

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 23 April 2013

Public Authority: Northern Ireland Transport Holding Company
Address: 22 Great Victoria St
Belfast
BT2 7LX

Decision (including any steps ordered)

1. The complainant requested information relating to staff salaries. The Northern Ireland Transport Holding Company (NITHC) provided some information, but refused to disclose standard salaries under sections 22, 40(2), 41 and 43(2) of the FOIA. The Commissioner's decision is that NITHC was entitled to refuse this part of the request under section 40(2). The Commissioner does not require any steps to be taken.

Background

2. NITHC was established under the Transport Act (NI) 1967 to oversee the provision of public transport in Northern Ireland. NITHC wholly owns three subsidiary companies: Citybus, NI Railways and Ulsterbus. These subsidiaries deliver public transport services under the brand name Translink.
3. In this case the complainant made her request to Translink, although the information is held by NITHC. Therefore NITHC is the public authority for the purposes of the FOIA, and this decision notice refers to NITHC throughout.

Request and response

4. On 9 July 2012 the complainant submitted an information request to NITHC. The complainant requested information relating to NITHC employees broken down by grade or band. For each band the complainant requested the following information:

- No of staff at this grade
 - Base normal salary
 - No of staff in each PRP (appraisal) rating:
 - Rating 1
 - Rating 2
 - Rating 3
 - Rating 4
 - Rating 5
 - No of staff receiving company car
 - No of staff receiving free fuel
 - Any additional fringe benefit (eg pension)
5. NITHC responded to the complainant on 15 August 2012. NITHC provided salary information relating to 5 senior employees but did not cite any exemptions under the FOIA in relation to the remainder of the requested information.
6. The complainant requested an internal review on 19 August 2012, and NITHC provided the outcome on 31 August 2012. At this stage NITHC provided some further information, and cited the exemptions at sections 40 and 41 of the FOIA in relation to the withheld information.
7. The complainant contacted the Commissioner on 11 September 2012 to complain about the way her request for information had been handled. In particular the complainant was of the view that NITHC ought to have provided her with all of the requested information.
8. As a result of the Commissioner's intervention NITHC disclosed further information to the complainant on 6 December 2012. NITHC advised the complainant that it did not hold "base normal salaries" but accepted that what it called "standard salaries" corresponded to the complainant's description of the requested information. However NITHC advised that its standard salaries were exempt from disclosure under sections 22 and 43 of the FOIA, in addition to the exemptions already cited. NITHC provided the remainder of the requested information except for the number of staff within one band, as this comprised fewer than 10 people and NITHC was concerned that individuals might be identifiable.

Scope of the case

9. The complainant remained dissatisfied and asked the Commissioner to make a formal decision in the matter. The complainant confirmed that she was content to limit her complaint to the standard salaries which had been withheld under sections 22, 40(2), 41 and 43 of the FOIA.

10. Therefore the scope of the case is to decide whether or not NITHC was entitled to rely on the exemptions claimed in order to withhold the standard salaries.

Reasons for decision

Section 40(2): third party personal information

11. Section 40(2) of the FOIA states that a public authority is not obliged to disclose information if to do so would:
- constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).

Would disclosure of the requested information constitute a disclosure of personal data?

12. The DPA defines personal information as:

"...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 of the data controller or any person in respect of the individual."

13. The withheld information in this case comprises the standard salaries, which is the salary paid to individuals within respective bands. Each standard salary is an exact figure rather than a scale (ie, £X rather than £X - £Y). Although the withheld information itself does not contain staff names the Commissioner accepts that it is personal data, as the individuals in question could be identified by their banding and other information held by NITHC. An individual's salary is their personal data because it is specific to them, even if another individual earns an identical salary. The salary information in isolation may be unlikely to identify an individual, but combined with other information held by NITHC such as employee names, job titles and details of the band each individual is in, these individuals could be identified.

Would disclosure of the requested information breach any of the data protection principles?

14. NITHC has argued that disclosure of the standard salaries would breach the first data protection principle in that it would be unfair.

The first data protection principle

15. The first data protection principle has two main components. They are:

- the requirement to process all personal data fairly and lawfully; and
- the requirement to satisfy at least one DPA schedule 2 condition for the processing of all personal data.

Would disclosure of the information be fair?

16. 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 individuals. He has then balanced these against the general principles of accountability, transparency and legitimate public interest in disclosure.

Expectations of the individuals concerned

17. NITHC advised the Commissioner that most of its employees would not expect that information relating to their salary would be made public, although some information relating to its most senior employees had already been disclosed to the complainant.

18. The Commissioner has produced guidance on information relating to public authority employees¹. This guidance recognises that public authority employees should expect that some information about them may be published, as there is a legitimate public interest in accountability and transparency.

19. NITHC also confirmed that at the time of the request its employees would have limited knowledge of their own banding and those of their colleagues. In this context NITHC argued that staff would not expect that such information would be disclosed into the public domain. NITHC advised the Commissioner that it does not currently publish salary

1

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

information in its recruitment advertisements, which adds weight to its argument that standard salaries are not widely known nor discussed.

Consequences of disclosure to the individuals

20. The Commissioner's guidance notes that disclosure of an individual's exact salary would be more intrusive than disclosing a salary band or pay scale. Therefore the Commissioner accepts that such disclosure would be likely to cause distress to an individual, and that this will be unfair unless exceptional circumstances apply. The Commissioner has addressed this particular issue in a previous decision notice.²

General principles of accountability, transparency and legitimate public interest in disclosure

21. The Commissioner's guidance states that salary bands or pay scales should be considered for routine or proactive publication. This is because there is a legitimate public interest in the public being informed as to how public posts are remunerated. Public authorities are expected to demonstrate accountability and transparency by informing the public how it spends public money.
22. The complainant argued that she did not want to identify individuals' salaries, but rather sought information relating to general terms and conditions of employment which may be disclosed proactively by other public sector organisations.

Conclusion

23. The Commissioner understands the complainant's argument and has in some previous cases found that salary information should be disclosed. In this case however the Commissioner notes that NITHC does not hold pay scales, as its pay structure currently indicates a specific salary for all individuals employed at each band. The Commissioner recognises that this is an unusual situation for a public authority, but notes that NITHC is in the process of restructuring its pay system and intends to make information available to staff and then to the public as the new system is implemented.
24. In light of the above the Commissioner finds that disclosure of the withheld information would be unfair, and would thus contravene the

² http://www.ico.org.uk/~media/documents/decisionnotices/2011/fs_50307784.ashx

first data protection principle. As the Commissioner is satisfied that the exemption at section 40(2) is engaged in respect of all the withheld information he is not required to consider further the other exemptions claimed.

Right of appeal

25. 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

26. 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.
27. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF