

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2013

Public Authority: Swindon College
Address: North Star Avenue
Swindon
Wiltshire
SN2 1DY

Decision (including any steps ordered)

1. The complainant has requested;

Information concerning the amount of compensation and legal fees paid by Swindon College to one of its former employees following his successful legal claim against it in the High Court.

2. The Commissioner's decision is that Swindon College has correctly engaged section 40(2) of the FOIA in respect of the information requested.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 15 May 2012 the complainant emailed Swindon College and asked two questions. However, only the second one is of relevance to this Decision Notice as the complainant is satisfied with the response to the first.
5. In his second question headed '2. (name redacted) v Swindon College in the High Court in Bristol' the complainant stated:

'Further to your email dated 27 February 2012 my repeat request for information was made at a "reasonable interval" and was repeated because your reply conveyed that the matter had not been concluded when you replied to me.

If the costs have now been concluded, I request the following information: -

- a) What is the amount of compensation paid for (name redacted) pension loss?*
 - b) What is the total amount of compensation and / or damages paid to (name redacted)?*
 - c) What was the total of all legal fees, expenses and other costs incurred by the College in this case?'*
6. On 14 June 2012 Swindon College responded. In relation to questions 2 a) and 2 b) it confirmed that it held the information but was withholding it under sections 36(2) and 40(2) of the FOIA. It said that there would be an invasion of privacy if it disclosed the settlement amount paid to an identifiable individual. It added that there was a public interest in public bodies being able to avoid litigation by settling claims in privacy. With regard to question 2 c) Swindon College repeated what it has told the complainant earlier that the only recorded information it held in relation to the legal fees, expenses and other costs it incurred in connection with the legal case was the insurance excess of £30,000 (plus VAT).
 7. On 2 July 2012 the complainant requested an internal review as he was dissatisfied with the response from Swindon College.
 8. On 14 August 2012 Swindon College notified the complainant of the outcome of its internal review which was to uphold its original decision under sections 36(2) and 40(2) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner in October 2012 to complain about the way his request for information had been handled by Swindon College. In particular, he complained about its decision to apply sections 36(2) and 40(2) of the FOIA to withhold the requested information in questions 2a, 2b and 2c of his request dated 15 May 2012.
10. On 1 March 2013 the complainant confirmed that the only outstanding issues he required the Commissioner to investigate related to Swindon College's responses to questions 2a, 2b and 2c of his request dated 15 May 2012.

Chronology

11. On 4 March 2013 the Commissioner wrote to Swindon College and requested the withheld information together with its further comments in relation to the settlement terms with the named individual and the legal costs incurred.
12. The College replied on the 18 and 19 March 2013 and disclosed the withheld information (comprising of the total compensation figure for the information requested in questions 2a and 2b of the request) together with the terms under which it was paid. Further information regarding the basis upon which the claim was settled privately is set out in the Confidential Annex referred to in this Decision Notice.
13. In relation to the recorded information held in connection with the legal fees, expenses and other costs incurred in connection with the claim, Swindon College reiterated that these were restricted to the insurance policy excess of £30,000 plus VAT paid to its solicitors. It also clarified that the balance of the legal costs together with any compensation paid were settled directly by its insurer.
14. Swindon College also confirmed that the policy excess of £30,000 plus VAT was recorded within its annual accounts for 2008/9 and 2009/10 as part of its general expenditure.

Reasons for decision

Recorded information held

15. The first question for the Commissioner to consider is whether Swindon College has identified all the recorded information it holds falling within the scope of the complainant's request.
16. With regard to questions 2a and 2b of the complainant's request (concerning the amount of compensation paid, including any pension loss), Swindon College has provided the Commissioner with the recorded information it holds, a summary of which is set out in the Confidential Annex.
17. With regard to question 2c (concerning the total of all legal fees, expenses and other costs incurred concerning the case) Swindon College has provided the Commissioner with the recorded information it holds consisting of the Insurance Policy Schedule showing the excess of £30,000 together with details of the instalment payments to its solicitors making up this amount. Swindon College has pointed out to the

complainant that the extent of its financial liability in relation to the case for which it holds recorded information is the Insurance Policy Excess of £30,000 plus VAT. All other costs and expenses paid over and above this amount have been discharged by its insurers (which effectively is private as opposed to public money). Swindon College has stated that it does not hold any specific recorded information in relation to any other expenses or costs (for example, its staff time and expenses in detailing with the claim and communicating with its solicitors).

18. The Commissioner is satisfied that, on a balance of probabilities, Swindon College has identified all the recorded information it holds falling within the scope of questions 2a, 2b and 2c of the complaint's request. The information concerning questions 2a and 2b has been withheld under sections 40(2) and 36(2) of the FOIA and the information concerning question 2c is confined to the policy excess of £30,000 plus VAT.

Exemptions

19. Swindon College has relied on the exemptions under sections 40(2) and 36(2) of the FOIA to justify its decision to withhold the requested information.

Section 40(2)

20. Section 40(2) of the FOIA 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 second condition below is satisfied'.
21. Section 40(3) provides 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 –
 - (b) any of the data protection principles'.

Is the information 'personal data'?

22. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the Data Protection Act 1998 (DPA). Swindon College has argued that the amount of compensation paid to the data subject constituted his personal data as defined by the DPA. The Commissioner agrees with this interpretation.

Does the disclosure of the information contravene any data protection principles?

23. Swindon College has contended that disclosure of the compensation and legal costs paid to the named individual would contravene the first data protection principle.

24. 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'.

25. In deciding whether disclosure of personal data would be unfair in this case the Commissioner has taken into account the following factors:

- The circumstances and terms under which the compensation and legal costs were paid.
- The data subject's reasonable expectation as to what would happen with his personal data?
- What damage or distress the data subject would suffer if the withheld information was disclosed?
- Any legitimate interests the public may have in knowing the amounts of public money spent by Swindon College?

The circumstances and terms under which the compensation and legal costs were paid

26. Swindon College has informed the complainant that the amount of compensation paid was agreed privately between the parties in an out-of-court settlement.
27. Swindon College has pointed out that there is a major public interest and significant benefit in public bodies being able to reduce its exposure to lengthy and costly litigation (including final court hearings) by settling claims in private.
28. Swindon College has also informed the Commissioner of the circumstances and terms under which the compensation was paid. These are set out in the Confidential Annex referred to in this Decision Notice.
29. It is apparent to the Commissioner from the information in the Confidential Annex that circumstances and terms under which the compensation was paid were intended to be private and confidential and not for public disclosure.
30. The Commissioner recognises the desirability and importance of parties engaged in High Court litigation to be able to settle claims privately by negotiation without the need to attend a full hearing in open court with all the expense, stress and uncertainty associated with it.

The data subject's reasonable expectation as to what would happen with his personal data

31. Swindon College has pointed out that it would be an invasion of privacy to disclose the amount of compensation negotiated and agreed by litigating parties in private to avoid the cost of a full court hearing.
32. The Commissioner agrees that an individual who successfully sues a former employer would have a reasonable expectation that the details of any settlement achieved in private on an out-of-court basis would not be disclosed to the world at large under the FOIA.
33. It is clear to the Commissioner from the information in the Confidential Annex that the data subject had a reasonable expectation that the terms of his settlement with Swindon College would be kept private and confidential.

What damage or distress = would the data subject suffer if the withheld information was disclosed?

34. Although the Commissioner invited Swindon College to consider approaching the data subject to see whether he would have any objection to disclosing details of his compensation settlement under the FOIA, it declined to do so for two reasons. Firstly, it pointed to the circumstances and conditions under which the claim was settled. Secondly, it said that the litigation created a very hostile and confrontational position between the parties. Furthermore, both sides would have to make the approach suggested by the Commissioner through their respective solicitors and Swindon College said that it had a genuine concern that such a request might inflame or reopen the previous difficulties and lead to further conflict.
35. The Commissioner notes that the litigation between the data subject and Swindon College continued for some time resulting initially, in a public trial on liability (during which the claim was upheld) and subsequently, in a private settlement over a year later. The Commissioner recognises that such lengthy and contentious litigation would be stressful for the data subject and can understand why Swindon College believes that disclosure of the final settlement would have the consequences described above.

Any legitimate interests the public may have in knowing the amounts of public money spent by Swindon College and the terms of the settlement reached between the parties in private

36. Although the section 40(2) exemption is absolute and therefore not subject to the public interest test, the Commissioner will still consider legitimate interests in favour of disclosure as part of his consideration of fairness.
37. The complainant believes that there is a legitimate interest in the public knowing the amount of tax payers' money incurred by Swindon College as a result of the successful High Court claim brought against it by the data subject for negligent misstatement.
38. Swindon College has pointed out that the amount of public money it incurred (for which it holds recorded information) is limited to the sum of £30,000 plus VAT representing the excess under its insurance policy. All sums over and above this figure (in respect of the additional legal costs and the compensation paid) were paid by Swindon College's insurers and effectively represent private as opposed to public money.
39. The Commissioner recognises that there is a legitimate public interest in knowing the amounts of public money spent by a public authority in

defending a claim where ultimately it was found to have acted inappropriately by a High Court judge in a public hearing. Full details are set out in the confidential annex. However, the Commissioner believes that this public interest in this case has been satisfied by Swindon College in that it has disclosed the extent of its liability (namely the insurance policy excess of £30,000 plus VAT) and confirmed this figure has been accounted for in its annual accounts.

40. The Commissioner accepts there is a public interest in knowing the consequences of a public authority found to have been acting inappropriately in relation to a former employee and in some circumstances and this might include the amount of money incurred. In this case however, the Commissioner believes that the public interest has been satisfied by the extensive publicity surrounding the High Court hearing (as described in the confidential annex) and the fact that the actual public money incurred has been disclosed. He does not believe that there is a further public interest in the privately negotiated terms of the settlement reached between the parties being disclosed in view of the reasonable expectations of privacy as described above.
41. The Commissioner's conclusion in this matter Swindon College has successfully engaged section 40(2) of the FOIA.

Section 36(2) of the FOIA

42. As the Commissioner is satisfied that section 40(2) of the FOIA is engaged he has not gone on to consider section 36(2).

Right of appeal

43. 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

44. 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.
45. 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

Rachael Cragg
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