

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2013

Public Authority: Farnham Town Council
Address: Council Offices
South Street
Farnham
GU9 7RN

Decision (including any steps ordered)

1. The complainant has requested information relating to the decision of a recruitment interview panel, including details of individual candidates' performance. Farnham Town Council (the "council") provided the complainant with information relating to their own performance as a candidate and refused the remaining information under section 40(2) of the FOIA, the exemption for personal data.
2. The Commissioner's decision is that the public authority failed to respond to the request in time and breached section 10(1) of the FOIA and that the council has correctly applied section 40(2) of the FOIA to the withheld information.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 31 July 2012, the complainant wrote to the council and requested information in the following terms:

"...I would now like to see the various marking sheets that where (sic) the basis of the panel decision. I particularly would like to see how I fared against the other 4 candidates – their details of course being anonamised (sic)."

5. The council responded on 25 September 2012. It provided the complainant with the requested information as it related to their own interview. It refused to provide information relating to other candidates because it considered that this constituted third party personal data, the disclosure of which would be unfair. It explained that the information was, therefore, exempt under section 40(2) of the FOIA. The council explained that, even it was to redact the information it was not possible to render it anonymous because individual candidates would still be identifiable.
6. Following an internal review the council wrote to the complainant on 14 December 2012. It stated that it upheld its decision to partly refuse the request but acknowledged that its initial response had not been issued within 20 working days.

Scope of the case

7. On 14 December 2012 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. Having viewed the complainant's submission, the Commissioner considers that his investigation should determine whether the council provided a response within the statutory time limit and whether it has correctly applied the exemption for personal data to the withheld information.

Reasons for decision

Section 10 – time for compliance

9. Section 10(1) of the FOIA requires that on receipt of a request for information a public authority should respond to the applicant within 20 working days.

10. The complainant's request was submitted to the council on 31 July 2012 and the council provided a response on 25 September 2012.
11. As the council's response was sent more than 20 working days after the date of receipt of the request the Commissioner has concluded that the council has breached section 10(1) of the FOIA.

Section 40 – personal data

12. Section 40(2) of the FOIA provides 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.
13. The first question which the Commissioner needs to consider is whether the information is personal data for the purposes of the Data Protection Act 1998 (DPA) 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"

14. Having viewed the withheld information the Commissioner is satisfied that the information is personal data. It is a record of the opinions of the interviewers on individual candidates for a job position. 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.
15. When making their request the complainant made clear that they wanted the council to anonymise any information provided to remove personal data.
16. 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.

17. The Commissioner has therefore considered whether the council could have made a limited disclosure of the information, with direct details of the identities of the interviewees redacted.
18. 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.
19. 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. 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.
20. The council has argued that the candidates in question would be identifiable because they all met each other at the interviews. The complainant has disputed this and stated that they only know the winning candidate. However, the council has clarified that 3 of the candidates all live or work locally and that this knowledge, combined with that contained within the requested information, even when redacted, would allow them to be identified.
21. The Commissioner considers it is relevant that the council is a relatively small public authority and the number of candidates attending interviews was just 5. Disclosures made under FOIA are global disclosures so, regardless of whether the complainant had met the other candidates or not, the Commissioner considers that there is a likelihood that someone either associated with the candidates or with some local knowledge would be able to identify individuals from the details contained in the withheld information. The Commissioner considers that, in order to make the information truly anonymous and, therefore, not personal data, the extent of redaction required would render the information meaningless.
22. The Commissioner considers that the council was 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.

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 disclosure of the information be fair?

25. In this case, 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. 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.
26. 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.
27. 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.
28. 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.
29. 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 their 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 relating to this may be disclosed.

30. 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 but are private individuals going about their business, taking part in interviews seeking employment, albeit with a public authority. Most 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.
31. The Commissioner also places weight on the fact that the position which candidates were being interviewed for was that of team leader - not a senior position. 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 a team leader.
32. 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. A role where decisions can affect the use of public funds, or affect communities or areas which a public authority governs would be expected to attract a higher degree of public scrutiny.
33. 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.
34. 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.

35. The Commissioner has concluded, therefore, that the council was correct to apply section 40(2) to the information in this instance.

Right of appeal

36. 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

37. 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.
38. 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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