

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2020

Public Authority: Translink
Address: Translink Contact Centre
Falcon Road
Belfast
BT12 6PU

Decision (including any steps ordered)

1. The complainant requested salary details for two advertised posts from Translink. Translink refused to provide the requested information on the basis that it is personal information, and thus exempt from disclosure under section 40(2)(personal information) of the FOIA. The Commissioner's decision is that section 40 is not engaged.
2. The Commissioner requires Translink to take the following steps to ensure compliance with the legislation:
 - disclose the requested information.
3. Translink must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 6 June 2019, the complainant wrote to Translink with a general enquiry as follows:

"I'm interested in possibly making an application for two current vacancies on the Translink website. I note that the salary information in respect of both the Company Lawyer and Legal & Information Governance Officer are set at a Management, Professional and Technical Employees (MPT) grade.

Can I ask whether it is possible to give a little more information as to the bandings/thresholds which are relevant for each position”.

5. Translink offered to speak to the complainant, however, as this was inconvenient, on 14 June 2019, he therefore asked:

“If you could send through the relevant bandings etc for the two positions that would be great.”

6. Following further correspondence, on 17 June 2019, the complainant asked Translink to treat his correspondence of 14 June 2019 as a request under the FOIA.
7. On 27 June 2019, Translink responded. It refused to provide the requested information. It cited section 40(2) of the FOIA as its basis for doing so.
8. On 1 July 2019, the complainant requested an internal review, saying:

“My request related to the bandings/threshold which are relevant in relation to both the Company and Legal & Information Governance Officer posts.

I have not asked for exact salary figures but rather would like an indication of the scale banding which is applicable to each post.”

9. Following an internal review, Translink wrote to the complainant on 22 July 2019. It maintained its position.

Scope of the case

10. The complainant contacted the Commissioner on 22 July 2019 to complain about the way his request for information had been handled. He expressed concern that Translink wanted to discuss the matter with him so were likely to provide the requested information orally but not in writing. He added:

“I was not seeking exact salary figures but rather an indication of the banding, grade or threshold to understand whether there was merit in putting forward an application for the new two vacant positions”.

11. The Commissioner will consider the citing of section 40(2) of the FOIA to withhold the requested information below.
12. The Commissioner has viewed the withheld information in this case. It consists of two figures classed as the ‘entry’ and ‘standard’ salary bands

for the Company Lawyer and Legal & Information Governance Officer positions.

13. Translink has also confirmed that the Company Lawyer position was filled on 9 July 2019 and the Legal & Information Governance Officer position was filled on 14 October 2019. At the time of writing, the latter position is again vacant with a fresh recruitment exercise currently underway; the advertisement for the post does not include the salary.

Reasons for decision

Section 40 – personal information

14. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
15. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
16. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
17. 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 DP principles.

Is the information personal data?

18. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

19. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
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¹ As amended by Schedule 19 Paragraph 58(3) DPA.

20. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
21. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

Translink's view

22. When refusing the request Translink said:

"The information withheld in this case is the standard salary paid to individuals within each pay band; this standard salary is the exact figure which a member of staff is paid rather than a scale (i.e. £X, rather than £X - £Y). An individual's salary is their personal data because it is specific to them, regardless of whether another person earns an identical salary. The information could be combined with other information such as a person's name, job title or band to identify them ...

Unlike Translink's Executive Board members whose salaries are recorded in the annual accounts, or Clerical staff whose salaries are already known at the recruitment stage, employees within the MPT grade would not expect their salaries to be in the public domain. MPT recruitment advertisements do not carry the salary amount and these employees would have little knowledge or discussion of how their banding compares to those of their colleagues. Further, ICO guidance and previous decision notices set out that disclosure of an individual's exact salary is more intrusive than disclosing a salary scale and would be likely to cause them distress".

23. At internal review stage it added:

"I concur with our original decision which detailed that an individual's salary is their personal data because it is specific to them, regardless of whether another person earns an identical salary. The information could be combined with other information such as a person's name, job title or grade to identify them".

The Commissioner's view

24. The Commissioner has first considered whether the withheld information constitutes personal data within the meaning of the DPA.

25. When commencing her investigation, the Commissioner asked Translink to explain the following:

"The initial request was for information about two vacant positions, as advertised on your website. Please can you therefore explain how 'vacant posts' can constitute personal data as there is no-one currently filling that post? Furthermore, any salary is associated with that post, details about the post holder (either previous or whoever filled the post later) are not part of the request.

Surely any vacancy which is advertised must have an associated pay scale / band? This would be necessary for budgeting, forecasting, etc. If it is not the case, please explain on what basis your salaries are awarded".

26. By way of response she was advised that:

"It is important to set out at this point that Translink's MPT-level salaries do not follow scale banding. Instead, an individual member of staff is paid a standard, set salary dependent on their grade.

The information withheld in this case is the standard salary paid to specific individual [sic], namely our current Company Solicitor and Legal and Information Governance Officer; this standard salary is the exact figure which a member of staff is paid rather than a scale (i.e. £X, rather than 'between £X - £Y').

An individual's salary is their personal data because it is specific to them, regardless of whether another person earns an identical salary. Furthermore, there is only one of each of these roles in the company and it would be easily possible to identify the individual holder of these jobs".

27. The Commissioner initially notes that the complainant has sought information about two posts which were advertised as 'vacant', which Translink has confirmed was the case when the request was received; the complainant has at no point asked for information about previous or incumbent post holders. The request seeks only to ascertain the salary for two vacant posts which he was considering applying for, something which would presumably be a major consideration for any person who was considering making such an application. As Translink asked to speak to the complainant, presumably the details would have been provided verbally – something which it must have to do for every interested party as it is extremely unlikely that anyone will apply for a position without having previous details regarding remuneration.
28. As the circumstances differ slightly, the Commissioner will consider each post separately.

Legal & Information Governance Officer

29. This post was vacant at the time of the request and remained so at the time of the internal review. Although it was subsequently filled for a short time it is again vacant.
30. On this basis the Commissioner does not consider that the salary associated with the post can relate to any identifiable individual and it is not personal information. Therefore, section 40 is not engaged.

Company Lawyer

31. This post was vacant at the time of the request but was filled by the time of the internal review. It remains filled.
32. The request is for the salary of the post when it was vacant. It does not seek to know the actual agreed salary of the successful candidate. Whilst this may well be the same as the amount when it was advertised this is not certain, and has not been requested. It is also not known whether the successful candidate was given either the 'entry' or 'standard' salary band, or something in between, based on their experience. Furthermore, there may have been some agreed enhancement or allowance for the party concerned, and there may have also been a subsequent pay rise.
33. Based on the wording of the request, which seeks information about a post and not the post holder, and the unknown variables that the incumbent person may have been awarded on successfully obtaining that post, the Commissioner does not consider that the withheld information is personal information; it relates solely to the post. She therefore concludes that section 40 is not engaged.
34. Translink is required to disclose the requested information for both posts, as advertised when the complainant made his request.

Right of appeal

35. 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@justice.gov.uk

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

36. 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.

37. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF