

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2017

Public Authority: The University of Manchester
Address: Oxford Road
Manchester
M13 9PL

Decision (including any steps ordered)

1. The complainant has requested information from the University of Manchester ("the University") relating to the submissions of applicants that were invited to attend an interview at the University.
2. The Commissioner's decision is that the University has correctly withheld the information under section 40(2) of the FOIA (third party personal data).
3. The Commissioner requires the University to take no steps.

Request and response

4. On 14 April 2016, the complainant wrote to the University and requested information in the following terms:
"The anonymised submissions of those applicants which were invited for interview".
5. The University responded on 18 May 2016. It withheld the information under section 40(2).
6. Following an internal review the University wrote to the complainant on 27 February 2017. It upheld its previous decision.

Scope of the case

7. The complainant contacted the Commissioner on 5 January 2017 to complain about the way his request for information had been handled.
8. The complainant disagreed with the University's position that the information was exempt under section 40(2).
9. The Commissioner has considered whether the University was correct to apply section 40(2) to refuse to disclose the requested information.

Reasons for decision

10. 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.
11. 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 anonymised submissions of the applicants that were invited for an interview with respect of a specific recruitment exercise.

Is the withheld information personal data?

12. 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..."

13. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
14. The University argued that it was impossible to anonymise job applications especially those from a small academic field. It considered that job applications by nature are impossible to anonymise without taking away so much information that they become meaningless.
15. After reviewing the job applications, the Commissioner notes that they include the following information which she considers to be personal data:
 - Name and contact details of the applicant.

- National insurance number including questions regarding the applicant's eligibility to work in the UK.
 - Places of education – if the applicant has attended a particular University such as a University in another country, then the applicant could be identified.
 - Places of employment including details of their duties and responsibilities. Similarly to above, an individual could be identified by past or present jobs they have had.
 - Details of the applicants references.
 - An 'additional info' section which allows the applicant to explain why they meet the criteria for the post. This part can include detailed examples stating why they are suitable for the role such as a description of past employment and projects/work they have been involved with. The Commissioner considers that individuals could be identified from this information.
16. The Commissioner considers that the application forms contain very little information that is not personal data. This consists of the date of when the application was made and where the applicant heard about the vacancy. Disclosure of this information would be meaningless and not the intended purpose of the request.

Would disclosure breach the data protection principles?

17. 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.
18. 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

19. 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.

20. The University explained that there would be no expectation on the part of the applicants for a particular post that those applications would be made available to the public. The University also considered that the applicants would have no expectation that the fact they have applied for a particular post would be made public.

The consequences of disclosure

21. The Commissioner considers that disclosure of the requested information is likely to cause damage and distress to the individuals who submitted an application for the post subject to the request.

The complainant's arguments

22. The complainant made a number of arguments as to why the requested information should be disclosed to him under the FOIA. The Commissioner has acknowledged all arguments made by the complainant although not all are referenced in this decision notice.
23. The complainant argued that the requested information was already in the public domain. He explained that once a candidate is selected for interview, it is usual practice for the individual to conduct a public presentation in the department that they applied to. The complainant explained that this is open to all academics in the department and typically appears in their public calendars.
24. The complainant further argued that an individual in a given academic community is often known well beyond the institution through informal networks. He further argued that some applicants advertise themselves and place their application materials such as CV's, research statements on the internet.
25. In his view, the complainant explained that asides from the name of the person who applied and was invited to an interview, it is difficult to see what personal data remains. He explained:

What remains is stylistic: it is based on how applicants argue their cases, rather than actually personal information in and of itself. So it is difficult to see how an applicant would expect their information to be private, or for their application to be, given the context of the academic community.

26. He further explained that he was not seeking any sensitive personal data and he believes that the University were wrong to state that it could not redact the applications in any way.

27. The complainant also argued that the University are obliged to disclose the requested information under different statutory enactment.

The legitimate public interest

28. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms or legitimate interests 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 complainant) accessing the withheld information.
29. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
30. The Commissioner has considered all arguments provided by the University and the complainant. However, having considered the circumstances of this case, the Commissioner has concluded that releasing the withheld information would not be within the expectations of the individual to whom it pertains.
31. The Commissioner is aware of the complainant's argument detailed at paragraph 25 and 26. It is clear from these that he is seeking the application forms with the names of the individuals and any sensitive personal data such as religious beliefs redacted. However, the Commissioner would like to emphasise that it is not as simple as this. As with most application forms, the information contained in it is personal to the individual applying for the job and this information therefore identifies the individual. In this case and as detailed in paragraph 15, the information consists of the applicants contact details, previous education and employment, previous employers, details of previous jobs such as details of their role and description of the work. From this information, individuals can easily be identified especially if they have worked in another country or have had a specialised role. The Commissioner notes that the withheld information relates to very few individuals and the Commissioner considers that these individuals could be identified if the information was disclosed.
32. In relation to the complainant's argument that the requested information is already in the public domain as the individual's that are selected for an interview have to give a public presentation within the department, the Commissioner considers that even if this were the case, the applicants would still have no expectation that their job application form would be placed into the public domain in response to an FOI

request. In any event, if the individuals are well known in the community as is claimed by the complainant, then it would be unfair to disclose the requested information as the individuals could be easily identified and it would not be in their reasonable expectations for their application form to be broadcast to the world.

33. The Commissioner notes that the complainant has a legitimate personal interest in the requested information. However, the Commissioner considers that this is not a legitimate public interest and disclosure of the requested information will be of little interest to the general public.
34. With regard to the complainant's belief that he is entitled to the information under other statutory legislation, this is not something the Commissioner has considered. The Commissioner has solely considered whether the complainant is entitled to the requested information under the FOIA.
35. In light of the above, the Commissioner does not consider that there is a legitimate public interest in the withheld information that outweighs the reasonable expectations of the data subjects, the damage and distress that would be caused by disclosure and the unwarranted intrusion into the private life of the individuals.
36. As described in paragraph 16 the Commissioner considers that the requested information cannot be meaningfully redacted and therefore she considers that the University was correct to apply section 40(2) to withhold the requested information.

Other matters

37. 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.
38. 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.
39. In this case, the complainant asked for an internal review to be carried out on 18 May 2016. The University did not issue its internal review response until 27 February 2017. This is clearly outside of the recommended timescales.
40. The Commissioner considers that the delay in providing the internal review response was unreasonable and she would take this opportunity to remind the University that it is good practice to respond to an internal review within 20 working days and in any event, no later than 40 working days.

Right of appeal

41. 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

42. 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.
43. 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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