

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2023

Public Authority: Department of Finance Northern Ireland

Address: Clare House
303 Airport road
Belfast
BT3 9ED

Decision (including any steps ordered)

1. The complainant requested information from the Department of Finance ('the public authority'). The Commissioner's decision is that the public authority should have relied on section 40(5B) (personal information) of FOIA to refuse to confirm or deny whether any of the requested information was held.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 3 March 2022, the complainant made the following request for information to the public authority:

"IRC265933 SPTO Graphics Designer

As you can see in the email trail, the line states 'at the time of application'. I was wondering is it possible to be provided with information of past working relations between the successful candidate and the panel members."

4. The public authority refused to provide all of the requested information citing section 40(2) (personal information) of FOIA as its basis for doing so.
5. During the course of the Commissioner's investigation, the public authority explained that it should have neither confirmed nor denied whether the information was held.

Reasons for decision

Section 40 - personal information

6. This reasoning covers whether the public authority should have issued a neither confirm nor deny response under section 40(5B) of FOIA.¹
7. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny that it holds particular information if the mere act of confirming (or denying) that information is held would, in itself, reveal personal data about an identifiable individual and would contravene one of the data protection principles.
8. In this case, the Commissioner is satisfied that confirming or denying whether information is held would identify third party personal data. This is because to do so would reveal whether there were any past working relationships between the successful candidate and the interview panel members involved in the recruitment of this particular role.
9. 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 – or as in this case the public authority can only confirm whether or not it holds the requested information - if to do so would be:
 - a. lawful (i.e. it would meet one of the conditions of lawful processing listed in Article 6(1) UK GDPR);
 - b. fair; and
 - c. transparent.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

10. The Commissioner recognises that individuals have a clear and strong expectation that their personal data will be held in accordance with data protection laws. In this case, he is satisfied that the individuals concerned would not reasonably expect the public authority to confirm to the world at large whether or not it held the requested information relating to their employment history in response to a FOIA request.
11. He has also determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms, and that confirming whether or not the requested information is held would not be lawful.
12. As there is no lawful basis for doing so, confirming or denying would be unlawful and therefore the public authority should have relied on section 40(5B) of FOIA to neither confirm nor deny that the requested information is held.

Right of appeal

13. 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

14. 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.
15. 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