

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2012

Public Authority: The Royal Armouries
Address: Royal Armouries Museum
Armouries Drive
Leeds
LS10 1LT

Decision (including any steps ordered)

1. The complainant requested information about the irregularities or potential irregularities relating to the suspension and subsequent departure of Paul Evans, Master of the Armouries. The Royal Armouries provided some information but withheld the remainder citing section 40(2) of the FOIA (personal information).
2. The Commissioner's decision is that the exemption was correctly applied. He requires no steps to be taken.

Request and response

3. The Royal Armouries is the United Kingdom's National Museum of Arms and Armour including artillery. On 10 July 2012 the complainant wrote to the Royal Armouries and requested information in the following terms:

"I would be grateful if you would provide the following under the terms of the FOI Act:

1) The information held on the irregularities or potential irregularities relating to Paul Evans that related to his suspension and subsequent departure as Master of the Armouries. Specifically this would be the information on the irregularities or potential irregularities themselves.

It is likely that the best way to provide this would be in the form of any reports drawn up at the time detailing the issues and I would like copies of any such reports. These may have been reported to the audit committee or any such similar part of the management structure or in reporting to the trustees.

2) I would also like a copy of any final report drawn up on the irregularities or potential irregularities and any other document which relates specifically to the conclusion of the investigation. Again this may have been reported to the relevant part of the management structure, to the trustees and/or to the DCMS.

3) Please provide the information on any payments made to Mr Evans on his departure and how these payments were arrived at by the Royal Armouries, ie detailing whether it was a year's salary or payments in lieu of pension contributions and so on."

4. The Royal Armouries responded on 2 August 2012. It provided some information within the scope of the request – namely information in relation to point (3) - but refused to provide the remainder. It cited the following exemptions as its basis for doing so:
 - section 40(2) personal information
 - section 41 information provided in confidence.
5. The Royal Armouries provided an internal review on 21 August 2012 in which it maintained its position with respect to section 40(2). It advised that, as it considered section 40 was engaged, it had not further considered the section 41 exemption.

Scope of the case

6. The complainant contacted the Commissioner on 4 September 2012 to complain about the way his request for information had been handled. He told the Commissioner that he disputes the Royal Armouries' view that none of the information can be processed fairly and that all of the information is the named individual's own personal data.
7. In correspondence with the Commissioner, he said:

"I am not seeking personal information about Mr Evans, I am seeking information about how the public body dealt with failings in its operation: there is a difference".

8. Referring to the potential irregularities that were described as having been picked up "*following an internal systems check*", when requesting an internal review the complainant told the Royal Armouries:

"it is highly likely that there is information surrounding this issue that involves the Armouries management systems – and possible failures in those systems. Such information ... could not reasonably be held to be Mr Evans' personal information".

9. In the Commissioner's view, the focus of the request is clearly the individual named in the request. He is satisfied that the Royal Armouries read the request objectively and that, while the complainant appears to have changed the emphasis of the request when requesting an internal review, the focus remained "*this issue*" - information on the irregularities or potential irregularities relating to Mr Evans.
10. The Commissioner considers the scope of his investigation to be the Royal Armouries citing of section 40(2) with respect to points (1) and (2) of the request.

Reasons for decision

Section 40 Personal information

11. Section 40 of FOIA provides an exemption from the disclosure of personal 'data' where the information is the personal information of a third party and its disclosure would breach one of the data protection principles of the Data Protection Act 1998 (DPA).

Is the requested information personal data?

12. The definition of personal data is set out in section 1 of the DPA. This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
13. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
14. The withheld information in this case relates to an internal investigation conducted by the Royal Armouries.
15. The complainant told the Commissioner:

"I asked for information about the irregularities that related to Paul Evans' suspension and departure as the most senior official. I did

not ask for information on any disciplinary process that had been followed. Some of the reports or information the public body holds may have been used as part of a disciplinary process – I don't know whether they did or did not – but I am asking for information on the 'irregularities' involved, reports which might have included lessons learnt and so on".

16. The Commissioner has considered whether the withheld information constitutes the personal data of the individual named in the request. He has also considered whether the withheld information constitutes the personal data of other individuals.
17. The Commissioner has recorded some of his observations about whether the requested information is personal data in the confidential annex to this decision notice. That confidential annex will be provided to the public authority only.
18. Having considered the withheld information, the Commissioner is satisfied that, in the context of the request, the withheld information constitutes information that falls within the definition of 'personal data' as set out in section 1(1) of the Data Protection Act 1998.
19. He has reached this conclusion on the basis that the information comprises personal data relating to Mr Evans who was the focus of the internal investigation as well as, to a limited extent, the personal data of other individuals involved in the investigation.

Would disclosure breach one of the Data Protection principles?

20. Having accepted that all 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 most relevant principle in this case is the first principle.

The first principle

21. In determining whether a disclosure is fair under the first principle of the DPA for the purposes of section 40 of the FOIA, the Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency, as well as any legitimate interests which arise in the specific circumstances of the case.

Reasonable expectations of the data subjects – other individuals

22. In this case, the Commissioner is satisfied that it is plausible for those who have some knowledge of the internal investigation to recognise

individuals either directly or indirectly as a result of the content and context of the withheld information.

23. The Commissioner considers the nature of the information itself and the consequences of it being released are factors which will help shape the expectations of the data subject as to whether their personal data would be disclosed to the public. In this case, the Commissioner considers their expectation would be that it would not be disclosed to the world at large.

Reasonable expectations of the data subject – Mr Evans

24. The complainant argued that the requested information should be disclosed on the basis that it relates to a senior official carrying out public functions and the public interest favoured disclosure.

25. The Royal Armouries told the complainant:

"The Information Commissioner has directed in matters of this nature that there is a recognised expectation that internal disciplinary matters will be private, even where such matters involve senior members of staff in the public sector."

26. The complainant told the Commissioner:

"I don't accept that any information which relates to a failing in a public body can effectively be withheld from the public (and therefore genuine accountability) on the grounds that it might have additionally related to a disciplinary process."

27. The Commissioner is of the opinion that disclosing personal data is generally less likely to be considered unfair in cases where the personal data relates to an individual's public or professional life rather than their private life. The threshold for releasing professional information will generally be lower than that in releasing information relating to an individual's private or home life.

28. He acknowledges that, in this case, details of Mr Evans' departure from the Royal Armouries were reported at the time. An official statement said:

"Paul Evans has resigned as Master of the Armouries and Chief Executive of the Royal Armouries with effect from 30 September 2008, in accordance with his contractual terms..."

He was suspended on 15 April 2008, pending the outcome of an internal investigation, which had not been completed before he tendered his resignation. The suspension did not constitute

disciplinary action and did not apply any assumption that he was guilty of any misconduct."

29. In the Commissioner's view, the fact that the information at issue was not disclosed at the time of that press release is, in his view, likely to contribute to the data subject's expectations at the time of the request that the information would not be made public in the future.

Consequences of disclosure

30. When considering the consequences of disclosure on the data subject, the Commissioner has taken into account the nature of the withheld information. He has also considered the fact that disclosure under freedom of information legislation is disclosure to the public at large and not just to the complainant.

31. The Royal Armouries told the complainant that disclosure:

"... would involve a significant invasion of his privacy and would constitute a use in a way that may have an unjustified adverse effect on him."

Balancing the rights and freedoms of the data subject with legitimate interests

32. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
33. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.

Accountability and transparency

34. In the Commissioner's view, financial transparency and accountability can improve public trust and confidence in public authorities. He therefore accepts that it can be appropriate to disclose information where to do so would help determine whether public authorities are acting appropriately.
35. The complainant brought to the Commissioner's attention the fact that more than one senior official at the Royal Armouries has resigned or been suspended in the space of a few years. He told the Commissioner:

"the current suspension underlines why accountability for the first case is important as it is reasonable for the public to question how

the RA could find itself in the same situation with its most senior employee within a relatively short period of time”.

36. Arguing strongly in favour of disclosure in this case he said that:

“If a public body does not subject itself to the fullest accountability and transparency, things can keep going wrong”.

37. He also argued:

“In short, the public has no idea whether what the problems were have been dealt with or accounted for at all. It is submitted that is exactly the kind of situation the FOI Act should help to avoid and that transparency when things go wrong is a vital area for any public body”.

38. The Commissioner acknowledges that the issue under consideration in this case raises issues in relation to accountability and transparency.

Conclusion

39. In considering whether it would be fair to disclose the withheld information, the Commissioner’s investigation has to take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions. Fairness to the named individual must therefore be considered when deciding whether or not the information requested is suitable for disclosure

40. In reaching a decision in this case, the Commissioner has also taken into account the fact that the withheld information relates to an incomplete internal investigation.

41. The Commissioner, having viewed the withheld information, is satisfied that the reasonable expectations are a persuasive factor in indicating that the release of this information would be unfair.

42. It follows that the Commissioner finds that the disclosure of the disputed information would have contravened the fairness element of the first data protection principle and that section 40(2) of FOIA was therefore correctly engaged.

43. As section 40 is an absolute exemption there is no need to consider the public interest in disclosure separately.

Right of appeal

44. 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

45. 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.
46. 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

Jon Manners
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