

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 August 2010

Public Authority: Department of Finance and Personnel (Northern Ireland)
Address: Rosepark House
Upper Newtownards Road
Belfast
BT4 3NR

Summary

The complainant requested a summary of the relevant experience of each applicant who had been short-listed for a specific post within the Department of Finance and Personnel (NI) (DFPNI). DFPNI refused to disclose the information under sections 40(2) and 40(3)(a)(i) of the Act as it comprised personal data, and disclosure would be unfair. The Commissioner considers that section 40(2) by virtue of 40(3)(a)(i) was correctly applied in this case. The Commissioner requires no steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act). This Notice sets out his decision.

Background

2. The complainant had applied for a post within DFPNI. He was not short-listed to attend for interview, on the basis that he had not demonstrated enough experience to meet one of the essential criteria for the post. He did not accept that this was the case, and wished to see how the individuals who were short-listed met the criterion when he was deemed not to have met it.

The Request

3. On 28 January 2009 the complainant made the following request to DFPNI in accordance with section 1 of the Act:

“I would also (in accordance with the requirements of the Freedom of Information Act 2000) ask that you urgently send me the following details:
-a summary, for each applicant who you intend to call for interview, of their experience under essential criterion 2”.
4. On 24 February 2009, DFPNI issued a refusal notice to the complainant, citing section 40(2) by virtue of section 40(3)(a)(i) as a basis for refusing to disclose the requested information.
5. On 6 March 2009, the complainant requested an internal review of DFPNI’s decision not to disclose the requested information. DFPNI wrote to the complainant on 20 March 2009 with the outcome of that internal review. That letter stated that the reviewer upheld the original decision not to disclose the requested information under section 40(2) by virtue of 40(3)(a)(i).

The Investigation

Scope of the case

6. On 26 March 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - DFPNI’s application of the exemption under section 40(2) by virtue of 40(3)(a)(i) to the withheld information.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

8. On 29 January 2010 the Commissioner wrote to DFPNI requesting a copy of the withheld information and further explanatory details regarding its refusal to provide the complainant with the withheld information.

9. On 26 February 2010 DFPNI replied to the Commissioner, providing a copy of the withheld information and its detailed explanation as to its application of the exemption at section 40(2) by virtue of 40(3)(a)(i) of the Act. It provided the Commissioner with detailed arguments in support of its application of both sections to the withheld information.

Analysis

Exemptions

Section 40(2) – personal data of third parties

10. Section 40(2) of the Act (see Legal Annex) is an exemption which relates to the personal information of individuals other than the applicant. This provision creates an absolute exemption (one not subject to the public interest test) for information falling within the definition of personal data contained in section 1(1) of the Data Protection Act 1998 (the DPA).
11. Personal data is defined in section 1(1)(a) of the DPA as:

"data which relate to a living individual who can be identified:- from those data, or; from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."
12. Personal data is exempt if either of the conditions set out in section 40(3) or 40(4) are met. The relevant condition in this case is at section 40(3)(a)(i), where disclosure would breach any of the data protection principles as set out in Schedule 1 to the DPA.
13. DFPNI applied the exemption under section 40(2) to the withheld information, which was information relating to the experience under a certain essential criterion of applicants for a specific post.
14. The Commissioner is satisfied that all of the withheld information falls within the definition of personal data as set out in the DPA. It contains information about living individuals who it would be possible for the public to directly identify from those data. The information is about individuals being interviewed for a specific post and evidence they provided of their experience relevant to that post under the specified essential criterion. The Commissioner believes that, even if the

applicants' names were redacted, it would be clear to others such as their current employer who the individuals are.

Would disclosure breach the first data protection principle?

15. DFPNI claimed that disclosure would be unfair and therefore would breach the first data protection principle.

16. The first data protection principle states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

*(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".*

17. In deciding whether disclosure of personal data would be unfair the Commissioner has taken into account a range of factors including the potential consequences of disclosing the information, i.e. what damage or distress would the individuals suffer if the information was disclosed?

18. The Commissioner, in considering whether disclosure would cause any unnecessary or unjustified damage or distress, has concluded that applicants in general would be distressed if their personal details were placed in the public domain. A job application is essentially a person's life story and were this to be disclosed to other applicants or placed in the public domain it could cause considerable damage or distress. For example a current employer may not know of the applicant's intention to leave their current job. Therefore, disclosure could potentially damage these individuals' career prospects. That was an approach taken by the public authority and accepted by the Commissioner in a previous decision of the Commissioner involving the House of Commons (Ref: FS50139317) and the Commissioner believes that it applies similarly in this case.

19. The Commissioner has also considered the reasonable expectations of the individuals in terms of what would happen to their personal data. These expectations can be shaped by factors such as the individuals' general expectation of privacy and also the purpose for which they provided their personal data.

20. The Commissioner is of the view that none of the individuals who were being interviewed for the post would have a reasonable expectation that their personal information would be disclosed to the public. The

withheld information contains detail about the experience of individuals in relation to the specified post. In the Commissioner's view the individuals concerned would have, in addition to the general expectation of privacy, expected that material to be used for the specific purpose of deciding who was to be interviewed for that post and not to be disclosed to the public. The Commissioner notes that the recruitment related to a post within DFPNI. However, the Commissioner considers that privacy expectations relating to recruitment are not significantly different whether the post is in a public or private sector organisation.

21. Furthermore, notwithstanding a data subject's reasonable expectations and any damage or distress that might be caused to them by disclosure, the Commissioner believes that it may still be fair to disclose personal data if it can be argued that the legitimate interest in the public accessing the material is particularly compelling. Therefore, when assessing fairness the Commissioner will take into account the legitimate interests in disclosure of the information into the public domain.
22. The Commissioner has considered whether there is a legitimate interest in the public accessing the withheld information. The Commissioner notes that the complainant has personal reasons for requesting the information, as it is specific to a process in which he has an interest. The Commissioner does though accept that there is a wider public interest in transparency of public sector organisations and also a more specific public interest in knowing that those who are appointed to relatively high level posts within the public sector are properly qualified to fulfil the requirements of those posts. These interests would be served by the disclosure of the withheld information. However, the Commissioner does not believe that any legitimate interest in the public accessing the withheld information would outweigh the potential damage and distress caused by disclosure of that information. Therefore the Commissioner is unable to conclude that disclosure of the withheld information is necessary to meet a legitimate public, rather than personal, interest.
23. In view of all of the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure of any of it would breach the first data protection principle as it would be unfair.

The Decision

24. The Commissioner's decision is that DFPNI dealt with the request for information in accordance with the Act.

Steps Required

25. The Commissioner requires no steps to be taken.

Right of Appeal

26. 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
Arnhem House
31, Waterloo Way
LEICESTER
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 26th day of August 2010

Signed

**David Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Section 40 - Personal information.

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if—
 - (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied.
- (3) The first condition is—
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
 - (i) any of the data protection principles,

Data Protection Act 1998

SCHEDULE 2 CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA

- 1 The data subject has given his consent to the processing.
- 2 The processing is necessary—
 - (a) for the performance of a contract to which the data subject is a party, or
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
- 3 The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
- 4 The processing is necessary in order to protect the vital interests of the data subject.
- 5 The processing is necessary—

- (a) for the administration of justice,
- (b) for the exercise of any functions conferred on any person by or under any enactment,
- (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
- (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

6 (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.