

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 August 2012

Public Authority: Abertawe Bro Morgannwg University
Health Board

Address: One Talbot Gateway
Baglan Energy Park
Baglan
Port Talbot
SA12 7BR

Decision (including any steps ordered)

1. The complainant requested information about two recruitment exercises undertaken by Abertawe Bro Morgannwg University Health Board ('the Health Board'), in which she was involved. The Health Board provided some information relevant to the request, including the complainant's own personal information. It refused to provide other information under section 40(2) of the FOIA. The Commissioner's decision is that the Board correctly applied section 40(2) to the remaining information held relevant to the request. He does not require any steps to be taken.

Request and response

2. On 11 December 2011, the complainant wrote to the Health Board in relation to two particular posts – Lead Manager post, reference number 130-LD6001CH and Team Manager post, reference number 130-LD6064CH. The posts were ones for which the complainant had been shortlisted and interviewed. She requested her own personal information and made a freedom of information request in the following terms:

"Also in accordance with the Freedom of Information Act 2000, I am also requesting the anonymised details of all other applicant's details of scoring in the interviews, interview notes, scoring of criteria on application forms and qualifications in relation to the above two positions".

3. The Health Board responded on 25 January 2012 and refused to provide anonymised information relating to other candidates who were interviewed for the positions as it considered the information to be exempt under section 40(2) of the FOIA. The Health Board confirmed that the complainant's own personal data had been provided to her.
4. On 30 January 2012 the complainant requested an internal review of the Health Board's handling of the request, in relation to information which it had withheld. She also confirmed that she had received the interview notes for her own interviews for the two positions, but she was still awaiting some of her own personal data, namely the scoring of criteria on application forms for both posts.
5. The Health Board provided the outcome of its internal review on 28 February 2012 and upheld its decision that the requested information was exempt under section 40(2) of the FOIA. The Health Board also provided the scoring forms in respect of criteria on applications/qualifications for one of the posts (Lead Manager) and stated that the scoring forms for the other post (Team Manager) had been destroyed in line with the Health Board's normal retention policy.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She asked the Commissioner to investigate whether the information requested about other interviewees should be disclosed. The complainant also referred to the fact that the Health Board had destroyed some information relevant to the request, namely the scoring criteria for applications received for one of the positions – Team Manager post ref 130-LD6064CH.
7. During the course of the Commissioner's investigation, the Health Board located the scoring matrix for the Team Manager position and disclosed this to the complainant. As such, this information is not considered further within this notice.
8. The Commissioner therefore considers the scope of this complaint to be whether the anonymised details of other applicants' scoring in the interviews, and interview notes for both positions should be disclosed, or whether the Health Board correctly withheld this information under section 40 of the FOIA.

Reasons for decision

Section 40 – personal information

9. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
10. In this case, the Health Board argued that the requested information is the personal data of the other candidates who were interviewed for the two positions and that its disclosure under the FOIA would constitute unfair and unlawful processing and would be contrary to the data protection principles and schedules 2 and 3 of the DPA.
11. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

Is the requested information personal data?

12. When making her request the complainant asked for the information to be provided in an "anonymised" format. The Commissioner considers that truly anonymised data is not personal data because no individual can be identified from that information or from that information together with other available information. In such circumstances the information cannot be exempt under section 40(2) because a disclosure of the information would not be disclosure of personal data.
13. The Commissioner has therefore considered whether the Health Board could have made a limited disclosure of the information, with direct details of the identities of the interviewees redacted.
14. The Health Board confirmed both to the complainant and the Commissioner that there were only two candidates for each post. The complainant was one of the candidates interviewed for each of positions, and the other candidate for each post was successful and appointed into the post. The Health Board confirmed that all of the candidates interviewed were existing members of staff. As such, the complainant is aware of the identity of the two other interviewees, and confirmed this in her internal review request.

15. The Health Board advised that, the interview notes were considered differently to the scoring sheets of criteria on application forms and qualifications for the post and this information was disclosed to the complainant. This is because the scoring matrixes simply confirmed (via a tick box) that each applicant met the required criteria to be selected for interview.
16. The interview notes contained details of the examples given by interviewees from their current or former workplaces, or from their past. These are biographical details which might enable individuals who have some knowledge of the interviewee to recognise that the notes refer to them rather than to any other interviewee, even if the names of the interviewees were redacted. The withheld information also contains the opinions of the interviewers on individual candidates for the positions.
17. The Commissioner considers that based on the content of the interview notes, and the fact that only two individuals were interviewed for each of the positions (the complainant being the other), there is a strong likelihood that if the information were disclosed, even in a redacted format, it would be relatively easy for other employees of the Health Board and particularly colleagues of the interviewees to identify the individuals concerned. He believes the likelihood of identification would be greatest in relation to employees who worked closely with, or in the same department as the interviewees. The complainant herself is aware that only one person other than herself was interviewed for each post, and the other interviewee for each post was appointed, and she confirmed that she knows the identity of the two individuals.
18. Taking into account the above factors the Commissioner believes that it would be highly probable that individuals would be identified if the withheld information were disclosed. Accordingly, the Commissioner is satisfied that the information requested does constitute personal data, within the definition at section 1(1) of the DPA.

Would disclosure breach one of the data protection principles?

19. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:
 - personal data shall be processed fairly and lawfully; and
 - personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

20. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

Expectations of the individuals concerned

21. The Commissioner has considered the reasonable expectations of the individuals in terms of what would happen to their personal data. These expectations can be shaped by factors such as the individuals' general expectation of privacy and also the purpose for which they provided their personal data.
22. The withheld information contains detail about the experience of individuals in relation to the specified post and contains examples and evidence given by interviewees in support of their suitability for the positions. The interview notes also record interviewers' opinions on the individuals, including notes about the interviewees' responses and markings awarded by interviewers based on the suitability of the individual for that role and the responses given to the interview questions. The interview notes are in essence a record of how the individual performed and it would therefore be possible to discover how well or how badly that person had performed during the interview.
23. The complainant has argued that the posts were fairly senior positions and as such their appointment should be subject to some degree of scrutiny in the context of the public interest in spending of public money. The Health Board considers that neither of the posts are of a sufficient level of seniority to warrant disclosure of the requested information, even in a redacted format. The Health Board has provided the Commissioner with a copy of its organisational chart. This shows that whilst the posts in question are management posts there are a number of levels of more senior positions within the Health Board.
24. In the Commissioner's view, regardless of the seniority of the individuals, in addition to the general expectation of privacy they would have expected that material used for the specific purpose of deciding who was to be appointed to the post would not be disclosed to the public. Disclosure of information under the FOIA is disclosure to the public at large and not just to the complainant. The Commissioner recognises that it is reasonable to expect that a responsible public

authority will not disclose certain information, and that it will respect confidentiality.

25. In summary, therefore, the Commissioner is satisfied that it is the reasonable expectation of an applicant for any job that the information he or she provides as part of the recruitment process will be treated as private and will not be passed on to third parties without their consent.

Consequences of disclosure

26. In light of the nature of the information and the reasonable expectations of the individuals concerned, as noted above, the Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the individuals in this case. The Commissioner considers that it may be upsetting or embarrassing to some individuals to have such details disclosed to the world, and in particular to their friends, family or work colleagues.

General principles of accountability and transparency

27. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure.
28. However, the Commissioner believes that the public's interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the members of staff concerned. The Commissioner accepts the Health Board's contention that these members of staff would have a strong expectation of privacy and confidentiality over the recruitment process, and specifically in relation to the interview notes.
29. The Commissioner has considered whether there is a legitimate interest in the public accessing the withheld information. The Commissioner notes that the complainant has personal reasons for requesting the information. The complainant believes that she has a legitimate interest in disclosure of the requested information in order to satisfy herself whether the recruitment process, which she was involved in, was undertaken fairly.
30. The Commissioner accepts that there is a wider public interest in transparency of public sector organisations and also a more specific public interest in knowing that those who are appointed to relatively senior posts within the public sector are properly qualified to fulfil the requirements of those posts. These interests would be served by the disclosure of the withheld information. However, the Commissioner does not believe that any legitimate interest in the public in accessing the withheld information would outweigh the potential damage and distress

caused by disclosure of that information. Therefore the Commissioner is unable to conclude that disclosure of the withheld information is necessary to meet a legitimate public, rather than personal, interest.

31. In view of the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure of any of it would breach the first data protection principle as it would be unfair to the individuals concerned. As the Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met. The Commissioner therefore upholds the Health Board's application of the exemption provided at section 40(2) of the FOIA.

Right of appeal

32. 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

33. 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.
34. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
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