

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2013

Public Authority: City College Peterborough
Address: Park Crescent, Peterborough
PE1 4DZ

Decision (including any steps ordered)

1. The complainant has requested information relating to the qualifications and experience of two members of staff from City College Peterborough (the college).
2. The Commissioner's decision is that the college has correctly applied section 40(2) of the FOIA to the withheld information.
3. The Commissioner does not require the college to take any steps as a result of this decision notice.

Request and response

4. On 25 March 2013, the complainant wrote to the college and requested information in the following terms:
 1. Full details of the qualifications (including name of college/university, examining board/body and dates) of [named individual] and [named individual].
 2. Full details of employment/experience (including names of institutions, levels taught and dates) of [named individual] and [named individual].
5. The college responded on 3 April 2013. It stated that the information was exempt under the FOIA as the individuals had refused to give their permission for it to be shared with a third party.

6. The complainant requested an internal review on 8 April 2013. On 29 April 2013 the complainant contacted the Commissioner as she had not received any further response to her request.
7. The Commissioner contacted the college on 21 May 2013 to advise that it should carry out an internal review of its decision.
8. Following further correspondence from the Commissioner, on 21 October 2013, a further refusal notice was issued by Peterborough Council on behalf of the college. Therefore for the purpose of this Notice it will refer throughout to both the council and the college as the relevant public authority where appropriate. In its further response, the council stated that with regard to part 1 of the request, it considered the information was exempt by virtue of section 14(2) and part 2 of the request was exempt by virtue of section 40(2). However, in its response to the Commissioner, the council stated that it now considered the information requested at part 1 to be exempt by virtue of section 14(1).

Scope of the case

9. The complainant contacted the Commissioner on 25 June 2013 to complain about the way her request for information had been handled, and that there had been no response to her request for an internal review.
10. The Commissioner considers the scope of this case to be to determine if the council has:
 - a) Correctly applied section 14(1) to the information requested in part 1 of the request.
 - b) Correctly applied section 40(2) to the information requested in part 2 of the request.
 - c) Handled the request in accordance with the FOIA

Reasons for decision

Section 40(2) – personal information

11. Section 40(2) of the FOIA provides an exemption for information that is the personal data of an individual other than the requestor and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process. First, the information in question must be the personal data of an individual aside from the requestor. Secondly, disclosure of that personal data must be in breach of at least one of the data protection principles.

Is the requested information personal data

12. The definition of personal data is set out in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

“personal data’ means 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”.

13. Both parts of the request are specifically for information about named individuals. Clearly, therefore, this information would both relate to and identify the individuals named in the request. It is the Commissioner’s view that all the information falling within the scope of the request would be the personal data of the individuals named in the request.

Would disclosure breach one of the data protection principles?

14. Having accepted that 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.
15. The college believes that disclosure of this information would not be fair or lawful because it would breach the first data protection principle as outlined in Schedule 1 of the Data Protection Act 1998.
16. The first data protection principle has two components:
 - personal data shall be processed fairly and lawfully; and

- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair

17. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. 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 individual. He has then balanced these against the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

Expectations of the individuals concerned

18. The Commissioner has considered the reasonable expectations of the individuals in terms of what would happen to their personal data. These expectations can be shaped by factors such as the individuals' general expectation of privacy and also the purpose for which they provided their personal data.
19. The personal data requested relates to the professional qualifications and experience of the interviewers for a part-time tutor post. The council has advised that the individuals concerned are not of a sufficient level of seniority to warrant disclosure of the requested information.
20. It is the Commissioner's view that, regardless of the seniority of the individuals, in addition to the general expectation of privacy they would have expected that material provided for the specific purpose of deciding on their own original appointments would not be disclosed to the public. Disclosure of information under FOIA is disclosure to the public at large and not just to the complainant. The Commissioner recognises that it is reasonable to expect that a responsible public authority will not disclose certain information, and that it will respect confidentiality.
21. The college stated that the two employees had a reasonable expectation that their qualifications and experience would not be disclosed without good cause. In addition, they did not consent for their personal data to be disclosed in response to the Freedom of Information request.
22. In summary therefore, the Commissioner is satisfied that it is the reasonable expectation of an employee that the information they provide as part of the recruitment process will be treated as private and will not be passed on to third parties without their consent.

Consequences of disclosure

23. In light of the nature of the information and the reasonable expectations of the individuals concerned, as noted above, the Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the individuals in this case. The Commissioner considers that it may be upsetting or embarrassing to some individuals to have such details disclosed to the world, and in particular to their friends, family or work colleagues.
24. The college maintains its position that all of the withheld information is personal data. It also considered that some of the information constituted 'sensitive' personal data. The Commissioner notes that the information *requested* relates to qualifications and places of employment rather than ethnicity or absences, therefore he is of the view that this is not sensitive personal data.

General principles of accountability and transparency

25. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure.
26. However, the Commissioner considers that the public's interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the members of staff concerned. The Commissioner accepts the council's contention that these members of staff would have a strong expectation of privacy and confidentiality.
27. The Commissioner has considered whether there is a legitimate interest in the public accessing the withheld information. The Commissioner notes that the complainant has personal reasons for requesting the information. The complainant believes that she has a legitimate interest in disclosure of the requested information in order to satisfy herself whether the recruitment process was undertaken fairly, with appropriately qualified interviewers.
28. The Commissioner accepts that there is a wider public interest in transparency of public sector organisations and also a more specific public interest in knowing that those who are appointed to relatively senior posts within the public sector are properly qualified to fulfil the requirements of those posts. However, the Commissioner does not consider that the individuals concerned are of such a senior level to warrant disclosure. Furthermore, he does not consider that the public interests would be served by the disclosure of the withheld information.

There is no legitimate interest in the public in accessing the withheld information that would outweigh the potential damage and distress caused by disclosure of that information. Therefore the Commissioner is unable to conclude that disclosure of the withheld information is necessary to meet a legitimate public, rather than personal, interest.

29. In view of the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure of any of it would breach the first data protection principle as it would be unfair to the individuals concerned. As the Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met. The Commissioner therefore upholds the college's application of the exemption provided at section 40(2) of the FOIA.
30. As the college is of the view that *all* the withheld information is personal data, and the Commissioner concurs, he has not gone on to consider the application of section 14 to part 1 of the request.

Other matters

31. The Commissioner was concerned that the request did not appear to have been dealt with appropriately under the FOIA. For example, the college did not provide a sufficient explanation in its refusal notice to the initial request. In addition, no internal review was carried out despite the complainant asking for this to be undertaken.
32. Following correspondence from the Commissioner the council explained that the initial response to the complainant from the college had not been dealt with by the FOI team. The council provided assurances that it was implementing new procedures to make sure FOI requests are properly channelled in future.

Right of appeal

33. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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