

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 December 2011

**Public Authority:** Leicester City Council

**Address:** New Walk Centre  
Welford Place  
LE1 6ZG

### Decision (including any steps ordered)

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1. The complainant has requested details of the qualifications of Leicester City Council's Director of Property.
2. The Information Commissioner's decision is that Leicester City Council (the Council) correctly applied the exemption at section 40(2) (personal information of third parties) of the Freedom of Information Act to the requested information and so it is not required to disclose this information.

### Request and response

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3. On 08 April 2011 the complainant wrote to the Council and requested information in the following terms:

*"(name redacted) ~ Academic Qualifications*

*2009 - Divisional Director*

*Currently - Director, Properties*

*Assuming the post was advertised stipulating qualification/s required*

*May I request to see what qualifications does (name redacted) have".*

4. The Council responded on 14 April 2011 explaining that it considered the information requested was exempt under section 40(2) of the FOIA.
5. The complainant requested an internal review on 17 April 2011.

6. The Council responded to the internal review on 14 May 2011 explaining that, having investigated the matter, it was correct to withhold the information under section 40(2) when it responded to the request.

## Scope of the case

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7. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. The complainant stated that the Council did hold the information and argued that it should have provided it in response to the request.

## Reasons for decision

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8. Section 40(2) of FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles.
9. In order to reach a view on the Council's arguments in this case, the Information Commissioner has first considered whether the withheld information is personal data.

### *Is the requested information personal data?*

10. Section 1 of the Data Protection Act 1998 (DPA) defines personal data as data which relates 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 is likely to come into the possession of, the data controller.
11. The Information Commissioner is satisfied that all of the withheld information falls within the definition of personal data as set out in the DPA because it 'relates to' an identifiable living individual.

### *Would disclosure breach one of the Data Protection principles?*

12. The Council has argued that the withheld information is exempt under section 40(2) because disclosure would breach the first data protection principle.
13. The first data protection principle has two components:
  - personal data shall be processed fairly and lawfully; and

- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

*Would disclosure be fair?*

14. In considering whether disclosure of the information requested would comply with the first data protection principle, the Information Commissioner has first considered whether disclosure would be fair. In assessing fairness, he has considered:

- the nature of the information itself;
- the reasonableness of the expectations of the individual(s) about what would happen to their information; and
- the possible consequences of disclosure - whether disclosure would cause any unnecessary or unjustified damage or distress to the individual(s) concerned.

15. He has then balanced against these the general principles of accountability and transparency, as well as any legitimate public interests which arise from the specific circumstances of the case.

*The nature of the information*

16. The withheld information in this case relates to the academic qualifications of an individual employed by the Council.

*Reasonable expectations of the data subject(s)*

17. Disclosure of information under FOIA is disclosure to the public at large and not just to the complainant.

18. The Information Commissioner recognises that people have a reasonable expectation that a public authority, in its role as a responsible data controller, will not disclose certain information and that it will respect confidentiality.

19. However, the Information Commissioner recognises that information relating to an individual's general academic background may be made public through, for example, published biographies or similar disclosures.

20. In this case the complainant requested the specific academic qualifications of the Director of Properties on the assumption that particular qualifications would be required if the post was advertised externally. The Council has explained, however, that the post was not

advertised externally and that the post holder was 'slotted in' to this post having previously held a director position at the Council.

21. In this case, the Information Commissioner is satisfied that the data subject would have had a reasonable expectation that their personal information would not be disclosed to third parties without their consent. Whilst some public authorities publish some information about their employees, such as the type of biographies referred to above, these would not generally include full details about the qualifications held by any employee. In this case, therefore, the view of the Information Commissioner is that the data subject would have held a reasonable expectation of privacy in relation to this information, despite the seniority of their position within the public authority.

*The consequences of disclosure*

22. The Council has not provided a detailed explanation of the possible consequences of the disclosure. However, the Council has stated that it believes the disclosure in this case would prejudice the rights and freedoms of the individual concerned.
23. In the absence of argument from the Council as to what the impact of disclosure could be in this specific case, the Information Commissioner has considered what consequences may be likely to result in general through the disclosure of information about an individual's qualifications. On this point the Information Commissioner's view is that information relating to qualifications would not in general be regarded as particularly sensitive.
24. While the Information Commissioner has accepted that the data subject would hold a reasonable expectation of privacy in relation to this information, this would be on the basis of the general expectation of confidence that an individual would hold in relation to information their employer holds about them. This expectation of confidence would not be due to this information being of particularly high sensitivity. On the basis that he does not regard the personal data in question here as being particularly sensitive, the Information Commissioner does not believe that it is likely that disclosure of this information would be likely to result in any significant negative consequence for the data subject.

*The legitimate public interest in disclosure*

25. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, depending on the circumstances of the case it may still be fair to disclose requested information if there is a more compelling public interest in disclosure.

26. In considering 'legitimate interests', the Information Commissioner's view is that such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
27. The Council has acknowledged that a balance has to be struck between a public authority's duty to be transparent and accountable and its duty to respect its employees' right to privacy.
28. The Council has explained the position of Director of Properties was not advertised externally and that the current postholder was appointed to the position in accordance with the Council's 'slotting-in' procedures. The Council has argued that, for this reason, there is not a legitimate public interest in disclosure.
29. The Council told the Information Commissioner:

*"Whilst we appreciate that this is a quite senior post and sometimes a summary of qualifications may be justified, in this particular case it was an internal slotting in procedure rather than an open recruitment process. We have seen no evidence that there is any legitimate purpose, or that release is necessary and in the public interest for this particular case."*

30. The Information Commissioner's view is that generally there is a legitimate public interest in information about an individual employed in a senior role by a public authority. This may include for example the reasons an individual was suitable for a particular role. It would not be necessary, however, to release information of the level of detail requested by the complainant here. The Information Commissioner does not, therefore, believe that the reasonable expectation of confidentiality held by the data subject would be outweighed by any legitimate public interest in disclosure.

### *Conclusion*

31. In light of the nature of the information and the reasonable expectations of the individual concerned, the Information Commissioner is satisfied that release of the withheld information would cause unwarranted prejudice to the rights and freedoms of the employee. The Information Commissioner also considers there is no particular legitimate public interest in disclosure. He has therefore concluded that it would be unfair to disclose the withheld information - in other words, disclosure would breach the first data protection principle. He therefore upholds the Council's application of the exemption at section 40(2).

32. As the Information Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA is met.

## Right of appeal

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33. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

34. 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.
35. 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** .....

**Jon Manners**  
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