

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2012

Public Authority: The Governing Body of New College Nottingham

Address: 1 Broadway
Lace Market
Nottingham
NG1 1PR

Decision (including any steps ordered)

1. The complainant has requested information relating to the recruitment of a particular vacancy at New College Nottingham (the College). The College provided the complainant with some information but refused to provide him with the remainder of the requested information under section 40(2) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the College correctly applied section 40(2) to some of the withheld documents in full and in part. In relation to the withheld information which the Commissioner does not accept section 40(2) would apply, he considers that section 40(1) FOIA should have been applied to some of this information either in full or in part. However the Commissioner also considers that section 40(1) or 40(2) FOIA does not apply to some of the withheld information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The information to which the Commissioner does not consider section 40(1) or 40(2) would apply should now be disclosed. The Commissioner has attached a Schedule to this Notice detailing the information he considers should be withheld and that which should be disclosed.

The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 7 September 2011, the complainant wrote to the College and requested information in relation to a particular recruitment drive in the following terms:
 1. Number of applications received
 2. Qualification of the people shortlisted and interviewed
 3. Number of people from BME
 4. Number of people interviewed
 5. Number of people interviewed from BME
 6. Short listing criteria
 7. Short listing paper work
 8. Marking sheet
 9. Who got selected and why
 10. Who marked the application
 11. Who interviewed
5. On 21 September 2011 the College responded. The College explained that the complainant did not have the right to access third party personal data under the Data Protection Act 1998 (DPA). It said that it was therefore considering the request under the Freedom of Information Act (2000) (FOIA). The College provided the information requested at points 1, 3, 4, 5, 6 and 10 of the request. It refused to provide the remaining information under section 40(2) FOIA.
6. The complainant requested an internal review on 28 March 2012. The College sent the outcome of the internal review on 27 April 2012. The College provided a copy of the job advert, the date the person was selected, the date the person was appointed, a list of selection criteria, the names of the interview panel and the names of the individuals who shortlisted the candidates. It also confirmed the level of qualifications which the applicants had obtained. The College did not however provide any further information relevant to the scope of the requests.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He is dissatisfied that information was withheld.
8. The Commissioner has considered whether section 40(2) FOIA has been correctly applied to the withheld information. The Commissioner has also considered whether section 40(1) FOIA should have been applied to some of the withheld information.

Reasons for decision

9. Section 40 of FOIA states that:

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides 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 (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - i. any of the data protection principles, or
 - ii. section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

10. In this case the College has applied section 40(2) to withhold the information requested at parts 2, 7, 8, 9 and 11 of the request. The withheld information includes job application forms (to the extent that they include candidates qualifications), multiple choice tests completed by the shortlisted candidates, a copy of the interview questions, interviewer notes for each shortlisted candidate, shortlist scoring sheets, person specification and post description, a job file checklist, interview schedule, interview summary, a spreadsheet of all applicants, and a letter to one of the unsuccessful candidates. The College has also provided the Commissioner with some internal emails making the practical arrangements for the interviews.
11. Under section 40(1) FOIA information is absolutely exempt if it amounts to the personal data of the applicant. In this case the Commissioner has viewed the withheld information and considers that some of it does amount to the complainant's own personal data. This has been identified in the Confidential Annex to this Notice. This information is therefore exempt from disclosure under section 40(1) FOIA.
12. Under section 40(2) with subsection 40(3)(a)(i) third party personal data is exempt from disclosure if disclosure would breach any of the data protection principles.
13. In this case the College has explained that the third party personal data is that of the job applicants as well as the interviewers. The Commissioner has first looked at the personal data of the interviewers. The Commissioner considers that the names of the interviewers and information relating to them such as their interview notes or the scores they gave to particular candidates would be the interviewer's personal data.
14. The College has argued that it would be unfair to disclose this information. It has said that it has disclosed the names of the staff involved in the shortlisting process in response to part 10 of the request however it considers that it would be unfair to disclose the names of the interviewers as the interviewers influenced who was offered the position. It said that these individuals would expect this information to remain confidential as they undertook a much more scrutinous role which involved difficult and sensitive judgements often with unwelcome outcomes for those who were not offered the position. It argued that it could be very difficult for internal candidates to continue to work

alongside interviewers in the knowledge that they did not select them. It suggested that interviewers could be subjected to harassment. In terms of the interview notes on specific candidates it argued that this would enable candidates to see the notes of individual panel members which may undermine the working relationship between interviewers and internal candidates and could again lead to harassment of individual panel members. It has concluded therefore that the interview panel members would not expect this information to be disclosed into the public domain and if it were the College considers that this would cause damage and distress to those individuals. The College accepted that there was a legitimate public interest in recruitment processes being open and those involved being accountable, but it said it had gone some way to meeting this by disclosure of the names of those involved in the shortlisting process.

15. The Commissioner has considered the College's arguments in relation to the interviewer's personal data. The Commissioner considers that the individuals involved in the shortlisting also had a significant influence over who was offered the position as by not selecting certain individuals it ruled people out completely. However the College did not consider that it would be unfair to disclose the information relating to those who shortlisted and discounted candidates applications even before the interview stage. The Commissioner therefore considers that this undermines the College's position that it would be unfair to disclose the names of the interviewers.
16. In terms of the College's arguments relating to the ongoing working relationship between interviewers and internal candidates, in terms of identity of the interviewers this will already be known by the candidate's attendance at interview. In terms of the more detailed notes the Commissioner considers that the interviewers were acting in a professional capacity and that this information would not relate to their private life in any way. It is information which relates only to their professional role and therefore the damage and distress caused by disclosure would be significantly reduced. The Commissioner considers that there is a legitimate public interest in public authorities recruitment processes being open and those involved being accountable. Disclosing the names of those involved in the shortlisting process goes some way to meet this but there is a legitimate interest in the names of the interviewers and information relating to the interviewers being disclosed to provide a fuller picture. The Commissioner does not therefore consider that it would be unfair to disclose the interviewer's own personal data. The Commissioner has also included some further arguments in the Confidential Annex to this Notice in support of this position.

17. The Commissioner has therefore gone on to consider the personal data of the candidates. The Commissioner considers that the names of the candidates are clearly personal data and it would be unfair to disclose this information in this context. This is because disclosure would confirm that particular individuals applied for a particular job at a particular establishment which inextricably links elements of the individual's private and professional lives. However the Commissioner considers that the names of candidates, along with any other identifying information could be redacted from much of the withheld information which would then render it anonymous.
18. The College has argued that due to information already in the public domain due to an employment tribunal hearing and local knowledge within the College it has suggested that anonymisation would not be possible. It has not provided the Commissioner with any examples of the information already in the public domain which would enable individual applicants' names to be established by disclosing the withheld information with those names redacted. Upon viewing the withheld information the Commissioner does not consider that it would amount to third party personal data if the candidate's names and where appropriate other identifying information were redacted. The Commissioner has included further arguments in support of this position in the Confidential Annex to this Notice, along with the withheld information clearly marked where he considers the redactions should be made to render it anonymous.
19. The only information left to consider is the candidate's application forms, so far as they contain the candidate's qualifications and the interviewer's notes which have already been considered as the interviewer's personal data but would also amount to the candidate's personal data.
20. The Commissioner considers that the candidate's qualifications and the interviewer's notes about the candidate's interview is clearly the candidate's personal data. He considers that this could not be suitably anonymised as it is very particular and detailed information relevant to each applicant and therefore there is more likelihood that individuals could be identified from this information. The Commissioner agrees with the College that applicants would not expect this information to be disclosed into the public domain. Furthermore the Commissioner considers that this type of information inextricably links applicants private and professional lives and therefore the interests of the applicants would outweigh the legitimate public interest in relation to this very detailed and specific information. Section 40(2) FOIA was therefore correctly applied to this information in full.

Right of appeal

21. 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

22. 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.
23. 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
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

1	POST: Technical Engineer 1953 spreadsheet	Applicants names, cyborg/excel numbers, whether internal, whether relation, disability, BME and whether appointed. Redact whole column even if blank.
2	Letter to successful applicant (dated 25 August 2011)	Applicants name and address and HR officer's name.
3	Interview questions/scoring	No redactions.
4	Short list scoring/interview confirmation sheet – continuation	Candidate numbers.
5	Person specification	No redactions.
6	Duties and responsibilities	No redactions.
7	Shortlist scoring/interview confirmation sheet x2	Candidate numbers and signatures of panel members (signatures only contained on one of the sheets).
8	Job vacancy description	No redactions.
9	Internal emails	HR officer's name.

10	Job file checklist – administration page	Successful candidate's name.
11	Interview schedule	Candidate's names and numbers.
12	Interview summary sheet/confirmation of appointment	Candidate's names, successful candidate's name and salary offered.
13	Senior technical engineer questions August 2011 x3	Candidate's names.
14	Interviewer assessment forms	Withhold in full.
15	Application forms	Withhold in full.