

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 June 2017

**Public Authority:** Hertfordshire County Council

**Address:** County Hall  
Pegs Lane  
Hertford  
SG13 8DQ

#### Decision (including any steps ordered)

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1. The complainant has requested information from Hertfordshire County Council ("the council") relating to the application and selection process for a particular position of employment.
2. The Commissioner's decision is that the council has correctly withheld the information under section 40(2) of the FOIA.
3. The Commissioner does not require the council to take any steps.

#### Request and response

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4. On 3 August 2016 the complainant wrote to the council and requested information in the following terms:  
*"I would like you to provide copies of all the application forms that were submitted for the vacancy and also all of the interview notes along with any pertinent information that related to the application and selection process."*
5. The council responded on 25 August 2016. It advised that it did not hold interview notes (as the interviews had not yet been conducted), nor an application form, for the role.
6. The council confirmed that it did hold a copy of the job description and scoring sheet for the post which it provided to the complainant, removing that information which would identify the applicants.

7. The council also confirmed that it held the online registration forms, supporting statements, CV's and covering letters submitted by applicants. However, it refused to supply this information as it considered this to be the personal data of third parties and decided that it should be withheld under section 40(2) of the FOIA.
8. Following a request for internal review by the complainant on 3 September 2016 the council wrote to the complainant on 5 October 2016. It maintained its original position.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 20 October 2016 to complain about the way his request for information had been handled.
10. The complainant disagreed with the council's position that all the information that had been withheld was exempt under section 40(2). The complainant believed that information could have been provided in a summarised or redacted form.
11. The Commissioner has considered whether the council was correct to apply section 40(2) to refuse to disclose the requested information.

### **Reasons for decision**

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12. The Commissioner began her investigation by contacting the council on 28 March 2017. The council provided a detailed response and supplied a copy of the withheld information.

#### **Section 40(2) – Third party personal data**

13. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and, by virtue of section 40(3)(a)(i), its disclosure under the FOIA would breach any of the data protection principles of the Data Protection Act 1998 ("DPA").
14. 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.*

15. If the Commissioner is satisfied that the information is personal data, she must then go on to establish whether the disclosure of that data would breach any of the data protection principles contained within the DPA. The Commissioner notes that in this case the council has advised that the disclosure of the information that has been withheld would breach the first principle of the DPA.

### **Is the withheld information personal data?**

16. The council has explained to the Commissioner that the information which has been withheld consists of individual and personal responses to an application process and, in some cases, also contains a supporting personal statement and C.V. The applicants also offer responses on their work history, qualifications obtained, involvement in projects and publications, professional and personal achievements, life experiences, etc. The council goes on to say that this information has been processed in order to learn something about each individual which, in this case, is their suitability for the particular role which was advertised.

It is apparent to the Commissioner after reading the applications that they contain 'life story' details about each individual including their employment history, their personal experiences and achievements and the reasons why they believe they are suitable for the vacant position. She is satisfied that the information submitted by each individual in support of their application will be their personal data.

### **Could personal data be redacted from the withheld information?**

17. The complainant has indicated that he would be happy for the information to be anonymised so that individual applicants cannot be identified. The Commissioner has therefore considered whether the information that has been withheld could be disclosed in a redacted format.
18. Having viewed the withheld information, it is clear to the Commissioner that even if names and addresses, which will directly identify each applicant, are withheld, what would remain still amounts to a significant amount of biological information which would allow a motivated third party to establish the identity of the applicant. The Commissioner has noted that the majority of the withheld information sets out direct

personal experiences, qualifications and employment history to support the reasons for suitability of the role. Even in isolation each of these factors are likely to make each applicant personally identifiable by certain other parties. Indeed, some of the information provided is so specialised, such as details of involvement in specific projects or contributions to particular publications, that the identity of the applicant would be immediately obvious to some third parties. Putting together the information supplied in support of each application, even in a redacted format, will even further increase the likelihood of each applicant being identifiable.

19. The Commissioner is satisfied that the information is so biographically significant that if all the information that could identify any one applicant is redacted, any remaining data would become meaningless to the complainant.

**Could the personal data be provided in the form of a summary?**

20. The complainant has also indicated that it would be acceptable for the information to be provided in the form of a summary, with any identifying information removed.
21. The FOIA provides a right to recorded information held by a public authority, subject to exemptions. A public authority may provide information that has been extracted and presented in a different form. However, it is not required to create new information in order to respond to a request. The ICO's current view is that if a summary is not already held then, in most instances, the provision of this information would require the creation of new information by the public authority.
22. The Commissioner notes the reference made by the complainant to Decision Notice FS50184888 to support his request for the information to be supplied in the form of a summary. However, she is mindful of the need to consider the set of circumstances surrounding each particular case. In this instance, the Commissioner is satisfied that a summary could not be provided without creating new information. Therefore, the Commissioner's view is that council is not required to provide a summary in response to the complainant's particular request.
23. The Commissioner has therefore gone on to consider whether disclosure of the requested information in its entirety would constitute a breach of the DPA.

**Would the disclosure breach the first data protection principle?**

24. The council states that the disclosure of the withheld information would breach the first data protection principle of the DPA.

25. *The first principle states:*

*"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."*

26. In deciding whether the disclosure of the information provided by the applicants would be unfair, the Commissioner has taken the following into account:

- The nature of the information;
- The reasonable expectations of the applicants with regards to the processing of their personal data; and
- The consequences of disclosure to the applicants.

27. The Commissioner's guidance on section 40 of the FOIA suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life.

28. The Commissioner considers that the information provided by individuals in support of their application for a position of employment can reasonably be described as information about their personal life in the context of a job application rather than an undertaking in an official work capacity.

29. The council has argued that the applicants would have a general expectation that data will not be processed for purposes beyond that for which it was being collected i.e. recruitment purposes only. It goes on to say that applicants would not expect their completed application forms and other submitted documentation to go into the public domain without their knowledge or consent. It would also not be within any applicant's reasonable expectation that it would 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.

30. When considering the expectations of the applicants in relation to how their personal information would be processed, the council states it has also considered the possibility that some of the information may already be in the public domain. It goes on to say that it recognises the potential use of social media by some individuals to attract prospective employers

and that it may be the case that some applicants already have C.V.'s and supporting statements on certain websites such as 'LinkedIn'. However, the council believes there is a clear distinction between the publication of information provided by each applicant, which would include details of how their personal qualifications, employment history and life experiences are relevant to the specific post advertised, and the publication by an individual applicant of a generic 'application' on a website.

31. The council also makes the point that the seniority of the role of Project Manager is not at a sufficient level where the applicants would have an expectation that their personal information would be released into the public domain.
32. The Commissioner is satisfied that, in this case, the disclosure of the information in the circumstances described would be unfair to the applicants. When submitting an application for the vacant role, individuals would not have had any expectation that the information that they provide would be placed into the public domain. Indeed, in contrast they would have had a strong and reasonable expectation that their personal information would be treated in confidence and would only be processed for the purpose of assessing their suitability for the role which they had applied for.
33. The Commissioner also acknowledges that it may be possible that some applicants have already placed details of their work experience in the public domain in order to attract potential employers. However, she agrees with the council that a 'tailored' application submitted to the council for a specific position is distinctly different to a generic application published on a website such as LinkedIn. The Commissioner's view therefore is that all the individuals who submitted applications for the vacant position at the council would, in this instance, have had a reasonable expectation that their information would be treated in confidence and would not be shared with third parties.
34. With regards to the level of seniority of the advertised position of Project Manager, the council has confirmed that it does not involve responsibility for staff management, budgetary decisions, or the spending of public money and it is not a public facing role. The Commissioner therefore accepts that this is not at a level where public accountability for performance would be expected from an individual in post. This would add further weight to the argument that the applicants would not have had any reasonable expectation that information they submit in support of their application for the role would be disclosed for the purpose of transparency and accountability. Instead they would have expected the information to be handled sensitively and privately and not shared publicly.

35. With regards to the consequences of disclosure to the applicants, the council has explained that the disclosure of the withheld information could potentially have unjustified adverse effects, such as embarrassment and distress. The council also makes reference to the possibility of the current managers of applicants becoming aware they were pursuing an alternative position of employment and that this could cause difficulty for the applicants.
36. The Commissioner accepts that there is a real possibility that the disclosure of the personal information of applicants could cause embarrassment, or have the potential to affect their current position of employment. For example, it could become clear to current employers who the candidates were and that they were seeking alternative employment, a fact which may not necessarily be within the current employer's knowledge. This could have a detrimental impact on the applicant's position with their current employer.
37. When referring to the first principle of the DPA, the council has also referred to its consideration of the conditions set out in Schedule 2 of the DPA.
38. In order to comply with the first principle of the DPA, the general requirement that data is processed fairly and lawfully must be satisfied. However, in addition, one of the conditions for processing personal information contained within Schedule 2 (or Schedule 3 if it is sensitive personal data) also needs to be met.
39. The council refers to the legitimate interest condition set out in Schedule 2(6)(1) of the DPA as being relevant in this case. It states it recognises that there is a strong public interest in the disclosure of information to show that the recruitment process is fair to all applicants. However, it states that it has balanced this against the legitimate interests of the third parties to have the information held about them kept private. The council states that, on balance, 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.
40. The Commissioner agrees that there is a legitimate public interest in the disclosure of information which would provide greater understanding and transparency behind the recruitment process. The Commissioner recognises that as the complainant was concerned that the recruitment process followed in this instance may have been unfair, the motivation behind the request for the information would meet this legitimate interest. However, such legitimate interests must be weighed up against the intrusion into the private lives of the applicants and the distress disclosure would cause to them. It is the Commissioner's view that the

strong expectations that the applicants would have about how their information would be processed, and the need to protect their privacy rights, outweighs the legitimate public interest arguments for disclosure in this particular case.

41. The Commissioner has also had regard to the information that has been supplied to the complainant. The complainant was given a copy of the scoring sheet, with identifying factors removed, which provides certain information to explain what factors were considered when shortlisting for interview and why certain individuals were not successful. This has provided some openness and transparency with regards to the process followed by the council in relation to its recruitment for the vacant position without breaching the data protection principles.
42. The Commissioner has concluded that to disclose the online registration forms and supporting documents, even in a redacted form, would be unfair and in breach of the first principle of the DPA. She is also satisfied that in order to provide a summary of the information the council would have to create new information and it would not be required to do so under the FOIA. The Commissioner therefore finds that the council has correctly applied section 40(2) of the FOIA to the withheld information by virtue of section 40(3)(a)(i) and accordingly requires the council to take no steps.



## Right of appeal

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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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**