

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 November 2013

Public Authority: Peterborough Regional College (the "College")
Address: Park Crescent
Peterborough
Cambridgeshire
PE1 4DZ

Decision (including any steps ordered)

1. The complainant made a request to the College for information relating to a named individual's employment details. The request included the job title and the job position end date of the individual prior to February 2004 in which she was employed within a section of the College.
2. The College responded and refused to provide the requested information to the complainant. It stated that the information was withheld under section 40(2) of the FOIA. It explained that this applies as the information requested was personal data of a third party ([name withheld]) and disclosure would breach one or more of the Data Protection Principles of the Data Protection Act 1998 (the "DPA").
3. The Commissioner's decision is that the College is entitled to rely on section 40(2) of the FOIA as a basis for refusing to provide the complainant with the information in question.

Background

4. By way of background the request focuses on the request for any recorded information regarding the job title and the job position end date of a named individual prior to February 2004.
5. The Commissioner noted that the complainant had previously made a similar request to the College and a complaint to the Commissioner. This resulted in a decision notice dated 24 February 2011 (reference FS50239091) and also an appeal to the Information Tribunal dated 21

March 2011 (reference: EA/2011/0078) to dispute the Commissioner's findings.

6. The Notice of Appeal showed evidence before the Commissioner that the named individual's job title is "*Administration Assistant*" and has been since 2004. It was emphasised in the appeal "*the College does not hold [name withheld] job title before that date*".
7. The Tribunal struck out the appeal on the basis that it saw no evidence to dispute the claim that the College did not hold further information.

Request and response

8. On 7 January 2013, the complainant wrote to the College and requested information in the following terms:

"I would be obliged if you could provide me with full details, regarding the Administrative position in which [a named individual] was employed at Peterborough Regional College, prior to February 2004, including the job title and the exact date in which her employment in this particular position ended, including the month and year".

9. On 24 January 2013 the College responded and it explained the information was withheld under section 40(2) of the FOIA. The College informed the complainant that the requested information is personal data of a third party and disclosure would breach one or more of the Principles of the Data Protection Act 1998 (the "DPA"). The College also provided the complainant with a website address in which guidance on the application of section 40 of the FOIA can be found on the Ministry of Justice website.
10. On 30 January 2013 the complainant made a request for an internal review.
11. On 18 February 2013 the College upheld its original position. It confirmed that it was satisfied that the information requested is the personal data of a third party.
12. On 11 March 2013 the complainant sought to further appeal the decision.
13. On 19 March 2013 the College provided further information in relation to the request. It advised the complainant that the named individual had authorised the College to inform the complainant that there was a typing error on the CV to which he referred to and it provided the complainant with the correct dates. The College asked the complainant to confirm

whether he wished to continue with his appeal against the College's original decisions not to provide the requested information.

14. On 25 March 2013 the complainant confirmed to the College that he wished to continue with a further appeal.
15. On 3 April 2013 the College reviewed the decision and maintained its original decision. It cited section 40(2) of the FOIA and confirmed that the College considered the requested information to be the personal data of the named individual.
16. On 11 April 2013 the complainant made a complaint to the Commissioner about the College's decision not to release the information he requested.

Scope of the case

17. The Complainant contacted the Commissioner on 11 April 2013 to complain about the way his request for information had been handled, in particular that the information requested had been withheld.
18. During the investigation the complainant confirmed that, *"The information I am seeking with regard to this request, relates to the correct job title of the named employee before February 2004 and the exact date in which her employment with this particular job title came to an end."*
19. Taking this into account the Commissioner wrote to the complainant on 17 July 2013 and confirmed that the scope of the case would be limited to information relating to the correct job title of the named employee before February 2004 and the exact date in which her employment with this particular job title came to an end.
20. During the course of the investigation the College informed the Commissioner that it only held a limited amount of information that would fall under the request. This information was withheld under sections 40(2)(a)(i) of the FOIA.
21. Therefore the Commissioner has considered whether any further relevant information is held. He has also considered whether the College was correct to apply section 40 (2) of the FOIA.

Reasons for decision

Section 1

22. The College has confirmed that it holds only a limited amount of information that would fall under the scope of the case.
23. The Commissioner has first considered whether the College holds any further information that would fall under the scope of the request.
24. During the course of the investigation the College explained that information relating to the named individual's role prior to February 2004 would have been included in its accounting records. It went on to state that it retains its accounting records for a period of six years. Therefore, it no longer held this information. It also confirmed that it had searched the individual's personal file which is held in its HR department and had also conducted a search of records in the Finance department.
25. Taking this explanation into account the Commissioner is satisfied that no further information is held.

Section 40(2) – Requests for third party personal data

26. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
27. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.

Personal data

28. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. 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, had them as its main focus or impacts on them in any way.
29. The Commissioner considers the withheld information relates to a named individual. This is information which relates to a living individual from which they could be identified.

30. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of the FOIA are met. The relevant condition in this case is section 40(3)(a)(i), where disclosure would breach any of the DPA principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first DPA principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in schedule 2 should be met.
31. 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.
32. In the College's response to the complainant, it stated that in providing the requested information, this would breach the first principle of the DPA.
33. The College concluded in its response that disclosure would not be 'fair' to the individual involved who would have no expectations that this personal information would be made publicly available. In addition, the College stated that it could not identify any appropriate conditions in either schedule 2 or 3 that would justify disclosure.

The Commissioner's response to fairness

34. The Commissioner has first gone onto consider whether the disclosure of this information would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure, (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectation of the data subject

35. The College stated that the named individual has a strong expectation that the requested information would be kept confidential. It explained that the information which relates to the individual constitutes personal data relating to their employment details.
36. The College stated that as an employee of the College, the individual reasonably expects that the College will not disclose the terms of their employment without their consent.

37. The College informed the Commissioner that it discussed the complainant's request with the individual and they did not consent to the disclosure of their personal data to the complainant. The College also explained how the complainant is known to the individual and that he had requested access to their personal data on previous occasions over many years.
38. Given that the requested information is personal data, the Commissioner considers that it would be within the reasonable expectations of the individual for this information to not be put into the public domain. In reaching this view the Commissioner has also noted that the individual is a relatively junior member of staff.

Would disclosure cause damage and distress to the data subject?

39. The Commissioner notes that the information in this case is personal data relating to the individual's employment details.
40. The Commissioner would generally expect this information to be confidential. Therefore he is satisfied that the disclosure of this information would cause damage and distress to the individual.

The legitimate public interest

41. The complainant had expressed to the Commissioner that he was dissatisfied with the response from the College. He believes that the College has not complied with his request.
42. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest 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 complainants) accessing the withheld information.
43. The Commissioner considers that there is a legitimate public interest in openness and transparency. However, he notes that in this case the focus of this information is a junior member of staff at the College. Taking this and all the factors of the case into account, the Commissioner considers that the legitimate public interest in the disclosure of the information in question is limited.
44. The College has confirmed that the request relates to the individual's position before they were employed by the College and it believes that the information requested is personal data relating to an individual data subject. The College stated that disclosure of the information would breach the first data protection principle, which requires the fair and lawful processing of personal data.

45. Taking into account the reasonable expectations of the individual, and the potential impact on them if their personal data were to be disclosed, the Commissioner considers that it would be unfair to disclose the requested information. Whilst he accepts that there is a limited legitimate interest in the disclosure of this information, he does not consider that this outweighs these other factors. Therefore it is the Commissioner's decision that section 40(2) of the FOIA was applied correctly in this case.

Right of appeal

46. 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

47. 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.
48. 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

Rachael Cragg
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