

19 July 2023

ICO Case Reference: FOIA s.40(2) - Personal data-G2H3

Request

On 30 June 2023, you requested information about a Private Secretary vacancy (ref: JR20) that was posted on 6 June.

For each candidate that was shortlisted for interview, you have requested either:

- a) *What the candidate entered in the "responsibilities and achievements" free text box for each previous role they recorded on their application or;*
- b) *If any candidate uploaded a CV, either in addition to, or as well as, filling in the "Experience" section of the online application form, I would like to receive a copy of the equivalent sections where the candidate describes their skills and experience from previous roles.*

You have asked us to note that you are not requesting us to:

- provide any of the individual job titles;
- provide any of the other personal details (name, contact details, education history etc) the candidates may have submitted; or
- identify which application belongs to the successful candidate.

You have asserted that while some of the information within scope may reference specific dates, events, places or projects that might allow the candidate to be identified, you are happy for these details to be redacted, and that by making these redactions, *"the information requested cannot be linked to any identifiable candidate and is therefore not personal data"*.

We have dealt with your request in accordance with the Freedom of Information Act (2000).

Response

We hold information that falls within scope of your request.

This information has been withheld in accordance with Section 40(2). This exempts information if it is personal data belonging to an individual other than the requester and it satisfies one of the conditions listed in the legislation.

We find that the condition at section 40(3A)(a) applies in this instance: that disclosure would breach one of the data protection principles. The principles are outlined in the General Data Protection Regulation (GDPR) with the relevant principle on this occasion being the first principle as provided by Article 5(1): that personal data shall be processed lawfully, fairly and in a transparent manner.

We do not consider that disclosing this information into the public domain is necessary or justified. There is no strong legitimate interest that would override the prejudice to the rights and freedoms of the relevant data subjects. We have therefore taken the decision that disclosing this information would be unlawful, triggering the exemption at section 40(2) of the FOIA.

You have indicated that you are happy for certain information to be redacted as you do not require the individual candidates to be identified, and you have asserted that with such redactions, sections of each application would not enable the identification of individual candidates.

Job applications and CVs contain details about candidates' experience, qualifications and employment history, including examples of when they have dealt with particular issues, handled situations or demonstrated a particular skill. This information is personal to each candidate, and even if we remove obvious identifying details such as names of companies, job titles and specific events cited in applications, the remaining statements could, in combination with other details, be used to identify individuals.

Although these individuals may not necessarily be identifiable to every member of the general public from the information requested, the ICO's [draft anonymisation guidance](#) notes that "*You should also consider whether the specific knowledge of others, such as doctors, family members, friends and colleagues could be sufficient additional information that may allow inferences to be drawn.*"

Those with knowledge of this particular recruitment campaign (including the candidates) or of the candidates themselves (such as their family, friends,

colleagues and current employers) may be able to use these details in conjunction with other information to identify individuals. As the request only concerns candidates shortlisted for interview, this increases the likelihood of identification as the information in scope only refers to a small number of people. A motivated third party could find out about individual candidates (such as the work they have done and the fact that they were shortlisted for the ICO job), particularly if they are able to cross reference applications with other information available to them (such as online CVs or profiles).

With this in mind, we considered whether or not it may be possible to sufficiently anonymise the requested details for each shortlisted application. However, statements and examples given in these applications are typically indicative of work in particular sectors, organisations and teams. Phrasing and style of writing too may be personal to the writer or further indicative of their employment history, as the details within each application are interlinked (for example we are not just considering a series of standalone statements here, but how these interact with one another thematically and chronologically) and this could enable inferences to be drawn about employment histories of individuals.

By their very nature successful applications are more likely to contain specific examples that go beyond the generic requirements listed in the job advert, and the extent to which significant personal data is embedded within the applications prohibits meaningful disclosure of an anonymised version of the information. We also consider that any public interest in the information arguably lies in specific examples rather than occasional generic words and phrases which would likely have little value to the public – particularly in terms of understanding recruitment decisions and providing an accurate and useful representation of the information considered when shortlisting for this role.

We also consider that the disclosure of the requested information (even in a redacted form) would contravene the first data protection principle.

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."

In deciding whether disclosure of the other candidates application details would be unfair, we have taken into account:

- the nature of the information;

- the reasonable expectations of the data subjects of what would happen to their personal data; and
- the consequences of disclosure on those data subjects.

We have also balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

Our position is that candidates would have a strong expectation that the information supplied would be held in confidence and would only be used in connection with the recruitment process. They were not notified about processing for any purpose other than for the job application itself.

The level of seniority of the advertised vacancy is not one which would attract a higher degree of scrutiny in terms of the effective use of public funds. Whilst the successful candidate's details may subsequently be made available to the public via their work and through relevant publications, this would not include details of their application, nor would a candidate working in this position reasonably expect this kind of personal data to be disclosed even where their application was successful.

The qualifications essential to the advertised position, and without which an application could not proceed, were detailed within the job advert and so it is reasonable for the public to assume that all candidates offered an interview held this level of qualification as a minimum. Any detail above and beyond this as provided by the candidates in their specific skills and experience examples, and upon which shortlisting is based, are in our opinion personal to the candidate, constitute their personal data and we do not consider it lawful to disclose them.

In a decision notice the Commissioner issued on 9 April 2017 the Commissioner upheld the application of section 40 of the FOIA to the complainant's request for the job applications of some candidates that had been invited for an interview. The notice addressed how the applications could not reasonably be redacted as the complainant had suggested in this case and how disclosure would be likely to cause the data subjects concerned distress and upset. Paragraph 31 in particular addresses similar issues raised by your request:

<https://ico.org.uk/media/action-weve-taken/decisionnotices/2017/2013944/fs50647297.pdf>.

Advice and assistance

We have attached a copy of the job description so that you can see the criteria against which the candidates were assessed. Please note that while we can consider subject access requests from candidates for their own personal data in relation to recruitment campaigns (including feedback relating to their application), requests for the personal data of others are likely to involve exempt information.

This concludes our response to your request.

Next steps

Please come back to us in the first instance if you would like a clarification or a review of the way your request has been handled. If you remain dissatisfied you can then request a review of our decision under the FOIA or make a complaint about how your request has been handled by writing to the Information Access Team at the address below or email icoaccessinformation@ico.org.uk.

Your request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered at the discretion of the Commissioner.

If having exhausted the review process you are not content that your request or review has been dealt with correctly, you have a further right of appeal to this office in our capacity as the statutory complaint handler under the legislation. To make such an application, please write to our FOI Complaints & Appeals Department at the address below or visit our website if you wish to make a complaint under the Freedom of Information Act.

A copy of our review procedure can be accessed from our website [here](#).

Your rights

Our [privacy notice](#) explains what we do with the personal data you provide to us and what your rights are, with a specific entry, for example, for [an information requester](#). Our retention policy can be found [here](#).

Yours sincerely,



Information Access Team
Risk and Governance Department, Corporate Strategy and
Planning Service

Information Commissioner's Office, Wycliffe House, Water
Lane, Wilmslow, Cheshire SK9 5AF

ico.org.uk twitter.com/iconews

Please consider the environment before printing this email

**For information about what we do with personal
data see our [privacy notice](#)**

JOB DESCRIPTION AND PERSON SPECIFICATION



JOB TITLE: Private Secretary to Executive Director

REPORTS TO: Executive Director

SALARY: Level F

HOURS: 37 per week

PURPOSE OF POST:

The post holder will provide a Private Secretary function to one of the ICO's Executive Directors, supporting the full range of their responsibilities.

The Private Secretary will be required to respond to matters on behalf of the Executive Director by working with senior leaders and managers across the ICO to ensure that actions are congruent with organisational strategy, policy lines and legislative requirements.

In particular this includes supporting the Executive Director, and, from time to time, the ICO's Executive Team (ET) and Senior Leadership Team (SLT) at a range of events and business meetings with the primary objectives of ensuring each event achieves its strategic goal and effective links are maintained between attendees and the wider office.

The Private Secretary will ensure that the Executive Director is suitably prepared for business critical meetings. They will work with the Private Office Group Manager and the Private Secretary to the Information Commissioner to strategically plan engagements for the Executive Director, wider ET and SLT as required. This will require the oversight of the production of high quality and incisive briefings, often at short notice, across a diverse range of complex and sometimes sensitive subject areas. The role will also be required to manage projects on behalf of the Executive Director, reporting progress and ensuring actions are progressed.

Working closely with the SLT and Department Heads, the post holder will need an excellent internal network, engaging senior managers in order to work across the range of ICO departments and activities.

KEY RESPONSIBILITIES

Provision of support to Executive Director

- Take lead responsibility for the efficient running of the Executive Director's private office, overseeing and leading all activities at pace, ensuring all actions are responded to accurately and align with current organisational strategy and goals.
- Take ownership and proactive accountability to support the Executive Director, providing a trusted source of advice for them and wider Executive Team, gaining and respecting their confidence and providing appropriate challenge.
- Identify issues that could impact on the successful delivery of organisational objectives and engage with relevant internal and external stakeholders to ensure that effective approaches are adopted.
- Advise on wider political, constitutional and organisational considerations and keep abreast of key developments and issues in the wider environment as relevant to the Executive Director.
- Liaison with stakeholders across a diverse range of public and private sectors, plus international stakeholders as required.
- Advise and make recommendations to your Executive Director and ICO senior management, exercising good judgement and independent decision making, often working on problems and issues as they arise.
- Support the communication of your Executive Director's views and decisions sensitively and diplomatically where appropriate both internally and externally.

- Keep up to date with developments across ICO directorates and functions, have a breadth of knowledge across the work of the ICO and work closely with members of ICO's SLT and nonexecutive directors.
- Oversee external professionals and suppliers where appropriate and be accountable for budget spend within the functional area.
- Comply with ICO policies and procedures

Diary, inbox management and meeting coordination

- Monitor all incoming mail and manage correspondence received by the Executive Director within timely response times and ensuring that any urgent information/requests are managed promptly.
- Manage the Executive Director's email inbox and support with prioritisation of tasks.
- Manage all meeting engagements, both internally and externally where appropriate, ensuring that all appointments are organised effectively and daily meetings run smoothly.
- Ensure that, where appropriate, the Executive Director is briefed in advance of any meetings/engagements.
- Deliver accurate and concise briefing papers, written reports and presentations based on information gathered from across the ICO, often involving in depth analysis and/or interpretation and application of policy relating to complex issues.
- Support the development of submissions made by senior managers and assist in enabling them to provide appropriate advice to enable strategic decision making.
- Ensure the timely distribution of papers before and after meetings.

Leadership and stakeholder management

- Where required, communicate with senior, high profile external stakeholders, including the media, MPs and government

departments in order to influence and promote the ICO's agenda

- Working autonomously to deliver cross department, Executive Directorate wide corporate projects which contribute to the ICO's overall strategy using independent decision making skills.
- Demonstrate a 'One Private Office' approach through close working with peers across other Private Offices, sharing learning and best practices
- Lead the Private Office team, empowering them to deliver their roles collaboratively with other Private Office teams and support their own personal and professional development.
- Work collaboratively with internal stakeholders both within the Private Office and across other directorates, building and maintaining credible relationships to progress work on behalf of the Executive Director.
- Take a pro-active approach to continuous improvement, spotting and acting on opportunities to change approaches, ways of working, policies or processes.

PERSON SPECIFICATION

	Criteria	How Assessed
Education and Qualifications	Substantial experience relevant to the role requirements, as described in the role responsibilities and person specification, and accumulated through any combination of	Application

	academic or vocational qualifications or experience.	
Work Experience	<p>Substantial experience relevant to the role</p> <p>Significant experience of working in a role supporting and advising senior leaders.</p> <p>Experience in successfully interpreting, summarising and communicating complex information quickly</p> <p>Experience of developing and delivering a strategy or strategic goal</p>	<p>Application / Interview</p> <p>Application/ Interview</p> <p>Application/ Interview</p> <p>Application/ Interview</p>

Please note that post holders for this role may be required to receive security clearance to SC level. This requires the disclosure of spent and unspent convictions. Although convictions will be taken into account, any such information will not necessarily prevent you from obtaining a security clearance.

22 August 2023

Ref: [FOIA s.40(2) - Personal data that] -G2H3

Dear [FOIA s.40(2) - Person]

I write in response to your correspondence of 25 July 2023 in which you request a review of our response to your information request of 30 June 2023. You are challenging the application of s40(2) in responding to your request for information.

You have advised that you "*find it unlikely that every such response is so specific and is written in such an idiosyncratic style as to make every response identifiable*". You consider that "*information of this kind contains a small quantity of very specific information which, if removed with care, leaves behind information which could apply to any number of people*".

As a concession you have indicated that you would accept the information provided in a random order, rather than grouped by candidate.

The purpose of this internal review is to look again at your request, at our response, and to check that any exemptions applied were appropriate. I am a Group Manager in the Information Access Team. I have had no prior involvement in the handling of your request.

Review response

I have looked again at your request, and the points of challenge you have raised in your request for internal review, and my view is that you were provided with an accurate and compliant response in accordance with the legislation.

I am in agreement with my colleague that section 40(2) is engaged on the basis of the condition at section 40(3A)(a): that disclosure would breach one of the data protection principles, in this instance the first principle as provided by Article 5(1).

There is very little I can add to my colleague's initial response, as it comprehensively establishes our position in relation to the information you have requested.

I consider that legitimate interest in disclosure only exists in the general principles of transparency and accountability which underpin the FOIA itself. I do not consider that disclosure is necessary to meet this legitimate interest, as I am satisfied that the public availability of the job description for the role offers a proportionate alternative for achieving it—in that it provided all candidates interested in the role with a consistent understanding of the types of skills and experience necessary for the role.

I have considered whether your suggestion of shuffling the information into a random order would offer a suitable level of anonymisation to shift our position in relation to section 40(2) and I can confirm it does not.

The information in scope of your request is drawn from the CVs of a small number of candidates who were interviewed for the position of Private Secretary to the Information Commissioner. I have reviewed this information carefully to see whether redactions could be applied to remove personal data. However, I maintain that this information is personal to each candidate, and even if obvious identifying details such as names of companies, job titles and specific events were removed, the remaining statements could, in combination with other details, be used to identify individuals.

Not all applications are written the same, and while I appreciate that you may be expecting that the information you are seeking has been presented in short bullet points, a number of candidates have presented their skills and experience in a more free-form manner. Disclosing large sections of text from an individual's CV increases the risk that this information could be used to identify them—for example, by matching with data included on a LinkedIn profile or recognised by a family member, friend, or colleague.

Although I do not consider that disclosure is necessary to meet any legitimate interest, I have gone on to consider your points of challenge and balanced these with the interests and rights of the individuals whose data is the subject of your request.

Your position is that the information should be disclosed (with obvious personal data redacted) because:

1. A candidate in an ICO recruitment process would only become aware of the identity of another candidate if that other candidate chose to divulge the information;
2. Those most familiar with each candidate are those most likely to already be aware of the contents of the withheld information anyway; and

3. If individuals have chosen to publicise details of their career via an online CV, they should have very little expectation that the ICO would refuse to provide the same information.

I am afraid that I do not agree with your reasoning in this instance. I consider that recognising excerpts of your CV, or having someone known to you identify you from a disclosure made under the FOIA, even where directly identifiable personal data has been redacted, would cause distress. The ICO's [employee information disclosure policy](#) makes clear that information from CVs is unlikely to be disclosed under FOIA and I am confident that any applicant to a vacancy (in the ICO or otherwise) would expect that all elements of their application would be treated in strictest confidence.

I also do not accept that where an individual may publish a version of their CV in the public domain it would immediately follow that they would expect the ICO to publish extracts of the same under the FOIA. Particularly in this instance where this information would be immediately linked to further personal data that the individual may not have made public—that they applied for the specific role of Private Secretary to the Information Commissioner, and that they were unsuccessful in securing this position.

I would also note that some of the information in scope of your request is taken from the CVs of ICO employees, and that a portion of it is the personal data of one individual who is the incumbent in the role. FOIA s.40(2) - Personal data that doesn't fall under s.40(1)

[REDACTED]

I would point you to the Commissioner's decision in [RCRC-2022-C5B7](#), which I consider is of relevance here. The Commissioner acknowledged the particular circumstance of disclosing information under FOIA being the equivalent of making the same information available to all staff of the ICO, and who would have access to information not available to the wider world. He found in this decision that there was a strong likelihood of a particularly-placed motivated intruder being able to access sufficient information to identify the majority, if not all, of the individuals concerned, and found that this was a sufficient argument to

maintain the exemption in relation the information in question. In the circumstances of your request I consider that a similar risk exists.

Finally, I have given consideration to the Upper Tribunal decisions you have referenced, however, I am satisfied in this instance that we have established that the information you are seeking is personal data for the purposes of section 40(2). I note in *NHS BSA V ICO and Spivack*, that while the judgement concluded that *"the legislation provides that actual identification is necessary in order for data to be personal data"*, it also acknowledges that Section 3 of DPA2018 does not provide a test for the remoteness or likelihood an individual being identified directly or indirectly from data.

It goes on to say *"the test has to be applied on the basis of all the information that is reasonably likely to be used, including information that would be sought out by a motivated inquirer"*, which is derived from Recital 26 GDPR.

In this case the application process was relatively recent and only a small number of candidates were interviewed. The role, while being relatively junior in the organisation, is of sufficiently high profile that I consider it likely there would be curiosity about any disclosure made in response to your request. I therefore give the motivated intruder argument significant weight in my decision.

To conclude, I maintain that section 40(2) applies to the information you have requested, and that candidates would have a strong expectation that the information supplied would be held in confidence and would only be used in connection with the recruitment process. I consider that the qualifications essential to the advertised position, which are publicly available from the job advert and role description satisfy any legitimate interest in disclosure, but that any detail further to this represents the personal data of the individual candidates, which I do not consider it lawful to disclose.

Complaint procedure

If you're not satisfied with the outcome of this review, you can make a formal complaint to the ICO as regulator of the FOIA. This complaint will be handled by a separate, independent team of ICO staff, just like a complaint made to the ICO about any other public authority.

You can raise a complaint through our [website](#).

Your information

Our [Privacy notice](#) explains what we do with the personal data you provide to us and what your rights are. Our retention schedule can be found [here](#).

Yours sincerely

Shannon Keith
Information Access Group Manager
Information Commissioner's Office