

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 April 2014

Public Authority: Department for Education
Address: Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Decision (including any steps ordered)

1. The complainant has made a freedom of information request to the Department for Education (DfE) for information relating to the application of a named headteacher to become a National Leader of Education. The DfE refused the request by relying on the section 40(2) (personal information) exemption.
2. The Commissioner's decision is that section 40(2) was correctly applied and the DfE dealt with the complainant's request in accordance with FOIA. The Commissioner requires no steps to be taken.

Request and response

3. On 24 September 2013 the complainant made a freedom of information request to the DfE for information about an application for a named headteacher to become a National Leader of Education. The request read as follows:

"Please supply us with a copy of [a named individual]'s NLE application, including all related documents and materials. Including names of referring bodies or individuals and references."

4. The DfE responded to the request on 14 October 2013 when it confirmed it held the requested information. However, it said that this was being withheld because it was exempt under the section 40(2) (Personal information) exemption. It explained that the information was the personal data of several individuals and disclosure would contravene the data protection principles.

5. The complainant subsequently asked the DfE to carry out an internal review of its handling of his request and it presented its findings on 4 November 2013. The DfE said that it was upholding the earlier decision to refuse the request. It also noted that it had now dealt with over 40 items of correspondence from the complainant on the issue of a particular school and its head teacher since 2009. It suggested that this was part of an obsessive pattern and that therefore future identical or substantially similar requests would be considered under section 14(1) (vexatious requests). However, the Commissioner understands that the DfE are not relying on section 14 in relation to this particular request.

Scope of the case

6. On 16 November 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner agreed with the complainant that the scope of his investigation would be to consider the DfE's application of the section 40(2) exemption.

Reasons for decision

Section 40(2) – Personal information

7. The withheld information in this case comprises an application sent by the named individual for the post of National Leader in Education as well as a reference sent in support of the application. The information has been withheld under the section 40(2) exemption.
8. Section 40(2) of FOIA provides for an exemption where information is the personal data of someone other than the applicant and where one of two conditions is satisfied. In this case the first condition is relevant which is that disclosure would contravene one of the data protection principles. The data protection principles are a set of rules included in the Data Protection Act 1998 (DPA) which govern how public authorities should treat personal data.
9. The first thing to consider in deciding whether the section 40(2) exemption has been applied correctly is whether the requested information is personal data. Personal data is defined in the Data Protection Act 1998 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 intentions of the data controller or any other person in respect of the individual”

10. In this case the requested information all relates to the named headteacher. The information identifies this individual and is of biographical significance to him as it includes details of his career, achievements and experience. The information regarding references is also the personal data of the referee as it identifies this individual and includes their opinion on the applicant and their experiences of working with this individual. The Commissioner is satisfied that all of the requested information can be said to be personal data.
11. The next thing to consider is whether the information would breach one of the data protection principles. In this case the DfE has argued that disclosure of the information requested by the complainant would contravene the first data protection principle which requires that personal data be processed fairly and lawfully.
12. In considering whether disclosure would be unfair, and thus contravene the first principle, the Commissioner takes into account the expectations of the individual concerned, the possible effects of disclosure on the individual and whether consent has been obtained to disclose the information.
13. First of all, the DfE has said that the individual in this case has not given his consent to the disclosure of the information. The Commissioner also considers that there would be a reasonable expectation that information given as part of the application process for the National Leader of Education post would not be disclosed in response to a freedom of information request as it would be reasonably believed that the information would only be used to process the application. This is because it is usually implicitly understood that when people apply for a job or a position, even when this is a public role, their application and references will not be made public. The DfE has also suggested that there may be possible adverse consequences for the individual concerned given the history and background of the request. In particular the Commissioner understands that there is a campaign focusing on the named headteacher over alleged failings involving him and the school. Seen in this context the Commissioner considers that disclosure is likely to be unfair.

14. During the course of the Commissioner's investigation the complainant suggested that he would be satisfied if the DfE were to just disclose the names of the referee or referees who supported the application. Again, the Commissioner considers that disclosure would be unfair as the individual would have a reasonable expectation that information would not be disclosed. In particular the Commissioner notes that referees for NLE applications were only informed that any reference they give may be provided to the applicant (the head teacher). Therefore, it would reasonably be expected that the information would not be disclosed more widely.
15. The Commissioner's concerns regarding the campaign focusing on the headteacher are also likely to apply to the referee given that the campaign would appear to be based on the premise that the individual should not have been appointed to this role and that therefore the referee or referees were wrong to have recommended him. Again, the Commissioner considers that disclosure in this context is likely to cause distress to the individual concerned.
16. However, notwithstanding individuals' expectations of privacy or any harm that could be caused by disclosure, there may be occasions when it is still fair to disclose personal data if there is a public interest in disclosure. In this case, the Commissioner accepts that the information relates to the individual's application for what is a public role. Therefore, the Commissioner considers that this does weigh somewhat in favour of disclosure because this would help to explain the reasons for this particular headteacher's appointment. However, this has to be balanced against protecting the rights and freedoms of this individual and the other third parties. Where there is an expectation of privacy and disclosure would be likely to harm the interests of the individuals concerned there must be a compelling reason which would justify infringing someone's privacy rights. The Commissioner is not satisfied that this is the case here and therefore he has reached the view that disclosure would contravene the first data protection principle and as such the section 40(2) exemption was correctly applied. The Commissioner's decision is that the requested information, including the identity of the referee should be withheld.

Right of appeal

17. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF