

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 10 December 2012

Public Authority: London Borough of Camden
Address: Town Hall
Judd Street
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant has requested information relating to the Housing Department at the London Borough of Camden ('the council'). The Commissioner's decision is that Hounslow Homes has correctly applied the exemption for personal data. The Commissioner does not require the council to take any steps to ensure compliance with the legislation.

Request and response

2. On 20 December 2011, the complainant wrote to the council and requested information in the following terms:
 1. What is the present organisation of the Housing Department at Camden?
 2. Please provide a family tree showing the organisation as at 1. above?
 3. Please advise the qualifications of the senior post holders down to head of section level.
 4. Please advise when and in what publications applications were invited for the vacancies now held by present post holders, down to section level.
 5. Please advise the same information as above if the applications were only invited from internal applicants.
3. This was clarified on 27 December 2011 to relate to the Social Housing aspect of the council's organisation and on 3 January 2012 to have the information sought down to Group Leaders.

4. The council responded on 30 January 2012 as follows:
 - It provided the information requested at 1 and 2.
 - It refused to provide the information requested at 3 citing the exemption at section 40(2) of the FOIA.
 - It stated that it did not hold the information requested at 4 and 5.
5. The complainant requested an internal review on 31 January 2012. The council responded on 14 February 2012 in which it maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 5 March 2012 to complain about the way his request for information had been handled. He stated that his interest in this matter is that he believes many councils appoint people without relevant qualifications or experience and pointed out that other councils had provided him with such information. The Commissioner has considered the application of the personal data exemption at section 40(2) of the FOIA in relation to the information requested at point 3 of the request, that being the qualifications of senior post holders down to head of section level.
7. During the Commissioner's investigation, the council disclosed the information requested at points 4 and 5 of the request. Although the council had previously stated this information was not held, it reversed its position and as the complainant is now in receipt of this information, the Commissioner has not considered the council's response on these points. This decision notice only considers the remaining information withheld under the FOIA as requested at point 3 of the request.

Reasons for decision

8. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
9. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means 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. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the council stated that disclosure would be unfair and breach the first data protection principle.
11. 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.”
12. As explained above, the first consideration is whether the withheld information is personal data. The Commissioner is satisfied that the qualifications of identifiable individuals constitute the personal data of those individuals. He notes that in this case the council disclosed the names of the senior post holders therefore disclosure of the qualifications of those senior post holders would amount to disclosure of individuals’ personal data.
13. As the Commissioner is satisfied that the withheld information is personal data, he now needs to consider whether disclosure would breach the first data protection principle, as the council has claimed, i.e. would disclosure be unfair and/or unlawful.
14. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Nature of the information and reasonable expectations

15. The council has stated that when individuals apply for a position, the information they supply relating to evidence of their qualifications is provided in confidence and as a consequence the post holders would have an expectation that details on their actual qualifications would not be disclosed into the public domain. The post holders would have no expectation that such details would be made public at a later date or if they achieved a certain level of seniority. It confirmed that information concerning the postholders actual qualifications is not in the public domain.
16. The complainant does not agree that post holders would expect the details of their qualifications will remain private. He has stated that in most cases in local government, but not it seems in Camden, the qualifications of a senior officer were put on the official letter heading, either in the printed letter heading or after the signature line.
17. As stated in the Commissioner's guidance on 'Requests for personal data about public authority employees¹, information about an employee's actions or decisions in carrying out their job is still personal data about that employee, but given the need for accountability and transparency about public authorities, there must be some expectation of disclosure. On the other hand, information that may be held in a personnel file about their health or disciplinary record or payroll information about their tax code all relate to them as individuals and to their personal circumstances and there is a greater expectation that a public authority would not disclose such information. In this case, the Commissioner considers that the qualifications of individuals is information held within a personnel file, and has an impact on their private lives, and therefore carries that greater expectation of privacy. He does not consider that because some council officers may state their qualifications in correspondence with the public that the individuals in this case would have an expectation that details of their qualifications would be disclosed to the public.

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http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx

Consent

18. The complainant stated to the council that consent for disclosure could be sought from the staff concerned and suggested that the council could send an email to the relevant persons in the following terms:

"An FOI request has been received asking for information concerning the qualifications of senior post holders down to head of section level. Please advise if you consent to this information being disclosed under the FOI legislation. If you do consent then please give the qualifications you hold in reply to this email."
19. The council replied to the complainant that it is not persuaded that there would be a sufficient justification to go beyond the application of the exemption by seeking to ascertain the view of the individual data subjects on release. It stated that to adopt such a course would amount to the creation of new information which may not even be accurate according to the information actually held by the council's Human Resources.
20. When considering the issue of consent, the Commissioner's view is that where the data subject consents to the disclosure of their personal data within the time for statutory compliance with the request, then this disclosure will generally be considered fair.
21. However, any refusal to consent is not determinative in the decision as to whether the data subject's personal data will be disclosed. Rather the Commissioner will take the data subjects comments into account insofar as they represent an expression of views of the data subject at the time of the request had the data subject given any thought to the issue at the time. These views help form the analysis of fairness.
22. The Commissioner considers that the council was not under any obligation to seek consent when making its own decision as to whether disclosure would be fair.

Consequences of disclosure

23. The council has submitted that the nature of the post may be reliant on experience or judgement rather than formal academic qualification and that a perfectly suitable post holder may be embarrassed by public revelation that they don't have many academic qualifications.
24. It also stated that people who supply information concerning their qualifications do so freely because of the assumption that this information will not be disclosed and that future potential candidates may be dissuaded from applying for senior posts if their suitability for a

post was determined by public scrutiny of their qualifications rather than the formal recruitment process.

25. The council stated that disclosure would be an unwarranted interference with individuals' basic human right to privacy and that while it may be hard to detail the likely damage or distress that may be caused until after the release of this information, it is believed that any disclosure would be unfair and therefore it would be safe to assume that some distress would be caused to the officers involved.
26. In correspondence to the Commissioner the council also stated that the release of qualification information could call into question the ability of a council and its officers to deliver effective services to the community, as they could be hampered if some members of the public disputed decisions made by the council not because of the outcome of a particular decision but because of the qualifications of the individual who made the decision. This is a position that the Commissioner was found to agree with in decision notice FS50394165.
27. Although the Commissioner does not view information relating to qualifications as particularly sensitive, because the complainant has expressed his belief that one current postholder has recently been promoted despite having no qualifications and that another post was recently filled without any sort of formal process and possibly contrary to sex equality legislation, the Commissioner considers that there is a possibility that, should the information be disclosed, it could expose those individuals to harassment. The complainant provided the Commissioner with the background as to why he has made this request and although the FOIA is applicant blind, the Commissioner believes that this background increases the risk of the individuals being exposed to harassment if the information is disclosed, regardless of the actual qualifications held by those individuals.
28. The Commissioner considers that disclosure of the requested information and the associated loss of privacy has the potential to cause damage and distress in this case.

Legitimate interests in disclosure

29. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
30. The complainant stated that there is public interest in disclosure because it gives a form of audit that the council is acting in a proper manner in making appointments, that the staff appointed to senior positions are properly qualified and competent to carry out the work

assigned to them, and that the same or similar method of making appointments of qualified staff is used on a continuous basis.

31. The complainant also stated that it might appear to an unbiased onlooker that certain appointments have been made in suspicious circumstances and that can only be rebutted by full disclosure of the information requested. He explained that one current postholder has no qualifications and has recently been promoted and that another post was recently filled without any sort of formal process and possibly contrary to sex equality legislation. He believes that it is the policy at the council that staff will not be appointed without specific qualifications and that is in the public interest to know how these appointments were made. The Commissioner has not investigated the allegations in relation to these post holders as it is not within his jurisdiction to do so and he is aware that the council has a complaints procedure in place to deal with any such complaints.
32. He further stated that it is possible that appointment to posts may be reliant on experience or judgement but this is so subjective that employers try not to rely on it but instead rely on the objective basis of qualifications. He believes that this council did and do rely on qualifications, and in particular on the PQ-CIH (for housing staff), for just this reason and that no mention is made of experience or judgement in advertisements or in personal specifications.
33. He also submitted that it is very often the case that the public interest is best served and well served by the qualifications and experience of council officials being open to question and gave as an example that of social workers who with very little experience and only just having qualified are put in charge of very difficult and important child care cases which go on to cause a national scandal. He believes it cannot be right that some council officers are appointed without any proper system being followed and the council is then allowed to hide behind the exemption at section 40(2) of the FOI.
34. The council has acknowledged that to release the information would allow the public to know the qualifications of the council officers and that it is in the public interest that officers have the necessary qualifications and expertise to carry out their role. However, it has argued that the public (and the postholders) would expect the recruitment or organisational change procedures to determine both their suitability to hold the post and whether they held any qualifications that were deemed essential (which would be proved on recruitment through references and production of certificates) and it is not in the public interest for the exact qualifications of individual officers to be made public. It argued that there is therefore no legitimate interest in disclosure of this particular information, where

the public interest would be greater than the officer's right to privacy. It further stated that there is no public interest in qualifications that are not essential to the job.

35. Whilst the Commissioner believes there is a legitimate public interest in knowing that staff are suitably qualified to perform their roles, and that it is important for members of the public to have faith that council officers are appointed appropriately, he does not believe that it is necessary to know the exact qualifications of individuals in order to do so. He considers that the council's recruitment and organisational change procedures amount to another mechanism to achieve the same result without disclosure of individuals' personal data. The Commissioner is also aware that the council would address any complaint about an appointment through its central complaints team and that any complainant would be able to refer to the Local Government Ombudsman if unsatisfied with the outcome of the internal complaint investigation.
36. In addition, the Commissioner is aware that some of the post holders are employed in a senior role. Whilst his view is that generally there is a legitimate public interest in information about individuals in senior public roles, he does not believe it is necessary to release the level of detail requested in this case.

Conclusion on analysis of fairness

37. Taking all of the above into account, the Commissioner concludes that it would be unfair to the individuals concerned to release details of their qualifications. Such individuals would hold a strong expectation that their qualifications would not be disclosed, and, despite the information itself being of relatively low sensitivity, disclosure could cause damage and distress. He acknowledges a legitimate interest in knowing that staff are suitably qualified but there are other mechanisms to ensure this and qualifications are only part of the appointment process. Therefore he does not believe that the legitimate interest outweighs the individuals' reasonable expectations, their right to privacy, and the possible consequences of disclosure in this case. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i). As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

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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