

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 January 2015

Public Authority: The Planning Inspectorate
Address: 4/08 Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Decision (including any steps ordered)

1. The complainant has requested information with regards to the Planning Inspectorate's Exceptional Achievement Scheme (EAS). The Planning Inspectorate initially responded refusing the request under section 40 of the FOIA. Following an internal review, it advised that it did not hold information to some of the request, some information was already available and the remaining was being withheld under section 40 of the FOIA.
2. During the Commissioner's investigations, the Planning Inspectorate confirmed it was relying on section 40(2) of the FOIA to withhold the information it has.
3. The complainant was not satisfied with the Planning Inspectorate withholding the information under section 40(2) of the FOIA.
4. The Commissioner's decision is that the Planning Inspectorate was correct to rely on section 40(2) of the FOIA to withhold the information it has.
5. The Commissioner does not require the Planning Inspectorate to take any steps.

Request and response

6. On 21 May 2014 the complainant requested information of the following description with regards to the Planning Inspectorate Exceptional Achievement Scheme (EAS):

"1) For each of the three rounds, please can a breakdown be provided for each grade stating how many nominees received financial awards, how many received a letter of commendation but no financial award, and how many received neither.

2) I note that a breakdown of staff by grade who received financial awards was previously issued by PINS for performance pay. Therefore, to not provide comparable data for EAS would be a change of policy. Please can an example of correspondence setting out the reasoning behind this different approach be provided.

3) The EAS nomination form states that, "Names of successful nominees, together with a brief summary of the achievement will be published on PINSnet." A reasonable view of a situation where some nominees receive several hundred pounds of award, and the remainder receive no financial awards, would be that the successful nominees are those who received the financial awards.

Therefore, please can a list of the names, together with a brief summary of their achievement, be provided for those nominees who received financial awards for each of the three rounds.

4) I note a decision has been made to view all nominees (for the purposes of data publication) as being successful, regardless of whether they received a financial award or not. Please can an example of correspondence setting out the reasoning behind this decision be provided.

5) My understanding of the Data Protection Act is that, as nominees were clearly informed on the nomination form that details of successful nominees would be published, there would be nothing preventing names of nominees who received financial awards (who would be considered "successful") then being published. Please can an example of correspondence setting out the reasoning for not publishing this information be provided.

6) By implication, nominees who did not receive financial awards would reasonably be considered unsuccessful. Please can an example of correspondence setting out why (for the purposes of

publication) these nominees were considered successful be provided.

7) Knowledge of which activities were viewed as exceptional, and of which nomination wording was considered persuasive, gives those aware of this information a potential advantage when submitting nominations or advising on the submission of nominations by other staff. Likewise, those unaware of this information are at a potential disadvantage. Given that the majority of staff have so far been prevented from receiving this information, please can details be provided of safeguards put in place to ensure that the small number of staff aware of this information were prevented from using it to their own (and others) financial benefit."

7. On the 18 June 2014 the Planning Inspectorate responded. It advised that it could not provide the information as it would breach the Data Protection Act 1998 (DPA)
8. The complainant requested an internal review on 14 July 2014. The Planning Inspectorate provided its internal review on the 11 August 2014. Its response explained that for parts 2, 4, 5 and 6 of the request, it does not hold the correspondence requested.
9. For part 7 of the request it advised that the information published about the scheme provides details of how the scheme operates.
10. For parts 1 and 3 of the request, the Planning Inspectorate refused the information, relying on section 40 of the FOIA – Personal data.

Scope of the case

11. The complainant contacted the Commissioner on 18 September 2014 as he was not satisfied that the Planning Inspectorate refused the information under section 40 of the FOIA.
12. During the Commissioner's initial investigations, the Planning Inspectorate confirmed that the information withheld under section 40 of the FOIA, was withheld under section 40(2) of the FOIA – Third party personal data.
13. The Commissioner considers the scope of the case is to determine whether the Planning Inspectorate has correctly refused the information it has under section 40(2) of the FOIA for parts 1 and 3 of the complainant's request.

Reasons for decision

Section 40(2) of the FOIA

14. Section 40(2) of the FOIA states that:

"Any information to which a request for information relates is also exempt if-

a) It constitutes personal data which do not fall within subsection (1), and

b) either the first or the second condition below is satisfied."

15. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

Is the Withheld information personal data?

16. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.

17. The Planning Inspectorate has provided the Commissioner with a copy of the withheld information.

18. It may be helpful to firstly explain that The Planning Inspectorate has a reward scheme to identify exceptional achievement in the department, which employees can either be nominated for or nominate themselves for.

19. During this process an employee may receive either a commendation – a written acknowledgement of the achievement, or they may receive a commendation with a financial reward. An employee is considered successful by the department regardless of whether they receive either a commendation or a commendation with a financial reward.

20. The Planning Inspectorate has published on its intranet the total amount of employees for each grade that has received either a commendation only or a commendation with a financial reward, but it has not distinguished how many employees received which one. So you cannot identify how many received a financial reward.

21. It also published the names of the staff that were considered successful with a description of their exceptional achievement.

22. On considering this, the Commissioner is satisfied that the withheld information for part 3 of the complainant's request does fit the definition of personal data as set out in the DPA. As it is a request for the names of those who received a financial reward.
23. For part 1 of the complainants request some of the information, initially, it would not appear to be personal data as you would not be able to identify who received a financial award and who received only a commendation with just this information alone.
24. However, if the requested information were provided, individuals could be identified if used alongside the other information that is available on the Planning Inspectorate's intranet - that other information being the names of all employees who received at least a commendation and employee grades.
25. Not all of this information on the intranet is readily available to the general public, but it is still readily available to the Planning Inspectorates members of staff.
26. Already knowing how many employees received at least a commendation across each grade, if the total number of employees that received a financial award for each grade was provided as requested in part 1 of the request, it would be possible to identify the names of the employee's that received a financial award.
27. Also if the information were provided and the figures showed 0 employees received only a commendation but 7 received a commendation and a financial reward, then again from the information available on the Planning Inspectorate's intranet which gives the names of those that received either a commendation or financial reward, it could be easily established which 7 employees received a financial reward.
28. On this the Commissioner is satisfied that the withheld information to the complainant's question 1 all constitutes personal data of third parties due to other information that is in the possession of the data controller making individuals who received a financial reward identifiable.
29. The Commissioner notes that the complainant has stated that he does not want to know how much of a cash reward was received (as these are given at £300 or £600 amounts, allowing one person to receive up to £900 over the 3 stages), just the number of people who received a cash award. However, the Commissioner considers that if individuals can be identified as receiving a cash award, regardless of the specific amount, this still constitutes the personal data those individuals.

Would disclosure contravene any of the Data Protection Principles?

30. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

Reasonable expectations

31. The withheld information identifies employees who received financial awards on top of a commendation within the Planning Inspectorate under its EAS. It has explained to the Commissioner that the purpose of the EAS is to recognise and celebrate exceptional achievement within its department where employees or teams have gone above their normal expected roles.
32. The Planning Inspectorate does this by publishing, on its intranet, the names of those whose nominations have been successful, regardless of the award given. This scheme has been designed and communicated to staff on this basis.
33. The Planning Inspectorate has told the Commissioner that it explicitly informs staff members that details of the actual reward received will not be published on the intranet. It also does not consider that level of disclosure, requested by the complainant, to be necessary for the purpose of the scheme.
34. The Commissioner, on viewing the information notes that the only information given is the employees who got a commendation, with a summary of what the commendation was for. It does not go on to identify who got a financial award on top of the commendation.
35. The Planning Inspectorate has confirmed to the Commissioner that the information relates to employees' public lives as it relates to exceptional achievements within the department and relates specifically to employees rather than being primarily about a public facing duty.
36. The Planning Inspectorate consider that the employees nominated have a reasonable expectation that their name and achievement (i.e what they have done to be nominated) will be published internally. However, it does not consider that they would have an expectation that the names of those who received a financial award, on top of a commendation, would be identified internally – it has informed the Commissioner that its guidance on this is explicit in that the specific reward will not be

published internally. And although its guidance does not say anything about whether it would be made publicly available or not, it would be reasonable to assume that the same applies.

37. The Planning Inspectorate, in respect of considerations to the seniority of the staff with regards to its planning inspectors, is of the opinion that although planning inspectors have an obvious public role, with their identities included in published appeal decisions, their expectations are considered to be identical to administrative staff with regards to the EAS and employee data as a whole.
38. The Commissioner is of the opinion that the more senior a member of staff, the expectations on remuneration being exempt from disclosure decreases, and this should be balanced against the individual circumstances of the case.

Consequences of disclosure

39. The Planning Inspectorate has told the Commissioner that although it is unable to identify any damage or distress to individual employees, due to the number of employees involved, it does consider on a whole that given the employee's expectations, to how the information requested would be used, releasing the information requested is likely to erode employees' trust in the Planning Inspectorate and its ability to process their personal data fairly. Especially as there is a reasonable expectation that the information being withheld would not be divulged.
40. The Commissioner agrees with the position of the Planning Inspectorate in the above paragraph, in that the employees would have reasonable expectations that details of who received a financial reward would not be disclosed and that to do so could have a likely consequence in reducing employee's trust in the Planning Inspectorate when it comes to handling their personal data.
41. Although the Commissioner agrees with the Planning Inspectorates position on the consequences of disclosure. He needs to balance this and the reasonable expectations of the employees against the legitimate interests in disclosure.

Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure.

42. The Planning inspectorate acknowledges in its responses to the Commissioner's investigations that there is a legitimate interest in

disclosing information regarding payments made to members of staff and has made the Commissioner aware that reference is made to the EAS in its published annual reports¹ at section 10, page 29. Also that the total amount paid under the EAS is aggregated into its published staff costs.

43. The Commissioner also sees that there is a legitimate interest in disclosing information regarding payments.
44. Although the Commissioner has found the information requested to be the personal data of individual employees, with regards to it identifying who received a financial reward, if it were released. The Commissioner does consider the seniority of the employees to be a factor with regards to remuneration.
45. The Planning Inspectorate, has told the Commissioner that it considers all the employees, whether administrative staff or Planning Inspectors, carry identical expectations as to how their data being withheld in this case.
46. However, the Commissioner recognises that there is strong public interest and scrutiny about how public money is being spent within public authorities and with this, the more senior a person you are within the authority, the more expectation there is on public authorities to disclose those employee's remuneration.
47. On this consideration though, the Commissioner also acknowledges that the EAS scheme is only open to employees below its Senior Civil Service staff members, which is stated in its published annual reports.
48. Another consideration for the Commissioner is that the commendations are there to recognise exceptional achievements or activities of staff members outside the normal expectations of their grade and role.
49. It appears to be there to encourage employees to go beyond the expectations of their job role. So providing the requested information which would reveal who got a commendation to those who got a commendation and a cash reward may discourage some people from wanting to nominate themselves or be nominated for a commendation if they were identifiable as receiving a cash award amongst colleagues and

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324434/PlanInspAnnRep2013-14-web.pdf

so may result in some not striving to or declining to be a part of the EAS considerations.

50. At the same time, the Commissioner sees that this may not necessarily be the case for all of the employees.
51. The complainant has stated that there would be legitimate public interest in being able to distinguish whether the allocation of cash awards made to civil servants is done in a fair manner. Also there is an interest in individual's eligible to take part in the scheme, to know who received cash awards, and more importantly, what the cash awards were made for bringing a level of transparency to the EAS, which the complainant considers is currently lacking.
52. The Commissioner notes from reading the section about the EAS in its published annual reports that the committee of the EAS scheme was made up of a mix of staff across the organisation with membership rotated annually. This would alleviate some of the public interest in knowing whether the rewards were distributed fairly.
53. The Commissioner acknowledges that employee's may be interested to know what types of achievements received cash rewards as opposed to just a commendation. But the Commissioner has to consider whether this adds enough weight to releasing information that has the potential to identify individual's personal data about whether or not they received a cash reward on top of a commendation.
54. Also the fact that the total amount paid under the EAS is aggregated into its published staff costs goes some way in satisfying any legitimate public interest in public spending.
55. After considering the above, the Commissioner has determined that any legitimate public interest in disclosure does not outweigh the individuals' rights to privacy with regards to their personal data.
56. Therefore, the Commissioner's decision is that the Planning Inspectorate was correct to rely on section 40(2) of the FOIA to withhold the information it has at parts 1 and 3 of the request.

Right of appeal

57. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

58. 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.
59. 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

Andrew White
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