

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2013

Public Authority: Imperial College London
Address: South Kensington Campus
London, SW7 2AZ

Decision (including any steps ordered)

1. The complainant has requested information relating to a recruitment process carried out by Imperial College London.
2. The Commissioner's decision is that Imperial College London (ICL) has correctly applied section 40(2) of the FOIA when withholding the information requested.
3. The Commissioner does not require ICL to take any steps as a result of this decision notice.

Request and response

4. On 10 September 2012, the complainant wrote to ICL and requested information in the following terms:
 1. *Please provide copies of the application forms and particulars of the 3 candidates shortlisted for interview **on an anonymous basis**; please blot out all names and personal details, if necessary. The information should be edited to remove personally identifiable data without reducing the value of the information.*
 2. *Please provide copies of any other document, official notes, if not submitted before, and emails exchanged between the members of the shortlisting panel and between them and the HR department, relevant to the shortlisting process.*
 3. *Alternatively to #1, please provide a general comparative summary of the experience and qualifications of each candidate, identifying the*

*successful candidates, **on an anonymous basis**. The summary should indicate the comparative information for the 8 selection criteria given in (1) advertised job description, and (2) Short Listing Record Form.*

5. ICL responded on 5 October 2012. It provided a summary for each of the shortlisted candidates. ICL further stated that there were no further documents relating to the shortlisting process that the complainant had not already received.
6. Following an internal review ICL wrote to the complainant on 11 October 2012. It maintained its original position and stated that the requested information was exempt under section 40(2) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 12 October 2012 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if ICL has correctly applied section 40(2) to the information requested.

Reasons for decision

9. Section 40(2) of the FOIA provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the Data Protection Act 1998 ("the DPA"). Section 40(2) is an absolute exemption and therefore not subject to the public interest test.

Is the information personal data?

10. In considering whether ICL has correctly applied section 40(2) of the FOIA, the Commissioner has first considered whether the withheld information can be considered "personal data".
11. Personal data is defined in the DPA as:

*"..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 intention of the data controller or any other person in respect of the individual".

12. The withheld information consists of application forms and CVs of shortlisted candidates. The Commissioner is satisfied that this is personal data.

Could personal data be redacted from the withheld information?

13. The Commissioner has considered whether it would be possible to disclose the withheld information in an anonymised format, i.e. redact any details which could lead to the identification of individual applicants. He does not accept that, where a data controller holds information which could potentially be used to identify living individuals from the anonymised data, this turns the anonymised data into personal data. The Commissioner considers that even where the data controller holds additional 'identifying' information, this does not prevent it from anonymising that information to the extent that it would not be possible to identify any living individual from that information alone, and thus it would no longer be personal data.
14. The Commissioner draws support for this approach from the House of Lords' judgement in the case of the Common Services Agency v Scottish Information Commissioner¹.
15. However, if a member of the general public could identify individuals by cross-referencing the anonymised data with information already in the public domain, then the information will be personal data. Whether it is possible to identify individuals from the anonymised data is a question of fact based on the circumstances of the specific case.
16. In this case the application forms provides details of current and previous positions held by the applications, as well as specific and detailed biographical data relating to their lives. It also includes details of presentations, research papers and publications they have contributed to or written.
17. The Commissioner has viewed the withheld information. It is clear to him that even in a redacted form whereby names and addresses have been withheld, there is a significant amount of biographical information, which when combined with information already in the public domain, would make the individuals easily identifiable.

¹ [2008] UKHL 47

Would disclosure breach the first data protection principle?

18. The most relevant data protection principle in this case is the first data protection principle. The Commissioner has considered whether such disclosure would be unfair and as such breach the first data protection principle.
19. 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
20. ICL considered that disclosure of the requested information would be unfair as the applicants had provided the information as part of a job application process, which is by nature and necessity a private process.
21. ICL maintained that the candidates would not expect their completed application forms and other submitted documentation to go into the public domain without their knowledge or consent. Neither would they expect it to be made known to a third party that they were applying for a new position or that they were selected for interview and in the case of unsuccessful candidates that they were not appointed.
22. ICL believed that the disclosure of the requested information would be unfair and could potentially have unjustified adverse effects on the individuals concerned such as embarrassment and/or distress. ICL considered that it was a reasonable expectation of any individual applying for a position, whether an academic role or not, that their application would be kept confidential along with the content of their application form. In addition, ICL stated that the data protection notification on the application forms states that any *"processing of the data will be in accordance with the College's Data Protection Policy and the processing principles set out in the Act"*, this implies that the data will not be processed for purposes beyond that which it was being collected i.e. recruitment purposes only.
23. ICL also considered whether any of the conditions in schedule 2 would allow the information to be disclosed. ICL accepts that the information was of interest to the complainant but contends that any legitimate interest he had to the information was outweighed by the legitimate interests of the applicants to have the privacy of their information maintained.

24. 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.
25. The Commissioner draws a distinction between such circumstances and the information which has been withheld in this case. The individuals are not public officials carrying out public roles. They are private individuals going about their business, taking part in interviews seeking employment, albeit a public authority. Not all the individuals will have obtained a position within the authority and therefore will have no expectation that their information would subsequently be disclosed.
26. The Commissioner also places weight on the fact that the position being recruited for was not a senior position. There may be a stronger argument for the disclosure of applicant information where the position sought is a senior public official; individuals who obtain senior roles may be immediately responsible for large public budgets and make decisions which affect large numbers in the community. Such individuals would have a greater level of expectation that their actions would need to be transparent. There would not be same level of expectation regarding the role in this case namely that of a research assistant.
27. Whilst the Commissioner recognises a strong public interest in information on recruitment processes being disclosed in order to show that the recruitment is carried out fairly, he must balance this against the potential for unwarranted intrusion into the private lives of the individuals concerned.
28. On balance, the Commissioner considers that the legitimate interests in the public knowing that the recruitment process was carried out fairly does not outweigh the legitimate interests of the individuals in keeping the information collected through their applications private in this instance.
29. ICL was therefore correct to apply section 40(2) to the information requested in this instance.

30. With regard to part 2 of the request:

"Please provide copies of any other document, official notes, if not submitted before, and emails exchanged between the members of the shortlisting panel and between them and the HR department, relevant to the shortlisting process."

ICL stated that in its response to the complainant dated 5 October 2012 it had explained to the complainant that it had already released to him all documents relating to the shortlisting process outside of the FOIA.

31. In his submission to the Commissioner, the complainant stated he would like ICL to provide information how the shortlisting and the interviewing processes were exactly carried out in this case. This can be clarified through revealing correspondence between the shortlisting/interviewing panel and between them and other departments such as HR, shortlisting grids, and interview dates and notes.

32. The complainant maintained that a statement from ICL

"You also asked for copies of any other documents and emails that had not previously been provided to you. I have reviewed the information provided to you in response to the Equality Act Questionnaire you submitted on 28 June and can confirm that there are no other documents or emails relating to the shortlisting or recruitment process that have not already been released to you." is untrue.

33. In its response to the Commissioner ICL commented that it was surprised the complainant was proceeding with this case as he already had in his possession the withheld information sought under the FOIA. It also confirmed that no further shortlisting documentation, beyond that already provided, is held by ICL.

Information not held

34. Section 1 of the FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing whether it holds information of the description specified in the request and if that is the case, to have that information communicated to him.
35. The normal standard of proof to apply in determining whether a public authority does hold any requested information is the civil standard of 'on the balance of probabilities'.
36. ICL has provided the Commissioner with copies of all the information provided to the complainant. This covers information in response to his FOIA request and information provided outside of the FOIA.

37. The Commissioner acknowledges that the complainant is of the opinion that ICL holds further information relating to the shortlisting process i.e. emails between those involved in the recruitment process.
38. The Commissioner notes that it can be difficult for a public authority to “prove” that it does not hold any information on a particular subject. However, having reviewed the evidence, the Commissioner is satisfied that on the balance of probabilities, ICL has already provided all the information it holds and does not hold any further information in relation to part 2 of the request.

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

Pamela Clements
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