

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2023

Public Authority: Northern Ireland Ambulance Service Health and Social Care Trust

Address: Ambulance Head Quarters
Site 30 Knockbracken Healthcare Park
Saintfield Road
Belfast
BT8 8SG

Decision (including any steps ordered)

1. The complainant has requested recruitment information from Northern Ireland Ambulance Service (NIAS). NIAS refused to disclose the information citing section 40(2) of FOIA (personal information).
2. The Commissioner's decision is that NIAS was correct to rely on section 40(2) of FOIA to withhold the information.
3. He also finds that NIAS failed to respond to the complainant's request within the statutory timeframe of 20 working days. On this basis the Commissioner finds that NIAS has breached section 10 of FOIA.
4. The Commissioner does not require NIAS to take further steps.

Request and response

5. On 28 June 2022, the complainant wrote to NIAS and requested information in the following terms:

"I am requesting through a freedom of information request the following information in relation to the recruitment for the post of

Assistant Director of Finance (Accounting & Financial Services). BSO
Recruitment Ref: 52860618

- Monitoring information (redacted) for all shortlisted candidates.
- Interview scoring (total score and per presentation / interview question) for all shortlisted candidates.

Detailing which of the information above relates to the successful candidate.”

6. NIAS responded on 23 September 2022 and refused to disclose the requested information on the basis of section 40(2) of FOIA.
7. Following an internal review NIAS maintained its original position.

Reasons for decision

8. 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.
9. The Commissioner must 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.
10. Section 3(2) of the DPA defines personal data as:

“Any information relating to an identified or identifiable living individual”.
11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. 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.
13. 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.
14. NIAS has explained that it is unable to provide the information to the complainant because the number of interviewees was low. It says that

to disclose the information together with information available in the public domain, creates a risk of an individual being identified.

15. During the internal review, NIAS maintained that the information requested by the complainant is personal data. It contended that even without candidates' names, if redacted records were provided, there would be a high risk that individuals could still be linked to information through other information available in the notes.
16. It argued that the interviewees provided information specifically for the recruitment process and as such would have a reasonable expectation that information about their perceived religious/political affiliation/sexual orientation etc., would not be disclosed for the purposes of a FOIA request.
17. In this case the information in question relates to monitoring information and interview scores for short listed candidates. The Commissioner is satisfied that the information relates to the candidates who participated in the recruitment process and therefore this constitutes personal data of those candidates and is information that identifies them. This information therefore falls within the definition of 'personal data' under section 3(2) of the DPA.

Is the information special category data?

18. Article 9 of the UK GDPR defines 'special category data' as being personal data which reveals racial, political, religious or philosophical beliefs, or trade union membership, the processing of genetic data, and biometric data for the purpose of uniquely identifying a natural person, data concerning health and data concerning a natural person's sex life or sexual orientation. The monitoring information falls within this definition.
19. NIAS has argued that the article 9 conditions that could be relevant to a disclosure under FOIA are condition (a) which relates to explicit consent from the data subject and condition (e) which concerns data made manifestly public by the data subject. It says that it has no evidence or indication that individuals concerned have specifically consented to this data being disclosed to the world in response to a FOIA request, or that they have deliberately made this data public.
20. The Commissioner has seen no evidence or indication that individuals who took part in the recruitment process have specifically consented to their data being disclosed to the world in response to the request or that they have deliberately made this data public.
21. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this special category data would therefore breach principle (a) and so the

monitoring information is exempt from disclosure under section 40(2) of FOIA.

22. The complainant has stated that they understand the possibility of individuals being identified via the monitoring information. However, they do not consider that the release of interview scores will identify any individual other than the successful candidate who has already been appointed to the role.
23. The Commissioner is satisfied that the interview scores are not special category data. Therefore, the Commissioner has considered whether the disclosure of the interview scores will contravene the DP principles.
24. In the case of a FOIA request, 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.
25. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individual(s) whose personal information it is.
26. The Commissioner recognises that 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. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
27. The complainant has a legitimate interest in the requested information in that they require the information in order to establish details about a formal grievance they raised with the public authority.

Is disclosure necessary?

28. '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.
29. The Commissioner is satisfied that there are no less intrusive means of achieving the legitimate aims identified.

30. The complainant was advised that the information requested could not be disclosed because the number of interviewees was low, and disclosure combined with information available in the public domain, creates a risk of an individual being identified.
31. NIAS has argued that it is highly probable that disclosure of the withheld information would contribute to the identification of interviewees. It says that even if the information were redacted, it may be relatively easy to identify individuals directly or indirectly due to some local knowledge about the recruitment exercise. NIAS says that the successful candidate is already known as the appointment has been completed and the information is already available. It is therefore possible to attribute the highest score to that candidate making them identifiable.
32. NIAS argues that none of the interviewees were informed that their interview scores would be disclosed into the public domain. It considers that interviewees would have had a reasonable expectation that such information is personal and therefore kept confidential. It maintains that the release of such information could be an intrusion of privacy and could cause unnecessary and unjustified distress to the individuals concerned.
33. The Commissioner has had sight of the withheld information and agrees with NIAS that the disclosure of the information is likely to identify individuals whether directly or indirectly. He is of the view that even if the interview scores were disclosed with the interviewee names redacted, it is likely to identify at least one individual.
34. Having considered the above, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals. Therefore, he considers that there is no legal basis for NIAS to disclose the requested information and that to do so would breach principle (a).
35. The Commissioner's decision is that NIAS was entitled to rely on section 40(2) of FOIA to refuse to provide the requested information.

Procedural matters

Section 10(1)- Time for compliance

36. Section 10(1) provides that "Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

37. The Commissioner notes that the complainant submitted his information request on 28 June 2022. NIAS did not provide its response until 23 September 2022.
38. Section 10 specifies that a public authority must comply promptly and no later than 20 working days following the date of receipt of the request. The Commissioner interprets this to mean the first working day after the request has been received. Therefore NIAS should have responded to the complainant's request of 28 June 2022 within 20 working days and no later than 26 July 2022.
39. The Commissioner has therefore decided that NIAS did not comply with the requirements of section 10(1) of FOIA.

Other matters

40. The complainant has explained to the Commissioner that they were dissatisfied by the significant delay by NIAS in responding to their internal review request.
41. The Commissioner notes the time taken for NIAS to respond to the complainant's internal review request of 21 October 2022 exceeded 40 working days. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and in exceptional cases, within 40 working days.
42. The Commissioner has made a separate record of the delay in providing the internal review for monitoring purposes.

Right of appeal

43. 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

44. 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.

45. 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

**Esi Mensah
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**