

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 June 2012

Public Authority: The London Fire Brigade
Address: 169 Union Street
London
SE1 0LL

Decision (including any steps ordered)

1. The complainant has requested information relating to a recruitment exercise which the London Fire Brigade ran on 9 August 2011. She asked for details of candidates scores and the notes of interviewers on each candidate. She stated that she would accept redactions to ensure that data protection laws are not compromised.
2. The Commissioner's decision is that London Fire Brigade has correctly withheld the information under section 40(2).

Request and response

3. In an undated letter the complainant wrote to London Fire Brigade and requested information in the following terms:

"I would like to know about the interview day arranged for the 9th August and the scores of all those candidates who attended that day and the notes of the interviewers on each candidate with obvious redactions made to ensure data protection is not compromised."
4. The London Fire Brigade responded (again on an unknown date). It stated that the information was exempt under section 40(2) (personal data belonging to a third party).
5. Following an internal review the London Fire Brigade provided the complainant with the candidates' scores in a redacted form. However it confirmed that the information held in the interview notes was exempt

under section 40(2). It said that even if it were to redact the names of the individuals concerned the notes often contained biographical information which could allow the individuals to be identified.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She argues that the information should be disclosed, even if the names of the individuals and their identifiers are redacted. She states that there is a precedent for redacted information to be disclosed in such requests and highlighted the Commissioner's decision in case FS50184888. This is available from the Commissioner's website at http://www.ico.gov.uk/~media/documents/decisionnotices/2009/FS_50184888.ashx.
7. The Commissioner considers that the complaint is therefore that the interviewers' notes regarding the candidates interviewed by the London Fire Brigade on 9 August 2011 should have been disclosed to her.

Reasons for decision

8. Amongst other things, section 40(2) of the Act states that information which is the personal data of a third party (i.e. not the applicant) is exempt if a disclosure of the information would breach any of the data protection principles.
9. The first question which the Commissioner needs to consider is whether the information is personal data for the purposes of the Data Protection Act or not. Personal data is defined in the DPA as information which

"data which relate to a living individual who can be identified-

a) from those data, or

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

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual"

10. On considering the above, the Commissioner is satisfied that the information is personal data. It is a record of the opinions of the interviewers on individual candidates for the position of trainee fire fighters. It also includes notes taken by the interviewers reminding them of certain biographical details given as examples by the individuals as demonstrating their relevant experience for the position.
11. When making her request the complainant made clear that she realised that the London Fire Brigade may need to redact some information from the forms in order that a disclosure would not breach the DPA. The Commissioner considers that truly anonymised data is not personal data because no individual can be identified from that information or from that information together with other available information. In such circumstances the information cannot be exempt under section 40(2) because a disclosure of the information would not be disclosure of personal data.
12. The Commissioner has therefore considered whether the London Fire Brigade could have made a limited disclosure of the information, with direct details of the identities of the interviewees redacted.
13. It is important to note that the interview notes contain details of the examples given by interviewees from their current or former workplaces, or from their past. These are biographical details which might enable individuals who have some knowledge of the interviewee to recognise that the notes refer to them rather than to any other interviewee.
14. The London Fire Brigade therefore argues that a limited redaction of direct identifiers such as the interviewees' names and addresses would still allow candidates to be identified by some individuals within the general public, such as former workmates or friends.
15. The Commissioner agrees that the interview notes contain biographical details about interviewees. He also considers that it may be possible for members of the public who have some personal knowledge of an interviewee to identify that particular notes refer to them rather than any other interviewee. The notes often contain details of incidents or events which the interviewees took part in within their workplace or within clubs or associations that they are members of. He also considers that where more than one example is given, this draws a picture of the past experience of the interviewee which would distinguish that individual from any other of the interviewees.
16. The Commissioner therefore recognises that friends, family and workmates may know that an individual applied for a position with the London Fire Brigade at around that time. If they are aware of some

details of the past experience of the individual they would be likely to be able to identify which record relates to the person that they know.

17. The Commissioner considers that there is a relatively high likelihood that some of the individuals concerned could be identified in this way, even where the notes had been redacted to some degree.
18. However the Commissioner considers that the London Fire Brigade could not know which biographical details would allow individual interviewees to be identified by friends, family or colleagues. It is on this basis that they have chosen to withhold the information in its entirety.
19. The Commissioner considers that, in general, it is likely that close friends and family members would not divulge the identity of the individual more widely. They may be able to identify the individual from their personal knowledge of his past experience etc, but would be likely to defend that person's identity from further disclosure. The Commissioner considers that in such scenarios this would not amount to a disclosure of personal data.
20. However where work colleagues or former work colleagues could identify the individuals they would have far less motivation to protect the identity of the individual concerned. Some work colleagues who could identify the individuals would be more likely to be neutral about the identification of the individual involved and could discuss the identity of the individual more openly and in a less restricted way than direct family or friends might. The result would be a far wider identification of the individual and a much less protected disclosure. In such cases the Commissioner considers that a disclosure of the information would amount to a disclosure of personal data.
21. The Commissioner is therefore satisfied that in this instance work colleagues who would not be 'motivated defenders' of an individual's information could identify the individuals from the information held within notes, together with their personal knowledge of the individual.
22. The Commissioner therefore considers that the London Fire Brigade were correct to consider that the notes contain personal data about the individuals, even where a redaction of any direct identifiers has been carried out.
23. Having decided that the information is personal data, the next question which the Commissioner must consider is whether a disclosure of that information would breach any of the data protection principles of the Data Protection Act 1998.
24. The most relevant data protection principle in this case would be the first data protection principle. This requires that information is processed

'fairly and lawfully'. The Commissioner must therefore decide whether a disclosure of the information would be 'fair'.

Would a disclosure of the information be fair?

25. The Commissioner has set out above that in his view, only individuals who are related to, worked with, or are friends with the interviewees would be able to identify the individuals from redacted records. The general public as a whole would not be able to do so.
26. If the individuals who can recognise the interviewee from the records would learn nothing new about that person from the disclosure then its disclosure is likely to be fair. Those who could associate the information with the individual would be aware of that information already.
27. In this case however, the records of each interviewee also provide a record of the interviewers' opinions on the individuals who attended the interviews. The information therefore includes notes about the interviewees' responses and provides marks as to that individual. They are a record of how that individual performed during the interview and a record of the interviewers' opinions of that performance. Marks are provided by interviewers based on the suitability of the individual for that role. It is therefore possible to understand how well or how badly that person performed during the interview stages. The Commissioner recognises that this sort of information could not be known by those able to identify the individual to whom the notes refer.
28. The Commissioner also notes that the information would have been provided by the individuals in circumstances where they would have had no expectation that that information may subsequently be disclosed to any member of the public. They would, if asked, be likely to have considered that the information and the examples they were providing would have been retained in confidence. Clearly in such circumstances there is a strong argument to suggest that it would be unfair to disclose information on an interviewee's performance to the world at large.
29. The Commissioner also notes that it may be highly embarrassing to some individuals to have such details disclosed to the world, and in particular to their friends, family or work colleagues. Clearly if the individuals had performed badly during the interviews it may cause a significant degree of distress to them to have detailed remarks about their performance disclosed in this manner.
30. The Commissioner must therefore consider whether there is any countering arguments which would outweigh such an intrusion. Where there is a significant public interest in the information being disclosed this may shift the balance towards it being fair to disclose that

information. The test is whether the legitimate interests of the public in having access to that information would outweigh the intrusion into the individual's affairs.

31. The Commissioner and the First-tier Tribunal have previously placed a strong weight on the disclosure of personal information where this is necessary in order for senior public or civil servants to be held accountable for their actions. The decisions in these cases have reflected the seniority of the post, together with the public rather than the private nature of the information to be disclosed. Effectively if the information relates to a public official carrying out his role in an official capacity then the Tribunal have placed a strong weight on that information being disclosed. This is on the basis that senior officials working within public authorities should have some degree of expectation that their actions in carrying out that role must be transparent and that information pertaining to this may be disclosed.
32. The Commissioner draws a distinction between such circumstances and the information which has been withheld in this case. The individuals in this case are not public officials carrying out public roles. They are private individuals going about their business, taking part in interviews seeking employment, albeit with a public authority. Many of the individuals will not have obtained a position within the authority and will therefore have no expectation that their information would subsequently be disclosed. They are not public officials and their actions and responses as individuals during the interview would have no real relevance to the community.
33. The Commissioner also places weight on the fact that the positions which candidates were being interviewed for were not senior positions. They were trainee fire fighter positions. There may be a stronger argument for the disclosure of interview information where the positions sought are senior public officials; individuals who obtain senior roles may be immediately responsible for large public budgets and make decisions which affect large numbers of the community. Such individuals would have a greater level of expectation that their actions would need to be transparent as discussed above. There would not be the same level of expectations regarding trainee fire fighters.
34. In the case of interviews being carried out for senior roles there would be a greater public interest in a disclosure of information on the interview process to ensure that that was carried out fairly and that the right person was awarded the position. They would not be trainees and would move directly into a role where decisions they take can affect the use of public funds, or affect the communities or areas which they help to govern.

35. Whilst the Commissioner is satisfied that some of these arguments also apply to trainee fire fighters due to the nature of the role, the impetus is less strong because the positions are not senior and the effect which the individuals might have on the general public as a whole is likely to be less. The Commissioner does recognise however that a fire fighter's role is public facing and that their roles can carry a great degree responsibility as regards the public health and safety of individuals in public and private buildings.
36. Whilst the Commissioner recognises a strong public interest in information on the interview process being disclosed in order to show that the interviews were carried out fairly, he must balance this against the potential for an unwarranted intrusion into the private lives of the individuals concerned.
37. On balance, the Commissioner considers that the legitimate interests in the public knowing that the interviews were carried out fairly does not outweigh the legitimate interests of the individuals in keeping information on their interview performance private in this instance.
38. The London Fire Brigade were therefore correct to apply section 40(2) to the information in this instance.

Right of appeal

39. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

40. 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.
41. 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

Andrew White
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