

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 June 2015

Public Authority: King's College London
Address: Strand
London
WC2R 2LS

Decision (including any steps ordered)

1. The complainant requested salary information relating to thirty members of academic staff within the King's College London (KCL) philosophy department. KCL refused to disclose this information and cited the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that section 40(2) is engaged and so KCL was not obliged to disclose this information.

Request and response

3. On 5 September 2014, the complainant wrote to KCL and requested information in the following terms:

"1. The Salaries of all 30 permanent academic staff members in the Philosophy department.

I do not need their names and I do not want their grade scale: I want their specific annual salaries.

2. I would also like to know the most recent pay-rises given this year given to each permanent staff member in the Philosophy department."

4. KCL responded on 30 September 2014. At this stage it refused the request under section 21 (information accessible by other means) of the FOIA and referred the complainant to responses to earlier information requests. Those earlier responses, however, actually refused to disclose the requested information.

5. The complainant responded on 3 October 2014 and requested an internal review. KCL responded with the outcome of the internal review on 29 October 2014. The refusal of the request was upheld, but at this stage KCL cited the exemptions provided by sections 40(2) (personal information) and 43(2) (prejudice to commercial interests) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 2 November 2014 to complain about the refusal of his information request. The complainant indicated that he did not agree with the exemptions cited by KCL as he did not agree that the anonymous salary information that he had requested could be linked to any identifiable individual.
7. In a recent decision of the First-tier Tribunal (Information Rights)¹, KCL was ordered to disclose information on some senior staff members in bands of £10,000. The facts of the Tribunal case differed from this case, most significantly in that the request in this case was for exact salaries, rather than £10,000 bands. Those differences mean that the conclusion of that Tribunal is not of direct relevance here.

Reasons for decision

Section 40

8. KCL cited the exemption provided by section 40(2) of the FOIA. This section provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption involves two stages; first, whether the information in question constitutes personal data and, secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.
9. As to whether this information does constitute personal data, the definition of this is given in section 1(1) of the Data Protection Act 1998 (DPA):

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1390/Kings%20College%20London%20EA.2014.0054%20\(30.09.14\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1390/Kings%20College%20London%20EA.2014.0054%20(30.09.14).pdf)

"personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data or other information which is in the possession of, or is likely to come into the possession of, the data controller".

10. The complainant's request is for salary information only – compliance with this request would not involve the disclosure of information that names or in any other way *directly* identifies the recipients of those salaries. This information would not, therefore, constitute personal data according to part (a) of DPA section 1(1).
11. The issue here is whether this information could be combined with other information to enable it to be linked to an individual, which would mean it would be personal data according to part (b) of DPA section 1(1). As disclosure through the FOIA places information into the public domain, the issue here is whether there is information available to *any* individual that could lead to the salary information being associated with the recipients.
12. The Commissioner's view is that there will be a number of individuals with sufficient existing knowledge to enable the linkage of the salaries to individuals. The first group that the Commissioner has considered is close colleagues of the thirty philosophy department employees specified in the request. The Commissioner considers that those individuals would have sufficient knowledge to enable them to link at least some of the salary information to other individuals. For example, the highest salary is likely to be that of the most senior employee.
13. In addition, knowledge of the seniority of the employees at a lower level and of other key factors, such as their length of service, is likely to lead to linkage of salary information with individuals. For example, a colleague of any of the thirty staff members may already have an approximate idea of their salary level and likely salary increase due to their knowledge of the KCL salary structure and the level within it that their colleague has reached as a result of being aware of their job level and length of service. The Commissioner believes that the combination of that existing knowledge with the withheld information would lead to salary information being linked with individuals.

14. As a result of information that is available on the KCL website, the view of the Commissioner is that there is a further group that could also link the information to individuals. That information on the website names the thirty staff members and gives their job titles², the date that they started with KCL and other information. The Commissioner believes that other individuals who are not close colleagues of those staff members, but have some knowledge of the structure and workings of KCL, could use that information to link the salary information with individuals. The group that has some knowledge of the structures within KCL would include employees from other KCL departments and possibly KCL students.
15. For example, from the website information a member of that group could be aware that an individual with the job title "*Reader in Philosophy*" had worked at KCL for five years. Due to their existing knowledge of KCL, they would be capable of estimating the salary and the likely level of the most recent increase to the salary of an individual with that job title and length of service with a reasonable degree of accuracy. Following from this, the Commissioner believes that there would be a strong likelihood of members of this group being able to link specific salary information to individuals.
16. For these reasons, the Commissioner's view is that the salary information in question does constitute personal data in accordance with the definition given in part (b) of section 1(1) of the DPA. The next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles.
17. The Commissioner has focussed here on the first data protection principle, which requires that personal data be processed fairly and lawfully, and in particular on whether disclosure would be, in general, fair to the data subjects. In forming a conclusion on this point the Commissioner has taken into account the reasonable expectations of the data subjects, what consequences disclosure may have on them and whether there is any legitimate public interest in the disclosure of this information.
18. On the issue of the expectations of the data subjects, the information in question here is salary information. Whilst there are certain exceptions, some senior salaries within the public sector for example, in general an employee would hold a very strong expectation that their employer would not disclose exact details of their salary. In line with this generally

² <http://www.kcl.ac.uk/artshums/depts/philosophy/people/staff/academic/index.aspx>

held expectation, the Commissioner believes that the data subjects in this case would hold a strong and reasonable expectation that their salary information would not be disclosed by KCL.

19. On the issue of the consequences of disclosure, it follows from the preceding paragraph that disclosure contrary to that expectation would be distressing to the data subjects given the intrusion into precise detail of their financial income.
20. As to whether there is any legitimate public interest in the disclosure of the information in question, whilst section 40(2) is not a qualified exemption according to section 2 of the FOIA, it is necessary for there to be a public interest element for disclosure to comply with the first data protection principle. The issue here is whether any legitimate public interest that does exist outweighs the factors against disclosure covered above.
21. KCL is partly publicly funded, hence an argument can be made that there is a public interest in disclosure of salaries that are, in part, provided from the public purse. There is also a public interest in students having information about staff salaries, related to the tuition they receive, given the funding they provide via tuition fees. The public interest is weightier for the most senior posts in the department – the Head and Deputy. However, the public interest is already satisfied to some extent by the publication of non-personal salary information on the KCL website³. The Commissioner does not believe that disclosure of the thirty individual salaries and other salary information in question here is necessary for any legitimate public interest.
22. On the basis that the data subjects would hold a strong and reasonable expectation that this personal data would not be disclosed, and that disclosure despite that expectation would result in distress, combined with the absence of a legitimate public interest that is strong enough to make disclosure necessary, the Commissioner finds that disclosure would be unfair and in breach of the first data protection principle.
23. The Commissioner's overall conclusion is, therefore, that the exemption provided by section 40(2) of the FOIA is engaged and KCL was not obliged to disclose this information. Having reached this conclusion, it has not been necessary to go on to also consider section 43(2).

³ <http://www.kcl.ac.uk/hr/SinglePaySpineNov14.xlsx>

Other matters

24. Whilst, as noted above at paragraph 7, the circumstances in this case differed significantly from the previous KCL case mentioned above, in an attempt to resolve this case informally, KCL was asked to consider disclosure of the salaries of the Philosophy Department staff in £10,000 bands. In response to this KCL stated that it believed that salary information in £10,000 bands would also be exempt by virtue of sections 40(2) and 43(2) of the FOIA and so it did not wish to disclose this less detailed information. The Commissioner has not considered this formally as part of the notice because the request was clearly made for exact salaries.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Steve Wood
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