

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 18 July 2011

Public Authority: The University of Bristol
Address: Senate House
Tyndall Avenue
Bristol BS8 1TH

Summary

The complainant made a request to the University of Bristol (the University) for banded salaries attached to specific job titles for those individuals responsible for major financial and policy initiatives. The University applied section 40(2) of the Freedom of Information Act 2000 (the Act) and withheld the requested information. The Commissioner considers that section 40(2) was incorrectly applied in this case.

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.

The Request

2. On 18 November 2010 the complainant made a request for the following information:

"banded salaries attached to specific job titles for those individuals who you agree are responsible for major financial and policy initiatives? This would seem to include all those in the "Senior Executive Team" and those in the column "Administrative and professional"."

3. The University provided a response to the complainant on 18 May 2011 in which it refused to provide her with the information she had requested under section 40(2). The complainant requested an internal review of the public authority's decision on 19 May 2011. On 17 June 2011 the public authority wrote to the complainant with the details of the result of the internal review it had carried out. It upheld its original decision.

The Investigation

Scope of the case

4. On 22 June 2011 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider whether the University correctly applied section 40(2) to withhold the information in this case.

Chronology

5. On 4 July 2011 the Commissioner wrote to the University to ask if it had any further submissions it wished to make in support of its application of section 40(2) other than that which is contained in its response and reviewed response to the complainant.
6. On 8 July 2011 the University responded to the Commissioner. It confirmed that it did not have any further submissions to add in support of its application of section 40(2).

Analysis

Exemptions

Section 40(2)

7. Section 40(2) of the Act provides an exemption for information that constitutes the personal data of third parties:

“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."

8. Section 40(3)(a)(i) of the Act states that:

"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, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress),"

9. The full text of section 40 can be found in the legal annex attached to this decision notice.

10. The Commissioner will determine whether or not the University correctly applied section 40(2) in order to withhold the requested information.

11. In this case the University has explained that the salary bands for particular job titles of those individuals responsible for major financial and policy initiatives, is the personal data of the individuals who occupy those roles. It has said that this information is exempt under section 40(2) of the Act by virtue of section 40(3)(a)(i). It said that this was because to release this information would breach the data protection principles.

12. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:

a. from that data, or

b. from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

13. The Commissioner considers that the withheld information constitutes information from which the data subject could be identifiable.
14. Such information is exempt if either of the conditions set out in sections 40(3) and 40(4) of the Act are met. The relevant condition in this case is at section 40(3)(a)(i) of the Act, where disclosure would breach any of the data protection principles. The council has argued that disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met.
15. In reaching a decision as to whether disclosure of the requested information would contravene the first data protection principle the Commissioner has considered the following: -

Likely Expectation of the Data Subject

16. The University has explained that:

"Banded salary figures do not exist for roles in the Senior Executive Team as these salaries are individually negotiated. To release a figure to the nearest £5000, as the ICO guidance suggests may sometimes be appropriate, would be little different from releasing the exact figure. It is acknowledged that public facing figures with responsibility for the expenditure of public money, such as our Vice Chancellor, should expect to have some salary information in the public domain. Our Vice Chancellor's salary is published annually in the University's Annual Report.

However, other members of the Senior Executive Team do not have public profiles, nor are they in public facing roles. They do not deal with members of the public. Further, salaries at this level are not made public within the higher education sector so there is not an expectation that they will be disclosed."

17. The Commissioner's Guidance states that, "Those who are paid from the public purse should expect some information about their salaries to be made public." The University has argued that it is in a different position from many other public authorities in that the University is also reliant on a great deal of money from non-public sources. Whilst the Commissioner accepts that the University is funded through public and non-

public resources, however as it is partially reliant upon public funding there should be some expectation that some information relating to salaries, particularly of senior members of staff, may be made public.

18. The University has also argued in this case that some members of the Executive Team do not have public facing roles. Despite the roles not being public facing, the Commissioner considers that they are senior roles which attract a high level of accountability and personal responsibility and therefore there should be some expectation that some information relating to their salaries may attract public scrutiny.
19. The request clearly refers to the salary bands of individuals "who you agree are responsible for major financial and policy initiatives". The complainant expects that this may include members of the Executive Team and "those in the column "Administrative and professional" (which was supplied in response to a previous FOI request). The Commissioner notes that the University has focussed on members of the Senior Executive Team as the individuals it agrees are responsible for major financial and policy initiatives. The Commissioner considers that as these individuals would be responsible for major financial and policy initiatives they should have an even greater expectation that information relating to their salary may come under public scrutiny.
20. The University has also argued that "salaries at this level are not made public within the higher education sector". The Commissioner accepts that this may reduce the data subjects likely expectations, however due to the seniority of the posts and the responsibility and accountability this denotes and the fact that these individuals are responsible for major financial and policy initiatives, there should still be an expectation of public scrutiny in relation to the salaries paid to these members of staff.

Legitimate Public Interest

21. The University explained that it "*accepts that there is a public interest in the amounts paid to high earning members of staff at the University, and includes in the Annual Report and Financial Statements the number of employees earning in excess of £100,000 in £10,000 bands.*" It also explained that the Vice Chancellor's exact salary is also listed within the Annual Report.

The University explained that *"It is also accepted that there is a public interest in knowing the salaries of public facing figures that have responsibility for the expenditure of public money. However, we would point out that the University is in a different position from many other public authorities in that the University is also reliant on a great deal of money from non-public sources"*.

22. The Commissioner considers that there is a legitimate public interest in knowing the salary bands of members of the University's Senior Executive Team, who are responsible for major financial and policy initiatives. He considers that there is a legitimate public interest despite the University being funded through both public and private resources.
23. The Commissioner accepts that the University has gone some way to meeting the legitimate public interest through the salary information contained in its Annual Report.

The effect disclosure would have on the Data Subject

24. The University has explained that it does not have the consent of the members of the Senior Executive Team to disclose this information and it has received express refusals of consent from some members of the Senior Executive Team.
25. The University considers that the disclosure of individual salaries into the public domain against the express wishes of a member of staff could cause unwarranted and unfair harm, intrusion or distress to them.
26. In this case the University has explained that Senior Executive Team salaries are individually negotiated and has suggested that *"to release a figure to the nearest £5000 ... would be little different from releasing the exact figure"*. The Commissioner's Guidance accepts that, "in some cases, releasing the exact salary would be significantly more intrusive than approximate salaries, for example because: the exact salary is individually negotiated rather than determined according to a know formula". Whilst the Commissioner accepts that it may not be appropriate to release exact salaries under these circumstances he does not consider that this is a bar to releasing banded salaries to the nearest £5000, nor does he accept that releasing banded salaries would be little different from releasing the exact salaries.

27. The Commissioner is mindful of a previous decision notice published in March 2008 under reference FS50070465. In this case the Commissioner determined that the BBC should disclose the salary band of the Controller of Continuing Drama, but not his exact salary, which was individually negotiated. He found that the legitimate public interest outweighed the intrusion of disclosing the salary band but not the additional intrusion of disclosing an exact salary.
28. The Commissioner considers that in this case the legitimate public interest outweighs the intrusion of disclosing the salary bands requested.
29. The Commissioner therefore considers that section 40(2) was incorrectly applied to withhold the salary bands requested in this case.

Procedural Requirements

Section 1(1)

30. Section 1(1) states that:

"Any person making a request for information to a public authority is entitled –

- a. to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- b. if that is the case, to have that information communicated to him."

31. As the University did not comply with section 1(1)(a) and (b) within the statutory time for compliance it breached section 1(1)(a) and (b) when dealing with this request.

Section 10

32. Section 10(1) of the Act 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."

33. The University failed to comply with section 1(1)(a) and section 1(1)(b) within the statutory time for compliance,

therefore it breached section 10(1) of the Act in its handling of the requests.

The Decision

34. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

Steps Required

35. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Disclose the salary bands of individuals who are responsible for major financial and policy initiatives, whether those individuals are on the Senior Executive Team or included in the column "Administrative and professional" on the information previously provided to the complainant in response to an earlier request.

36. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

37. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

38. 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

39. 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.
40. 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 18th day of July 2011

Signed

Pamela Clements

Group Manager, Complaints Resolution

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Personal information.

Section 40(1) provides that –

“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.”

Section 40(2) provides that –

“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.”

Section 40(3) provides that –

“The first condition is-

- (c) 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-
 - 1. any of the data protection principles, or
 - 41. section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (d) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

- (e) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (f) does not arise in relation to other information if or to the extent that either-

2. the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded, or

42. by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Section 40(6) provides that –

"In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded."

Section 40(7) provides that –

"In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act."