being debated.

27. However, the College has pointed out that these legitimate interests are offset to some extent by the information that is available in the public domain. It is known that the individual was made redundant and that the payment was made in accordance with its redundancy policy. The Commissioner has considered the policy and the withheld information and can confirm that the agreement accorded with the policy. The Commissioner can also confirm that the withheld information is personal information relating to the data subject's employment history.
28. The complainant has also argued that further information about the data subject's redundancy is in the public interest because it would enable other individuals in that position to benchmark their treatment and allow other staff to scrutinise the actions of the College. Having considered the information itself, the Commissioner does not consider that these concerns would be better addressed by disclosing the withheld information in this case.
29. Having considered the information and the arguments of both sides, he has come to the conclusion that the legitimate interests of the public are not as great as the prejudice to the interests of the data subject in this case.
30. For completeness, the Commissioner has also considered whether there are any 'exceptional circumstances' where a greater level of disclosure may be warranted. In his guidance, the Commissioner lists the following five situations:
 - There are current controversies or credible allegations;
 - There is a lack of safeguards against corruption;
 - Normal procedures have not been followed;
 - The individual in question is paid significantly more than the usual salary for their post; and
 - The individual/s have significant control over setting their own or others salaries.
31. Having considered the situation, without revealing the withheld information, the Commissioner is satisfied that none of the 'exceptional factors' are relevant in this case.

32. The complainant has made some allegations about the conduct of the ex Vice-Principal. However, the Commissioner does not consider from the evidence he has been provided with or the evidence in the public domain that they can be given the weight required to override the data subject's expectation of privacy in relation to his redundancy information.
33. The ex Vice-Principal was well paid. However, in the Commissioner's view the sum paid was not substantially more than equivalent positions in this case and the redundancy agreement accorded with the College's obligations in law. The ex Vice Principal did not have control over the setting of his own salary and the Commissioner is satisfied that the correct procedures were followed (although he cannot say more outside the confidential annex).
34. Overall, the Commissioner concludes that the disclosure of the disputed information would be unfair to the data subject. He is satisfied that the disclosure would amount to an unwarranted intrusion into the data subject's personal circumstances and be a disproportionate invasion to their right to privacy. It follows that disclosure would contravene the first data protection principle, the third party personal data exemption has been applied correctly and no information should be disclosed in this case. Further details about this conclusion can be found in the confidential annex.
35. The Commissioner has also considered whether it is possible to provide any of the information (redacting the rest) in a manner so that disclosure would be fair to the data subject. He considers that it is not possible in this case.
36. As disclosure is not fair, the Commissioner does not need to consider the other aspects of the first data principle. He also need not consider any of the other data protection principles, or the other exemptions that were cited by the College.
37. The Commissioner has also considered the procedural issues that were raised by the complainant and finds that the College complied with all the procedural provisions of the FOIA.

Right of appeal

38. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

Pamela Clements
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