

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 April 2017

Public Authority: University of Roehampton
Address: Grove House
Roehampton Lane
London
SW15 5PJ

Decision (including any steps ordered)

1. The complainant has requested information from the University of Roehampton ("the University") relating to a copy of the University's latest pay audit and the salaries of professors without senior management responsibilities.
2. The Commissioner's decision is that the University has correctly applied section 40(2) of the FOIA to the information sought on salaries outside of the RS03 band.
3. The Commissioner requires the University to take no steps.

Request and response

4. On 25 April 2016, the complainant wrote to the University and requested information in the following terms:
"I wish to make two Freedom of Information requests. The first is for a copy of the latest pay audit conducted by the University. The second is for a complete ranked list of salaries paid to professors without senior management responsibilities (of heads of department/school and beyond) with an indication as to whether they are male or female. I understand that it would be inappropriate for you to give names".
5. The request was acknowledged by the University on 28 April 2016. The complainant chased the University on 28 May 2016 as she had not received a response.

6. The University responded to the request on 2 June 2016. With respect to the first request, the University provided the complainant with a copy of the latest pay audit it had conducted. For request 2, the University confirmed that the information was held. It provided the complainant with a table detailing the number of professors on each of the RS03 salary grade points (grades 1-10) together with their gender. The University explained that salaries outside of the RS03 band had not been stated by gender as the University considered that it could be possible to identify the salaries of one or more individual's by doing this.
7. The complainant wrote to the University on 13 June 2016 and asked the University to carry out an internal review. The complainant asked the University to consider its failure to respond to the information request with statutory timeframe. She also explained that she was dissatisfied with the University's handling of request 2.
8. Following a number of chasers, the University wrote to the complainant on 2 August 2016. The University explained that it had not provided the precise salaries and gender of the individuals outside of the RS03 pay band as it considered this information was exempt under section 40(2) of the FOIA. The University considered that disclosure of this information would enable identification of the individuals concerned and that disclosure would therefore be in breach of principle 1 of the Data Protection Act 1998 (DPA). The University did however provide the complainant with the salaries with the professors outside of the RS03 grades in bands of £10,000.

Scope of the case

9. The complainant contacted the Commissioner on 24 July 2016 to complain about the way her request for information had been handled.
10. The Commissioner wrote to the complainant on 9 September 2016 to set out her understanding of the complaint. The complainant confirmed the scope of her complaint on 11 November 2016.
11. The complainant confirmed that her complaint concerned the University's application of section 40 to the information sought on professors exact salary details outside of the RS03 band.
12. The Commissioner has considered whether the University was correct to withhold the information requested on professors paid outside of the RS03 grade under section 40(2) of the FOIA.
13. The Commissioner has also considered whether the University has complied with its obligations under section 10 and 17 of the FOIA.

Background

14. The RS03 salary scale, comprising 10 salary points is one of the University's two published salary scales. The majority of professors are paid on this scale.
15. A number of staff (including some professors) are not paid on the published pay scales, but are paid a 'personal to holder' salary instead – this is a spot salary paid to individual's who are not paid on the published salary scales. The majority of staff who are paid 'personal to holder' salaries are paid in excess of the RS03 maximum, either because of the seniority of their post, or for recruitment and/or retention purposes.

Reasons for decision

16. Section 40 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.
17. Taking into account her dual role as regulator of both the FOIA and the Data Protection Act 1998 (the "DPA") the Commissioner has considered whether the University was correct to withhold the exact salary details of professors outside of the RS03 band on the grounds that it is third party personal data and individuals would be identified if the information was disclosed.

Is the withheld information personal data?

18. Personal data is defined by section 1 of the DPA 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 data controller or any person in respect of the individual..."

19. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
20. When considering whether the requested information constituted personal data, the University acknowledged that the complainant was an employee of the University. From this, the University argued that there

was information available to the complainant which could be combined/linked with the requested information which would then lead to the identification of the individuals.

21. On this basis, the Commissioner is satisfied that the withheld information constitutes personal data.

Would disclosure breach the data protection principles?

22. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
23. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

24. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
25. The University recognised that public authorities now publish more information on salaries of their staff than they did a few years ago and particularly, in relation to senior salaries. However, in this case the University explained that employees except for very senior ones, would have a strong and reasonable expectation that their employer would not disclose the exact details of their salary.

The consequences of disclosure

26. Given the reasonable expectations of the individuals, the University explained that disclosure of detailed information on their financial income may be distressing to employees. The University also explained:

"Further, salary information relates to an individual's financial circumstances and where salaries are individually negotiated, detailed

disclosure may give significant information about an individual, which could have a detrimental effect on them”.

The legitimate public interest

27. Assessing fairness also involves balancing the individuals' rights and freedoms against the legitimate interest in disclosure to the public. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
28. As disclosure under FOIA is considered to be disclosure to the public at large and not to the individual applicant, it is the legitimate interests of the public in disclosure that must be balanced against the interests of the data subjects, including their right to privacy.
29. The interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest. While the complainant may have personal reasons for wanting access to the requested information, the Commissioner must consider whether or not it is appropriate for the requested information to be released to the general public.
30. The University explained:

“It is recognised that the University receives public funds and therefore there is a legitimate public interest in knowing about staff salaries including salaries at lower levels. The University seeks to satisfy such public interest to some extent by the publication of non-personal salary information in its Annual Report and Accounts and on its website”.
31. The University considered that any legitimate public interest in the requested information was met by disclosing the salaries outside of the RS03 grades in bands of £10,000.

Conclusion

32. Having taken into account all the circumstances of the case, and having considered the reasonable expectations of the data subjects, the potential consequences of disclosure, and any public interest factors, the Commissioner has concluded that there is no legitimate public interest in disclosure which would outweigh any detriment which might be caused

to the data subjects as a result of disclosure of the requested information. Therefore, disclosure would be unfair and would breach the first data protection principle

33. The Commissioner is therefore satisfied that the University was correct to apply section 40(2) to the salary details outside of the RS03 band.

Section 10 – time for compliance

34. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
35. Section 10(1) requires that the public authority comply with section 1 promptly and in any event no later than 20 working days after the date of receipt of the request.
36. The complainant wrote to the University and made an information request on 25 April 2016. The University responded on 2 June 2016. The University responded on 26th working day. The University has therefore breached section 10 of the FOIA.

Section 17 – refusal notice

37. Section 17(1) states:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies”.

38. In this case, the University failed to issue a refusal notice within 20 working days. It has therefore breached section 17.
39. When the University responded on 2 June 2016 and refused part of the request, it failed to cite an exemption and explain why the exemption applied. The Commissioner would remind the University that if it is refusing to comply with any part of a request, it must issue a refusal notice within 20 working days stating that some information has been

withheld, cite the relevant exemption and clearly explain why the exemption applies.

Other matters

Internal review

40. Under section 17(7) of the FOIA, it does not state that a public authority must have an internal review process in place. However under section 45 code of practice, it suggests that it is good practice to review a response when a requestor expresses dissatisfaction with it. An internal review gives a public authority an opportunity to review a response and it can also be helpful to resolve an issue informally.
41. Although there is no statutory time set out in the FOIA within which public authorities must complete a review, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. Where it is apparent that determination of the complaint will take longer than the target time, the authority should inform the applicant and explain the reason for the delay.
42. In this case, the complainant asked for an internal review to be carried out on 13 June 2016 and the University sent the outcome of its internal review on 2 August 2016, a total of 36 working days.
43. Although the Commissioner's guidance states that a public authority should carry out an internal review within a maximum of 40 days, the Commissioner that the maximum time period should only be necessary in complex cases. The Commissioner would take this opportunity to remind the University to ensure that it carries out an internal review and soon as possible and for straight forward cases, within 20 working days.

Correspondence with the ICO

44. The Commissioner wrote to the University on 20 January 2017 and asked the University to respond within 20 working days, this was by 17 February 2017.
45. The University contacted the Commissioner on 24 February 2017 and advised "*Unfortunately advice necessary to complete the University's full*

response has not yet been received, but we will endeavour to expedite this". The University did however provide the Commissioner with a copy of the withheld information.

46. After not hearing from the University, the Commissioner chased them on 17 March 2017 and gave a deadline of 24 March 2017. The Commissioner received a response within this deadline. However, the Commissioner notes that the response was not detailed and she does not consider that it would have taken over two months to compose the response.
47. The Commissioner is happy in most circumstances to allow an extension of time for a public authority to provide its submissions in response to the Commissioner's investigation. However, when this is the case, the Commissioner would expect to receive detailed submissions which would be reflective of the amount of time given to the public authority to respond.

Right of appeal

48. 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

49. 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.
50. 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

Jack Harvey
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