

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 December 2014

Public Authority: Grŵp Llandrillo-Menai

Address: Llandudno Road
Rhos on Sea
Colwyn Bay
Conwy LL28 4HZ

Decision (including any steps ordered)

1. The complainant requested the annual salary details for two senior employees who are directors at Grŵp Llandrillo-Menai (GLLM) for the period 2011 to 2014. GLLM provided salary band information, but refused to supply the actual salaries, citing section 40(2) of the FOIA.
2. The Commissioner's decision is that GLLM has correctly applied section 40(2) in its refusal to release salary details of the individuals.
3. Consequently, the Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 14 March 2014, the complainant wrote to GLLM and requested information in the following terms:

"The annual salaries of: [named officer A] and [named officer B] from 2011 to 2014".
5. GLLM responded on 18 March 2014, stating that they were:

"..not permitted to divulge specific items of sensitive personal information (such as individual's salaries) under provisions provided within the Data Protection Act and the FOI Act. The Grŵp does however

publish the salary bandings of its most senior staff within its annual accounts (on page 24) which you already have.”

6. The Commissioner notes that the annual accounts referred to include the number of senior post holders in each of the £10k salary bandings from £60,000 upwards.
7. Following an internal review requested by the complainant, GLLM upheld its original decision. It supplied some additional information about salary bands for the two staff in question, and confirmed that it was relying on the exemption for personal data set out in section 40(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 9 May 2014 to complain about the way his request for information had been handled.
9. In his letter of 17 July 2014 the Commissioner confirmed with the complainant that the scope of his complaint was :

“To investigate whether Grŵp Llandrillo-Menai have correctly applied the personal data exemption in section 40(2) of the Freedom of Information Act or whether the requested information should have been released”.

Reasons for decision

Section 40 – personal information

10. Section 40(2) of 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.
11. In order to reach a view regarding the application of this exemption, the Commissioner has firstly considered whether or not the requested information does in fact constitute personal data as defined by section 1(1) of the Data Protection Act 1998 (the DPA).

Is the withheld information personal data?

12. Personal data is defined by the DPA as any information relating to a living and identifiable individual. 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 on them in any way.

13. The withheld information is the annual salaries for two clearly identified individuals who are Vice Principals within GLLM. The Commissioner is satisfied that an individual's salary is personal data as defined in the DPA.

Would disclosure breach the Data Protection Principles?

14. The data protection principles are set out in Schedule 1 of the DPA. 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."
15. In the case of personal data, both requirements (fair and lawful processing, and a schedule 2 condition) must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle.
 16. GLLM relied on principle 1 of the DPA in their response to the complainant.

Would disclosure be fair?

17. In his consideration of whether disclosure of the withheld information would be fair, the Commissioner has taken into account the following factors:
 - a. the reasonable expectations of the data subjects;
 - b. the potential consequences of disclosure;
 - c. the legitimate interests of the public.

The reasonable expectations of the data subjects

18. In his guidance on "Requests for personal data about public sector employees"¹, the Commissioner notes in paragraph 45 that:

"Seniority is a factor here; if there is a cut-off point in the salary scale for the routine publication of detailed salary information, derived for example from statute or a code of practice, this is likely to create a reasonable expectation that the same level of detail would not be released for more junior staff."

19. The individuals are both directors of GLLM, and are both within the staffing structure at "tier 2". Prior to the merger of the individual colleges to form GLLM, both were "Vice Principals".
20. In line with sector guidance from the ICO and Welsh Government's FE Sector Accounts Direction, GLLM proactively published salary information for both individuals in £10k bandings as part of their annual accounts, only publishing exact salary information for tier 1 staff.
21. The Commissioner asked GLLM to account for the apparent anomaly in recent years over whether individual senior staff salaries are in the public domain, as it relates to the data subjects' reasonable expectations. Having reviewed evidence from GLLM, the Commissioner is satisfied that in 2011-12, details of the salaries of the highest paid employee at Coleg LLandrillo and Coleg Menai - which at that time were still separate entities - have been published in the annual accounts. However, the merger of the colleges to form GLLM meant that for 2012-13 the highest paid employee was the CEO, whose salary details were published.
22. The Commissioner notes that GLLM sought consent from both individuals to release of the requested information and both refused.
23. Where the individual refuses consent, this is not the only factor in the decision whether to release the requested information. Section 7(4) of the DPA states:

"Where a data controller cannot comply with the request without disclosing information relating to another individual who can be

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx

identified from that information, he is not obliged to comply with this request unless-

- a) The other individual has consented to the disclosure of the information to the person making the request, or
- b) It is reasonable in all the circumstances to comply with the request without the consent of the other individual."

24. The Commissioner recognises that people have a reasonable expectation that a public authority, in its role as a responsible employer and data controller, will not disclose certain information. He considers that information relating to the exact salary of an individual will attract a strong general expectation of privacy as it is inherently personal to the data subject. He also considers that whilst those in high level posts in public authorities should expect greater transparency around their employment, he accepts that there is no reason for "tier 2" staff in the newly formed GLLM to expect full disclosure of their actual salary details.

The potential consequences of disclosure on the data subjects

- 25. As to the consequences of disclosure upon the individuals, having found that they held a strong expectation of privacy in relation to the details of their salaries, it follows from this that disclosure in contravention of this expectation would result in distress to the individuals.
- 26. In addition, the Commissioner accepts GLLM's argument that disclosure of exact salary details of individuals within the context of the confidential employment negotiations surrounding the merger of a number of previously separate organisations is likely to be more sensitive to individuals than details of salaries in an established and fully harmonised staffing structure.

Legitimate Interests of the Public

- 27. On the issue of whether there is any legitimate interest in this information the Commissioner is of the view that there will always be some legitimate interest in knowing how public money is spent, how public sector salaries compare with those in other areas, and how money is distributed between different levels of staff.

28. In his guidance "Requests for personal data about public authority employees"², paragraph 47, the Commissioner states:

"Exceptional circumstances are needed to justify the disclosure of exact salaries when they are not routinely published. In such cases there may be additional public interest factors that outweigh any detriment to the individual concerned. These exceptional circumstances could include situations where:

- There are current controversies or credible allegations;
- There is a lack of safeguards against corruption;
- Normal procedures have not been followed;
- The individual in question is paid significantly more than the usual salary for their post; or
- The individual or individuals concerned have significant control over setting their own or others' salaries."

29. The Commissioner is not aware of any exceptional circumstances applying in this case, and is therefore of the view that the legitimate interest is met by the disclosure of the salary band information in the accounts and the further information provided in GLLM's letter to the complainant of 7 April 2014.

Conclusion

30. Having also found that disclosure would be against the reasonable expectation of the individuals concerned and that disclosure, despite that expectation, would be likely to result in distress to them, the Commissioner's decision is that disclosure would be unfair and in breach of the first data protection principle.

31. The exemption provided by section 40(2) is therefore engaged and GLLM is not required to disclose the detailed salary information for the named individuals.

² See footnote 1 above.

Right of appeal

32. 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

33. 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.
34. 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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