

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2022

Public Authority: London Borough of Ealing
Address: Perceval House
14/16 Uxbridge Road
Ealing
W5 2HL

Decision (including any steps ordered)

1. The complainant has requested the pay grade of a named employee at the London Borough of Ealing (the 'Council').
2. The Commissioner's decision is that the Council is entitled to withhold the pay grade under section 40(2) of FOIA as it is the personal data of another individual and disclosure would be unlawful.
3. The Commissioner does not require further steps.

Request and response

4. On 12 April 2022, the complainant wrote to the public authority and requested information in the following terms:

"as previously stated, I have already seen this. It means little to me as there are pay grades. So for example, what grade is [name redacted]? A department manager."
5. The public authority refused to provide the information and relied on section 40(2) of FOIA as its basis for doing so. The public authority upheld this position at internal review. It stated that while a council employee would reasonably expect disclosure of salary bands or pay scales under an FOIA request, they would not expect their precise salary or pay grade to be disclosed, except for those employees earning over the publishing limit.

Reasons for decision

6. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on section 40(2) of FOIA in this particular case.
7. Section 40(2) of FOIA says that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.
8. An exact salary or pay grade is clearly the personal data of the named employee. The Commissioner is also satisfied that disclosure of this information in this case would breach data protection principles.
9. While local councils do publish salary information on their websites, they usually only include salary bands relating to employee job grades. Only names of staff who earn over £150,000 are disclosed. Disclosure of the pay grade the individual in question is on whilst not revealing their exact salary, would still reveal a narrow range within which their salary falls. This range is narrower than salary band data usually published by public authorities. Therefore, the named employee would not reasonably expect that their pay grade would be disclosed to the public in response to an FOI request. This is supported by ICO guidance¹ (see pages 15-17) which states, "Exceptional circumstances are needed to justify the disclosure of exact salaries when you don't routinely publish them." This position is also supported in recent ICO decision notices: see IC-129568-H6F5² (paragraphs 16-17) and IC-67131-Y6J2³ (see paragraphs 43-45 & 57).

¹ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4020703/ic-129568-h6f5.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2620296/ic-67131-y6j2.pdf>

Right of appeal

10. 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

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

11. 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.
12. 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

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