

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 November 2012

Public Authority: Victoria & Albert Museum
Address: Cromwell Road
South Kensington
London
SW7 2RL

Decision (including any steps ordered)

1. The complainant has requested information relating to the qualifying standards and ages of people who qualified for shortlisting for the position of gallery assistant at the Victoria & Albert Museum ("the V&A"). The V&A provided information on the essential criteria for the job and how this was assessed and a statistical summary showing candidates grouped into age bands. Any further information was refused on the basis of section 41 and 40(2).
2. The Commissioner's decision is that the V&A has correctly applied section 41 to withhold the requested information and requires no steps to be taken.

Request and response

3. On 17 April 2012, the complainant wrote to the V&A and requested information regarding an advertised position at the V&A:

"I wish to know what the 'particularly high' qualifying standards are for those who have been successful.

Also the ages of those who have qualified to go through for the interviews for the posts of a Gallery Assistant."

4. The V&A responded on 18 April 2012. It explained that when short-listing for interview all applications are reviewed and those candidates who demonstrate they meet the essential criteria are invited for an interview. These requirements are listed in the job description under the

'person specification'. With regards to the request for ages of those who qualified for interviews, the V&A explained that whilst dates of birth are collected from applications they are only used for statistical purposes and are not used as part of the recruitment process.

5. The complainant wrote back to the V&A on 20 April 2012 regarding the date of birth and reiterated her request for the ages of those who had been offered an interview for the Gallery Assistant job. The V&A responded to this further letter and provided a copy of the job description containing the person specification with the essential criteria for the role but did not provide any of the ages of the candidates progressed to interview stage.
6. Following intervention from the Commissioner, the V&A issued a further refusal notice on 19 July, specifically stating which exemptions under the FOIA it considered applicable. In this response the V&A clarified that it considered it had sent the complainant the information on the 'qualifying standards' but if it was the information supplied in individual's job applications this would be exempt under section 40 and 41 of the FOIA.
7. The V&A also clarified that information on the ages of candidates is held by its contractors but that it would not provide specific ages as they could lead to identification of individuals. The V&A was therefore withholding this under section 40(2) but did provide a summary of the ages of applicants in bands, showing applications received, interviewed and offered for each band as follows:

16-25:	148	10	1
26-35:	118	8	2
36-45:	31	4	1
46-55:	14	1	0
56+:	4	0	0

Scope of the case

8. The complainant contacted the Commissioner to complain about the way her request for information had been handled. In particular the complainant raised concerns that the V&A had not provided her with the information she asked for – namely the ages of the people shortlisted and recruited and what attributes they had that made them more suited to the role.
9. The Commissioner notes that the request was for the *"particularly high qualifying standards for those that had been successful"* and the V&A has provided the person specification listing the essential criteria for the

job. The V&A has also explained that candidates who were shortlisted were able to demonstrate that they met these criteria through their application forms. The Commissioner considers that information has therefore been provided to demonstrate the qualifying standards for the position.

10. In her letter of 20 April the complainant also asked for *"details of the closely matched candidates"*. This in conjunction with the wording of the initial request led the V&A to interpret that the complainant was requesting information from individual's application forms demonstrating how they met the essential criteria for the job. Whilst the Commissioner considers that the V&A could have interpreted the request, based solely on the wording of the request of 17 April, as a request for the essential criteria for the role rather than a request for evidence of how successful candidates met the criteria, the Commissioner accepts that the V&A's interpretation has not been challenged and he has therefore proceeded with his investigation on the basis that it is to cover the decision to withhold the ages of candidates and information on the application forms that demonstrate how candidates meet the required standards.

Reasons for decision

11. Section 41(1) of the FOIA states that information is exempt if it was obtained by a public authority from any other person and if disclosure of the information would constitute a breach of confidence actionable by that or any other person. The exemption is absolute and therefore not subject to a public interest test.

Was the information obtained from another person?

12. The focus of the Commissioner's investigation is the ages of candidates shortlisted for interview and information on the application forms that show how candidates meet the essential criteria for the job. This information was provided by applicants by giving their date of birth on the application form.
13. The information held by the V&A is therefore information obtained solely from a third party and the Commissioner therefore accepts that the first limb of section 41 is met and the V&A obtained the information from another person.

Would disclosure constitute an actionable breach of confidence?

14. In considering whether disclosure of information constitutes an actionable breach of confidence the Commissioner will consider the following:

- Whether the information has the necessary quality of confidence;
 - Whether the information was imparted in circumstances importing an obligation of confidence; and
 - Whether disclosure would be an unauthorised use of the information to the detriment of the confider.
15. The Commissioner finds that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial. The Commissioner accepts that the withheld information (ages of candidates and information from their application forms) is not accessible and may constitute the personal data of those individuals if not suitably anonymised. Furthermore the Commissioner does not consider the information to be trivial. He is therefore satisfied the information has the necessary quality of confidence.
16. The Commissioner has gone on to consider whether the information was imparted in circumstances importing an obligation of confidence. The V&A has explained that when candidates apply for positions they do so on the explicit understanding that their information will not be disclosed and their information will be processed for "the purposes of recruitment and selection, including the taking up of references". The date of birth is provided for statistical purposes and does not form part of the selection process and the whole application process is subject to an implied obligation of confidence on the part of the V&A when it receives this information from applicants.
17. The third element of the test of confidence involves the likely detriment to the confider if the confidence is breached. The information provided to the V&A is provided with an implied duty of confidence and is the personal data of the applicant. The V&A has provided the complainant with summaries of the ages of applicants shortlisted in bands but does not consider it would be reasonable to provide the exact ages of shortlisted candidates or any further information from the application forms as a disclosure of this data may be a disclosure of personal data and would constitute an actionable breach of confidence.
18. The test under section 41 of the FOIA is whether disclosure would constitute a breach of confidence actionable by the person who provided the information or any other person. The Commissioner considers the disclosure of the ages of the candidates and information submitted on the application form to demonstrate the essential criteria for the job could result in an actionable breach of confidence by candidates as not only could disclosure impact on the V&A's ability to recruit effectively in the future but it may also breach the Data Protection Act 1998.

Would a public interest defence be available?

19. As section 41(1) is an absolute exemption there is no public interest test. However, case law suggests that a breach of confidence will not be actionable in circumstances where a public authority can rely on a public interest defence. The duty of confidence public interest test assumes that the information should be withheld unless the public interest in disclosure exceeds the public interest in maintaining the confidence. The Commissioner has therefore gone on to consider whether there would be a defence to a claim for breach of confidence.
20. The complainant has argued that the disclosure of this information would not be detrimental to any of the concerned individuals assuming they could even be identified from the information. The complainant also considers that there is a need for disclosure as it may uncover evidence of wrongdoing in the recruitment process. However the Commissioner argues that the V&A have provided the complainant with as much information as it is reasonable to do so in response to a request of this nature.
21. The Commissioner generally recognises there is always some public interest in the disclosure of information held by public authorities to bring about more accountability and transparency however in this case he does not necessarily accept that this is the case. Whilst the information may be of interest to the complainant it is difficult to see there would be any wider public interest in the release of the requested information.
22. In considering this case the Commissioner has been mindful of the wider public interest in preserving the principle of confidentiality. It is in the public interest that the duty of confidentiality between confiders and confidants is preserved and the Commissioner considers it is widely accepted that the process of applying for jobs is a confidential process.
23. The V&A has argued that there is a strong public interest in preserving the confidentiality of the application and recruitment process and that disclosure of the requested information may result in the perception that the V&A does not treat information given to it in confidence appropriately and this in turn may affect its ability to conduct effective recruitment campaigns in the future.
24. Taking into account all the circumstances of the case, the nature of the relationships between the parties and the content of the withheld information the Commissioner considers the V&A would not have a public interest defence for breaching its duty of confidence. The Commissioner cannot conclude that there is a strong enough public interest argument to disclose the requested information. Therefore the

Commissioner finds that the requested information is exempt under section 41 and the V&A was correct to withhold this information.

25. As he has accepted that section 41 is engaged and provides a valid basis for refusing the request, the Commissioner has not gone on to consider the application of section 40(2).

Right of appeal

26. 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

27. 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.
28. 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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