

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 August 2014

Public Authority: Public Services Ombudsman for Wales

Address: 1 Ffordd yr Hen Gae

Pencoed

Bridgend

CF35 5LJ

Decision (including any steps ordered)

1. The complainant requested information about the academic and professional qualifications relating to the Ombudsman himself and a number of named employees. The Public Services Ombudsman ('the PSOW') stated it did not hold information relating to the Ombudsman and refused to provide the other requested information under section 40(2). During the course of the Commissioner's investigation, the PSOW located some information relevant to the Ombudsman, which it disclosed to the complainant. The Commissioner's decision is that the PSOW does not hold any further recorded information relating to the academic and professional qualifications of the Ombudsman and that it correctly withheld information relating to other members of staff under section 40(2). The Commissioner does not require any steps to be taken.

Request and response

2. On 19 September 2013, the complainant wrote to the PSOW and requested information in the following terms:

"The Ombudsman is requested, under the provisions of the freedom of information legislation, to provide the academic and professional qualifications of:

1. The Ombudsman, [name redacted]).
2. [name redacted], author of the 12 September 2013 letter.

2. [name redacted], author of the 21 May 2013 letter.

Academic qualifications include first degree and above, the Class and subject. Professional qualifications means membership for an approved and recognised professional institution”.

3. The PSOW responded on 23 October 2013 and stated that it did not hold information relating to the qualifications of the Ombudsman and that it considered information relating to the qualifications of the other named members of staff to be exempt under section 40(2) of the FOIA.
4. On 27 October 2013 the complainant requested an internal review of the PSOW’s handling of the request. He also submitted a new request for the academic and professional qualifications of the author of the request response, which had been sent to him on 23 October 2013.
5. The PSOW provided the outcome of its internal review on 6 December 2013. The PSOW upheld its position that it did not hold information relating to the qualifications of the Ombudsman. It also confirmed that it considered information relating to the other three named individuals to be exempt under section 40(2) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 5 February 2014 to complain about the way his request for information had been handled.
7. During the course of the Commissioner’s investigation the PSOW located some information relevant to the qualifications of the Ombudsman, which it disclosed to the complainant. However, it maintained that it did not hold any further information relating to the Ombudsman, and that information relating to the other three named members of staff was exempt under section 40(2) of the FOIA.
8. The Commissioner considers this complaint to be to determine whether the PSOW holds any further information relating to the qualifications of the Ombudsman, and whether it was correct to withhold information relating to other members of staff under section 40(2).

Reasons for decision

Section 1 – general rights of access

9. Section 1 of the FOIA provides that any person making a request for information to a public authority is entitled (a) to be informed in writing

by the public authority whether it holds information of the description specified in the request and (b) if that is the case to have that information communicated to him.

10. In cases where a dispute arises over the extent of the recorded information that is held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to ascertain information falling within the scope of the request and he will consider if the authority is able to explain why further information is not held. For clarity, the Commissioner is not expected to prove categorically whether additional information is held. He is only required to make a judgement on whether the information is held "on the balance of probabilities"¹. Therefore, the Commissioner will consider both:
 - the scope, quality, thoroughness and results of the searches, and
 - other explanations offered as to why further information is not held.
11. In terms of the searches conducted, the PSOW confirmed that, on receipt of the request, it determined that the personnel file of each individual was the most likely place that information relating to professional and academic qualifications was held. As a result, it located information relating to the three named members of staff.
12. The PSOW advised that, in line with the requirements of the Public Services Ombudsman (Wales) Act 2005, the National Assembly for Wales is responsible for the Ombudsman recruitment process, and for nominating an individual for the position of Public Services Ombudsman for Wales. The nominated person may then be appointed by Her Majesty the Queen. The PSOW office does not have any role in the recruitment or appointment of the Ombudsman, and as such, does not hold a personnel file relating to the Ombudsman.
13. As a result of the Commissioner's enquiries, the PSOW reconsidered whether information relevant to the request was held in any other location. After conducting further searches, the PSOW located a biography of the Ombudsman which had been produced for a conference he had attended. The biography contained a reference to a qualification held by him. Such a biography is not the most common form of recorded information held regarding qualifications (eg a photocopy of a certificate

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

or an application form containing a list of qualifications attained). However, the PSOW considered that it constituted recorded information regarding the Ombudsman's qualifications and therefore fell within the scope of the request. The PSOW confirmed that the fact the Ombudsman holds the qualification referred to in the biography is publicly available on other websites. While it considered that the information is exempt under section 21, it confirmed that it would not seek to apply this exemption and, during the course of the Commissioner's investigation, disclosed a copy of the biography to the complainant.

14. The PSOW confirmed that searches were also conducted of its intranet site for any reference to the qualifications of the Ombudsman and no information was located. It also confirmed that the Ombudsman did not include his qualifications in any letters or email signatures.
15. In his complaint to the Commissioner, the complainant said that, as correspondence he had received had been written on behalf of the Ombudsman, it was difficult to understand why *"he does not have (actually know!) his qualifications"*. In the complainant's view, it was a simple matter of asking the Ombudsman for details of his qualifications, which he considered was not an onerous task. However, the FOIA only applies to recorded information held by a public authority, not to unrecorded information. A public authority is not required to create new information or to find the answer to a question from staff who may happen to know it in order to respond to a request for information.
16. Based on the representations provided by the PSOW the Commissioner is satisfied that it has carried out adequate searches of all places where relevant information would be held. There is no evidence of any inadequate search or grounds for believing there is a motive to withhold information. Based on the searches undertaken and the other explanations provided by the PSOW, the Commissioner is satisfied that, on the balance of probabilities, the PSOW holds no further recorded information relevant to the qualifications of the Ombudsman.

Section 40 – the exemption for personal data

17. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
18. The PSOW considers that the information requested constitutes the personal data of the individual officers, and that disclosure would breach the first data protection principle.

Is the requested information personal data?

19. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
- from that data,
 - or, from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
20. In considering whether the information requested is "personal data", the Commissioner has taken into account his own guidance on the issue². The two main elements of personal data are that the information must "relate to" a living person, and that person must be identifiable. Information will "relate to" a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts them in any way.
21. The withheld information in this case comprises the academic and professional qualifications of three named PSOW members of staff. The Commissioner is satisfied that living individuals (ie the staff members) can be identified from the information. The withheld information clearly comprises data which relates to those individuals as it comprises biographical information about them. The Commissioner therefore accepts that the information in the context of this request is personal data as defined by the DPA.

Would disclosure breach one of the data protection principles?

22. Having accepted that the information requested constitutes the personal data of living individuals other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:
- personal data shall be processed fairly and lawfully; and

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

23. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.
24. The PSOW's position is that employees would have a reasonable expectation that their qualifications would not be disclosed, essentially into the public domain, in response to an FOIA request. Whilst all staff are reminded of the need for accountability and transparency, the PSOW does not consider that this extends to disclosure of this level of detail regarding specific qualifications, many of which were obtained prior to their employment with the PSOW.
25. The PSOW confirmed that the posts that the individuals occupy can be fairly classed as public facing roles, which normally include daily contact with members of the public. However, the individuals are not considered to be senior members of staff, nor are they responsible for major policy decisions or for expenditure of public funds.
26. In assessing what information third parties should expect to have disclosed about them, the Commissioner considers a distinction should be drawn as to whether the information relates to the third party's public or private life. Where the information relates to the individual's private life (ie their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life).
27. The Commissioner considers that an individual's attainment of any academic or professional qualification has an impact on their private lives. It refers to the qualifications and experience of an individual, is likely to appear on their curriculum vitae, and may have an effect on their future employment prospects and opportunities.
28. The Commissioner's guidance also states that the seniority of the individual acting in a public or official capacity should be taken into account when personal data about that person is being considered for disclosure under the FOIA. This is because the more senior a member of

staff is, the more likely it is that they will be responsible for making influential policy decisions and/or decisions relating to the expenditure of public funds. In previous decision notices the Commissioner has stated that he considers those in senior public posts are more likely to be exposed to greater levels of scrutiny and accountability, and there should therefore be a greater expectation that some personal data may need to be disclosed in order to meet that need

29. The Commissioner notes that, in this case, the individuals in question are not senior members of staff within the PSOW. The Commissioner has taken into account that the individuals in question occupy positions with a limited public facing role, do not have responsibility for major policy decisions or expenditure of public money. The Commissioner is satisfied that the individuals would have had a reasonable expectation that their personal data (ie their qualifications) would not be disclosed into the public domain.
30. The PSOW is of the view that disclosure of the information requested would cause an unwarranted interference with the employees' rights.
31. When considering the consequences of disclosure of the withheld information, the Commissioner has also considered how this data could be used by the public. Disclosure under the FOIA represents disclosure to the public at large. In correspondence with the Commissioner, the complainant said he considered the public were entitled to know the expertise and qualifications of the Ombudsman's staff who make decisions on complaints. Without this information, the complainant feels the public are entitled to the view that the individuals have no qualifications and therefore unable to consider complaints, let alone reject them.
32. The PSOW accept that there is a legitimate interest in the public knowing whether a member of staff is sufficiently qualified to undertake a specific role. However, it considers that this interest can be met without the need to disclose the actual academic and professional qualifications of the individuals. The PSOW stated that job descriptions contain a set of criteria, which may or may not include particular qualifications. It can therefore be assumed that in securing employment the member of staff has met this criteria, without the need for disclosure of any further information, for example their actual qualifications. The PSOW does not consider that there is a sufficient legitimate interest in disclosure of the qualifications of its staff which would outweigh their expectation of privacy.
33. The Commissioner believes there is a legitimate public interest in disclosure of information which would promote accountability and transparency in the spending of public money. In particular, the

Commissioner believes there is a legitimate interest in knowing that staff are suitably qualified to perform their roles. Given the relatively junior role of the individuals in this case, the Commissioner considers that they would have had a reasonable expectation that details of their academic and professional qualifications would not be disclosed into the public domain and that to do so would be unfair. The Commissioner is persuaded that disclosure of the withheld information in question would be unwarranted since such information is, by its nature, private to the individual in question and not information that he or she would want to be disclosed into the public domain.

34. The Commissioner also appreciates that qualifications are often only one element in establishing the suitability of an individual for a specific post. He considers that there is a likelihood that the disclosure of qualifications alone could be taken out of context, as it would not take into account any experience or skills of the individuals, which often play an equal part in determining suitability for a post.
35. As the Commissioner has decided that disclosure would be unfair, there is no need for him to go on to consider the other elements of the first data protection principle. The Commissioner therefore upholds the Council's application of section 40(2) because disclosure of this information would breach the first data protection principle.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
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SK9 5AF