

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2017

Public Authority: Redditch Borough Council
Address: Town Hall
Alcester Street
Redditch
B98 8AH

Decision (including any steps ordered)

1. The complainant has requested the job titles and salaries of all staff employed by Redditch Borough Council. The Commissioner's decision is that Redditch Borough Council has correctly applied the exemption for third party personal data at section 40(2) of the FOIA to the exact salary figures. She does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 18 April 2017, the complainant wrote to Redditch Borough Council ('the council') via the WhatDoTheyKnow website and requested information in the following terms:

"I would like in spreadsheet format the job titles and salaries of all staff employed by Redditch Borough Council as at the date on which you supply this information."
3. The council responded on 16 May 2017 and provided a spreadsheet detailing job titles and salaries of all staff employed by Redditch Borough Council as at 8th May 2017. It said that it can be cross referenced using the Salaries & Council Employee Pay Policy which is published.
4. On 19 May 2017 the complainant requested an internal review. She said that in 2010 the council provided all the current exact salaries as at that date and pointed out that the response in this case just gives a minimum and maximum range of salaries for the job title supplied, not

the actual current salary of the person with the job title. She questioned why the exact information was given in 2010 but not in 2017.

5. The council responded on 24 May 2017. It said that it cannot comment on the request from 2010 as FOI records are only recorded for 6 years so it would no longer have a record of this request. It explained that it does not give out exact salaries and job titles as this could lead to the disclosure of personal information which would contravene the Data Protection Act and that personal data is exempt under section 40(2) of the FOIA.
6. On 29 May 2017 the complainant suggested that the job titles of employees have been sufficiently anonymised so that individuals could not be identified. She said that she has all exact salaries from 2010 and that she could send them to the council by email. In addition she said that in the case of NHS Surrey a Tribunal upheld an appeal against ICO decision not to reveal exact salaries expressing that it could not see how a salary as an exact figure was any more risky than expressing bands.

Scope of the case

7. The complainant contacted the Commissioner on 28 June 2017 to complain about the way her request for information had been handled.
8. The Commissioner has considered whether the council has correctly applied the exemption for third party personal data at section 40(2) of the FOIA to the request for exact salary figures.

Reasons for decision

Section 40(2)

9. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
10. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data 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, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”
11. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

Is the withheld information personal data?

12. As explained above, the first consideration is whether the withheld information is personal data. The information requested is the job titles and salaries of all staff employed by the council. The complainant has said that she has not asked for a list by name, that she does not know anyone who works at the council, and suggested that the job titles have been sufficiently anonymised that she would not be able to identify individuals from the information. The council has said that all individuals may not be identifiable from the job title but where there are multiple people in one job role the exact salaries for each person could be different depending on their length of service and so giving the exact salary would then mean an individual could be identified.
13. Although the requested information itself does not contain staff names, the Commissioner accepts that it is personal data as individuals could be identified from their exact salary details and other information, such as the identification of post holders on the council’s website. The salary information in isolation may be unlikely to identify an individual but combined with other information such as job titles and names (which can be easily located for those staff in public facing roles), individuals could be identified. As disclosure under the FOIA is akin to disclosure to the world at large, the complainant’s statement that she does not know anyone who works at the council is irrelevant for the purpose of this decision.

Does the disclosure of the information contravene any of the data protection principles?

14. In the Commissioner's guidance on the exemption for personal data¹, it is explained that for the purposes of disclosure under FOIA, it is only the first principle that is likely to be relevant.
15. The first data protection principle states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

 - (a) at least one of the conditions in schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."
16. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Nature of the information and reasonable expectations

17. The council has said that its employees have a reasonable expectation that their actual salaries will be kept private. It acknowledged that the exception to this is those earning over the publishing limit, which the Commissioner understands to be derived from The Accounts and Audit (Amendment no 2) (England) Regulations 2009, and said that such individuals are informed of this. The council confirmed that the exact salaries for certain roles are available in the statement of accounts which is accessible on its website².
18. The council explained that pay slips are sent to employees via personal email and are password protected adding additional security, and that this implies to the employee their pay information is private and is kept private by the authority. It also said that actual salaries are not advertised in job adverts, only salary ranges, and that actual salaries

¹ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

² <http://www.redditchbc.gov.uk/media/3237294/RBC-Statement-of-Accounts-2016-17.pdf>
Note 30.

are not published internally, all giving employees an expectation of privacy around their actual salary.

19. The Commissioner has produced guidance on information relating to public authority employees³. This guidance recognises that public authority employees should expect that some information about them may be published as there is a legitimate public interest in accountability and transparency. However, it does not necessarily follow that all council employees would expect their exact salary to be disclosed in response to a request made under the FOIA. The Commissioner considers that it would be reasonable for a council employee to expect disclosure of a salary band or pay scale but not the precise salary, except for those employees earning over the publishing limit who have been informed by the council that publication will take place.
20. The complainant has informed the Commissioner that in 2010 another member of the public requested the same information and was given the exact salaries to the penny. She said that such information is available on the WhatDoTheyKnow website and provided the Commissioner with a copy of the information previously disclosed. The complainant believes that the council has set a precedent on the supply of this data to members of the public under the FOIA.
21. The council informed the Commissioner that it believes the disclosure in 2010 was an error and the website was asked to remove the data but refused to do so. It said that the data is now 7 years out of date and that there have been changes in shared services between Redditch borough Council and Bromsgrove District Council as well as job evaluation projects making the data out of date and inaccurate.
22. The Commissioner does not consider that a previous disclosure under FOIA sets a precedent. It may affect the expectations of the data subjects as to what information will be made available but, given the age of the information, the Commissioner does not consider that the previous disclosure of exact salary information in 2010 means that council employees would have a reasonable expectation that equivalent information will be made available in response to the request being considered in this case.

³ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

Consequences of disclosure

23. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.
24. The council said that there may be distress caused to their employees if their data is published.
25. The Commissioner's aforementioned guidance states the following:

"Salary information relates to people's personal financial circumstances and disclosure of the exact salary of an individual is more intrusive than giving a salary band or the pay scale for a post. It may also prejudice the individual's interests in ongoing financial or legal negotiations. If salaries are individually negotiated or contain a significant element of performance related pay, disclosure may give significant information about that individual, which could have a detrimental effect on them."
26. Therefore the Commissioner accepts that disclosure of exact salary information in this case would be likely to cause distress to the individuals and this will be unfair unless exceptional circumstances apply. The Commissioner has not been made aware of any exception circumstances in this case.
27. The complainant pointed out to the Commissioner that in the case of NHS Surrey a Tribunal upheld an appeal against an ICO decision not to reveal exact salaries. She commented that the Tribunal could not see how expressing a salary as an exact figure was any more risky than expressing bands.
28. The Commissioner understands the complainant to be referring to Appeal No: EA/2012/0250⁴. She notes that that decision related to the salary of the Chief Executive, rather than all employees of a public authority, and that it wasn't clear whether national pay guidance had been adhered to. The Commissioner does not consider that decision to be comparable to this case and, in any case, is not bound by previous decisions of the First-Tier Tribunal.

4

<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i994/20130429%20Decision%20EA20120250.pdf>

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

29. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with specific interests which in this case is knowing the exact amount of public money being spent on each council employee.
30. The council said that the benefit of the public knowing the exact salary of an individual does not produce a benefit that would outweigh any distress. It explained that public spending is accounted for in the council's published accounts and that the disclosed pay ranges give the public an indication of the salary level of different employees.
31. The Commissioner considers that the disclosure of salary bands in this case goes some way towards meeting the public interest in the expenditure of public money on individual council employees.

Conclusion on the analysis of fairness

32. Taking all of the above into account, the Commissioner concludes that it would be unfair to the data subjects to release the exact salary details. Disclosure would not have been within the data subjects' reasonable expectations, except where exact salaries are already published, and the loss of privacy could cause unwarranted harm or distress. She acknowledges that there is a legitimate interest in the expenditure of public money but does not consider that this outweighs the individual's rights to privacy, and deems the provision of salary bands as going some way to satisfying the legitimate interest in this case. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i).
33. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, she has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

Right of appeal

34. 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

35. 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.
36. 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

Deborah Clark
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF