Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **29 September 2011**

Public Authority: **University of Cambridge**
Address: **The Old Schools**
Trinity Lane
Cambridge
CB2 1TN

Decision (including any steps ordered)

1. The complainant requested the amount of post-dismissal compensation settlements agreed by the University of Cambridge between December 2008 and the date of the request. He asked for this information to be broken down into bands. He also asked for, where it was possible to do so without revealing personal data in a way which would be unfair, the categories of dismissed staff (academic, academic-related, etc.) with whom the settlements were made.

2. The Information Commissioner's decision is that the University of Cambridge correctly applied section 40(2) of the FOIA to this request.

3. The Information Commissioner does not require the University of Cambridge to take any steps to ensure compliance with the legislation.

Request and response

4. On 9 July 2010, the complainant wrote to the University of Cambridge (the University) and requested information in the following terms:

'*For the period December 2008 to date, please tell me how many post-dismissal compensation settlements were agreed where the amount paid [to] the dismissed employee was in one of the following ranges:*

** 0.01 pounds to 5,000 pounds*

** 5,000.01 pounds to 10,000 pounds*

** 10,000.01 pounds to 15,000 pounds*

...and so on for all the 4,999.99 pound ranges up to the range that contains the largest amount(s) paid.

Also, if it is possible to provide the following information without revealing personal data in a way which would be unfair, for each range where the number of settlements is not 0, please indicate the categories of dismissed staff (academic, academic-related, etc.) with whom those settlements were made.'

The complainant also requested the same information, but using ranges of £19,999.99 instead of £4,999.99.

5. The University responded on 5 August 2010. It stated that the information was exempt under section 40(2) of the FOIA as it considered the requested information to be personal data, and disclosure of that personal data would constitute a breach of the first principle of the Data Protection Act 1998 (the DPA).

6. Following an internal review the University wrote to the complainant on 15 September 2010. It upheld its previous response, confirming that it believed disclosing the information requested would be a breach of the relevant individuals' rights to be treated fairly and lawfully under the DPA. The University also explained that it had taken the following factors into account when reaching this decision:

- disclosure of information may be disclosure to the world at large;
- the circumstances of all five settlements;
- the individual amounts involved;
- the likely reasonable expectations of the individuals concerned as to what may happen to their personal data (references to their settlements even in bands);
- the size and nature of the University community, and;
- the significance of compromise agreements and the mutual benefits of settling these in private.

Scope of the case

7. On 15 November 2010 the complainant contacted the Information Commissioner (the Commissioner) to complain about the way his request for information had been handled. The complainant was not

satisfied that section 40(2) had been correctly applied to his request, and was also of the view that the University had failed to provide sufficient advice and assistance to him under section 16.

8. The focus of the Commissioner's investigation was to firstly determine whether the information requested was personal data under the DPA, and secondly, if the information requested does constitute personal data, whether section 40(2) of the FOIA would apply, or in other words, would the disclosure of the information constitute a breach of the principles of the DPA.

9. The Commissioner asked the complainant to provide further arguments in relation to his view that the University had failed to provide sufficient advice and assistance under section 16. As the complainant did not respond to this request, the Commissioner has not considered this issue in his investigation or this decision notice.

Reasons for decision

10. Section 40(2) of the FOIA states that information will be exempt if it constitutes the personal data of any third party (other than the requester), and release of that information in response to the request would cause a breach of any of the principles of the DPA or section 10 of the DPA.

11. The complainant does not consider that the University correctly applied this exemption to his request, as it had previously responded to a request for the same information, but broken down into bands of £99,999.99. The complainant considers that it is not clear why this information does not constitute personal data, but the same information broken down into smaller bands will constitute personal data.

12. The first matter to consider is whether the requested information is personal data. The University considers that disclosure of the requested information by reference to bands will only be legitimate where the number of individuals falling into each band is sufficiently large to prevent an individual from being identified. It has also explained that in the case of both of the ranges the complainant has requested, one or more bands would contain a settlement relating to one individual.

13. In relation to one of the individuals, the University has explained that due to the nature of the settlement, people who were familiar with their case would be very likely to be able to identify them, and as a result there would be a disclosure of personal data, as those with 'corroborating information' would be aware of the approximate amount of the settlement figure paid to them.

14. Personal data is defined in section 1(1) of the DPA as data which relate to a living individual who can be identified from that data, or from that data and other information which is in the possession of, or likely to come into the possession of, the data controller.

15. The Commissioner has previously considered whether the amount of a settlement figure will constitute personal data in a decision notice relating to a similar request[1]. The Information Tribunal also made a decision in that case[2]. On the basis that such information has a real and direct relationship to a living person (that is it is not anonymous statistical data in the sense that any connection between a living individual and the information has been obscured and cannot be recreated), both the Commissioner and the Tribunal concluded that the amount of a settlement figure would constitute personal data.

16. It is also the Commissioner's view that an approximate settlement, for example a figure expressed as being within a particular range, will also constitute personal data (where it can be linked to an individual). It is clear from the arguments the University has provided that if the requested information is provided in either of the bands requested, the approximate amount of one or more individual settlements would be disclosed.

[1] http://www.ico.gov.uk/~/media/documents/decisionnotices/2011/fs_50321032.ashx

[2] http://www.informationtribunal.gov.uk/DBFiles/Decision/i565/20110907%20%20Decision%20%20EA20110073%20&%200074.pdf

17. It should also be noted that in response to previous requests the University has not only provided the same information broken down into bands of £99,999.99, it has also disclosed an aggregated total figure of the amount of four of the post dismissal settlements and the total number of settlements. Due to the spread of the information requested in this case, even a limited disclosure of only the bands that contained more than one settlement figure would result in the disclosure of personal data, as it would be a simple task using the information previously provided to work out the approximate values of the other individual settlements.

18. The Commissioner is therefore satisfied that the information requested constitutes personal data, and that the exemption at section 40(2) is engaged.

19. The Commissioner has also considered whether the provision of the requested personal data would breach any of the principles of the DPA.

20. The first principle of the DPA 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*".

21. The wider considerations of whether it would be considered to be fair for this information to be disclosed were addressed in points 24 to 34 of the previously mentioned decision notice. The conclusion was that the individuals who the compromise agreements related to would have a high expectation of confidentiality in relation to the contents of their agreements, and it would therefore be unfair and a breach of the first principle for this information to be disclosed.

22. Although in this case the information that would be disclosed would be in bands rather than precise figures, the principle remains the same. It is extremely unlikely to be in the expectations of the parties to the agreement that even a rounded figure would be disclosed.

23. In light of this, the Commissioner is satisfied that the requested information is exempt from disclosure under section 40(2).

Right of appeal

24. 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: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

25. 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.

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

Dated the 29th day of September 2011

Signed ……

Faye Spencer
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF