

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 22 July 2022

**Public Authority:** Humberside Fire and Rescue Service  
**Address:** Summergroves Way  
Hull  
HU4 7BB

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information from Humberside Fire and Rescue Service regarding staff exit packages in the accounting year 2020/2021.
2. The Commissioner's decision is that Humberside Fire and Rescue Service is entitled to withhold the requested information in accordance with section 40(2) of FOIA – personal information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### **Request and response**

---

4. On 13 October 2021, the complainant wrote to Humberside Fire and Rescue Service and requested information in the following terms:

"For the accounting year 2020/2021 please supply details of public interest in relation to staff exit packages. Please provide everything that can be divulged and is not exempt.

For example:

Number of staff involved and their age (an age band is acceptable)  
Whether compulsory / voluntary / otherwise agreed exit  
Job title of any departing employee receiving a package

Length of service prior to departure  
Reason for the departure and offer of package  
Cost to public.”

5. Humberside Fire and Rescue Service responded on 18 October 2021. It stated that some of the information was available on its website, providing the link to access the information, however, the remainder of the information is withheld under section 40(2) of FOIA – personal information.
6. Following an internal review Humberside Fire and Rescue Service wrote to the complainant on 4 November 2021. It stated that it upheld its original position.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 3 December 2021 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of the investigation is to consider whether Humberside Fire and Rescue Service is entitled to withhold the remaining information under section 40(2) of FOIA.

### **Reasons for decision**

---

#### **Section 40 personal information**

9. Section 40(2) of the 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.
10. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. 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 UK General Data Protection Regulation ('UK GDPR').

---

<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA

11. 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.
12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### **Is the information personal data?**

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

“any information relating to an identified or identifiable living individual”.

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. 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.
16. 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.
17. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the data subjects. The names, job roles and information relating to the financial circumstances of the data subjects quite obviously is information that both relates to and identifies those concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
18. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
19. The most relevant DP principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

20. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

21. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
22. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

### **Lawful processing: Article 6(1)(f) of the UK GDPR**

23. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>2</sup>.

24. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-

i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

25. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

### **Legitimate interests**

---

<sup>2</sup> Article 6(1) goes on to state that:-

*“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

*“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.*

26. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
27. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
28. The complainant has explained to the Commissioner that it is a matter of public interest which involves a substantial sum of money.
29. Humberside Fire and Rescue Service has argued that staff members of all levels have a reasonable expectation of confidentiality when it comes to severance. However, it also acknowledges that to release the information is financial transparency in respect of a public authority's expenditure of public funds. It has pointed out that the number of exit packages and the amounts paid are published in the annual account and, as such, it considers that the legitimate interest has been satisfied.
30. The Commissioner is satisfied that the complainant is pursuing a legitimate interest about how public money has been spent.

**Is disclosure necessary?**

31. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
32. The number of exit packages and the amounts paid are published in Humberside Fire and Rescue Service's annual accounts. In this case, the information online meets the legitimate interest of transparency over how public money is spent and, as such, disclosure is not necessary to meet the legitimate interest. Personal information relating to the employees would add nothing further to the legitimate interest.
33. As the Commissioner has decided in this case that further disclosure is not necessary to meet the legitimate interests identified in paragraph 30, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing. It therefore does not meet the requirements of principle (a).

34. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.
35. As disclosure would have breached one of the data protection principles, Humberside Fire and Rescue Service was entitled to rely on section 40(2) of FOIA to withhold the information.

## Right of appeal

---

36. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**