

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 November 2012

**Public Authority:** North Shore Academy

**Address:** Junction Road, Norton, Stockton on Tees  
TS19 9LT

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the former Principal of North Shore Health Academy (the "Academy").
2. The Commissioner's decision is that the Academy has correctly applied section 40(2) of the FOIA.
3. The Commissioner does not require the public authority to take any further steps.

#### Request and response

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4. It should be noted that North Shore Health Academy was sponsored by NHS Stockton on Tees. However, the sponsorship ceased and Northern Education took over responsibility on 1 September 2012. North Shore Health Academy no longer exists and has been replaced by North Shore Academy, a distinct legal entity.
5. On 2 March 2012, the complainant wrote to the Academy and requested information in the following terms:
  - The date at which [named individual] ceased to be employed as the Principal of North Shore Health Academy, Stockton.
  - Whether [named individual] received a financial settlement when he ceased to be employed as the principal.
  - What was the total figure for any financial settlement awarded to [named individual]?
  - What was [named individual's] salary as principal of North Shore immediately before he ceased to be employed at the academy?

- Was [named individual] placed on any period of paid leave prior to ceasing in his role as principal; and if so, how long that period was for?
  - The number of days of sickness leave taken by [named individual] in the a) current and b) previous academic years
6. The Academy responded on 29 March 2012. It provided some of the information requested but refused to provide the remainder. It cited section 40(2) of the FOIA as its basis for doing so.
7. Following an internal review the Academy wrote to the complainant and revised its position. It provided further information in relation to the request. However, it maintained that the following information was still exempt under section 40(2).
- What was the total figure for any financial settlement awarded to [named individual]?
  - What was [named individual] salary as principal of North Shore immediately before he ceased to be employed at the academy?
  - The number of days of sickness leave taken by [named individual] in the a) current and b) previous academic years.
8. The Academy did provide a copy of the advertisement as requested by the complainant at the internal review stage, for the post which specified an attractive six figure salary range. In light of this the Commissioner has not pursued this aspect of the complaint.

### **Scope of the case**

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9. The complainant contacted the Commissioner to complain about the way the request for information had been handled.
10. The Commissioner considers the scope of this case to be to determine if the Academy has correctly applied section 40(2) to the remaining parts of the request as clarified in paragraphs 7 and 8.

## Reasons for decision

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11. Section 40(2) of 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 DPA.

12. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

*"...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 intentions of the data controller of any other person in respect of the individual."*

13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

### ***Is it personal data?***

14. The Commissioner has viewed the withheld information and notes that it contains details of a financial settlement and sickness absence. Having considered the withheld information the Commissioner is satisfied that the information relates directly to a living and identifiable individual.

15. As the Commissioner finds that the withheld information in its entirety constitutes personal data he has concluded that the information falls within the scope of the exemption. He has gone on to consider whether disclosure would breach the DP principles.

16. In its response to the Commissioner, the Academy stated it believed that providing the information requested would breach principle 1 of the DPA and contravene section 10 of the DPA.

17. The first data protection principle states that:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*

18. The Academy concluded that none of the conditions in Schedule 2 or Schedule 3 are met to allow for fair and lawful disclosure. In addition, the Academy considered that disclosure is likely to cause damage or distress to the individual.
19. Section 10 of the DPA provides an individual with the right to require a data controller to cease processing their personal data if the processing is likely to cause damage or distress.
20. The Commissioner has gone on to consider whether disclosure of the requested information would be fair.
21. The Commissioner has issued guidance about requests for personal data about public authority employees:  
[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Environmental\\_info\\_reg/Practical\\_application/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx)
22. This guidance talks about whether the information requested relates to them in the professional role or as an individual, and is information contained in their personnel file as opposed to actions they have taken in carrying out their job. It also suggests consideration should be given to whether the employees are senior within the organisation or have a public facing role. The more senior the individual and/or the more public facing their roles are the greater their expectation should be that information about them would be released and the more likely it would be to conclude that it would be fair to do so.

***Does the information relate to the individual's public or private life?***

23. The Academy argued that it refused to provide information regarding the total figure for any financial settlement awarded after giving consideration to whether or not this information would be disclosed to the public, given that the individual did hold a public facing, senior role and therefore there must be some expectation of disclosure.
24. The Academy recognised these factors as important considerations for disclosure and, in view of this, did supply salary details following its internal review as explained in paragraph 8. However, the Academy considered that disclosure of the financial settlement awarded and the number of days sickness leave taken would be unfair due to the fact that this would be likely to cause the individual distress and that he

would have had a reasonable expectation that these details would remain confidential.

25. The Academy further explained that a compromise agreement existed between the two parties and contains an enforceable confidentiality clause. The Academy therefore believed that disclosure would be unlawful.
26. The Academy considered that there were no extenuating circumstances which would create an overriding public interest in favour of disclosure and determined that disclosure would be an unwarranted invasion of the named individual's private life.
27. The Academy further believed that providing information relating to an individual's sick leave would also be unfair. Even though the role was a public facing, senior position again the Academy concluded that the individual would have a reasonable expectation that these details would remain confidential and that there was not a strong public interest in disclosure.

### ***Reasonable Expectations of the Individual***

28. The Academy stated it took this into consideration when responding to the request and concluded that the individual would have a reasonable expectation that the requested information would remain confidential. As stated above the compromise agreement contains an enforceable confidentiality clause.
29. The view of the Commissioner is that there is an expectation that an employee in a public authority will have a certain amount of information about them disclosed i.e. name, job title, work telephone number. However, the complainant has asked for information relating to sickness absence and a financial settlement.
30. The complainant has stated that they do not consider the information to be personal data as it relates to a publicly appointed and paid employee, and consequently do not consider it to be exempt under the FOIA.
31. The Commissioner notes and considers it relevant that the individual was an employee of the public authority and thus his salary and the cost of his departure were funded from the public purse. He acknowledges that there is a valid argument that the tax payers who supply those funds should be provided with details about how their money is spent.
32. However, the Commissioner's view is that, notwithstanding the data subject's reasonable expectations or any damage or distress caused to him or her by disclosure, it may still be fair to disclose requested information if it can be argued that there is a more compelling public interest in releasing the information. Therefore the Commissioner will

carry out a balancing exercise, balancing the rights and freedoms of the data subject against the public interest in disclosure.

33. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information. The Commissioner accepts that there is a general public interest in terms of the transparency and accountability of public sector organisations. However, the Commissioner does not consider that in this case any legitimate public interest extends to disclosure of the sickness absence or financial settlement requested by the complainant.
34. It is the Commissioner's view that as a compromise agreement existed between the two parties, it was fair that the individual would have had a reasonable expectation for the information not to be disclosed.
35. In light of the reasonable expectations of the individual concerned, the Commissioner is satisfied that release of the information would be an intrusion of privacy and could potentially cause unnecessary and unjustified distress to the individual in this case.
36. Based on the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individual concerned.
37. The Academy has stated that the compromise agreement contains an enforceable confidentiality clause, and it is therefore likely that disclosing the information would be unlawful.
38. The DPA does not define what is meant by the term 'lawful' but the ICO's Guide to Data Protection (published in November 2009) states as follows:

*'Lawful' refers to statute and to common law, whether criminal or civil. An unlawful act may be committed by a public or private-sector organisation.*

*If processing personal data involves committing a criminal offence, the processing will obviously be unlawful. However, processing may also be unlawful if it results in:*

- a breach of a duty of confidence. Such a duty may be stated, or it may be implied by the content of the information or because it was collected in circumstances where confidentiality is expected – medical or banking information, for example;

- a breach of an enforceable contractual agreement;
  - a breach of industry-specific legislation or regulations
39. It is the Commissioner's view that the compromise agreement is likely to be an enforceable contractual agreement. In addition, the Commissioner considers that to breach the terms of the compromise agreement by the Academy would have been unfair.
40. Therefore the Commissioner considers that the Academy has correctly applied section 40(2) of the FOIA.

## Right of appeal

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41. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

42. 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.
43. 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**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
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**Water Lane**  
**Wilmslow**  
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