

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 May 2024

Public Authority: Judicial Appointments Commission
Address: 5th Floor Clive House
70 Petty France
London
SW1H 9EJ

Decision (including any steps ordered)

1. The complainant requested information from the Judicial Appointments Commissioner (JAC) relating to a number of different topics.
2. The JAC provided some information but advised that other information was exempt from disclosure.
3. The Commissioner has investigated its application of sections 42 (legal professional privilege), 36 (prejudice to effective conduct of public affairs) and 40(2) (personal information) of FOIA.
4. The Commissioner's decision is that the JAC was entitled to rely on sections 42(1), 36(2)(c) and 40(2) to withhold the information.
5. The Commissioner requires no steps to be taken.

Request and response

6. This decision notice (DN) relates to three, multi-part, requests for information which have been considered together in this DN. For ease of reference, the Commissioner will refer to these requests as Request 1, Request 2 and Request 3.

Request 1 information relating to the qualified person and head of corporate services

7. On 30 April 2023, the complainant wrote to the JAC and requested information in the following terms:

"1 Qualified person

[...]

Please provide copies:

a) of all communication passing between the JAC (or any person on its behalf) leading to the granting of the authorisation on 10 October 2022.

b) Copies of all FOIAs and answers given by the JAC prior to the grant of the authorisation where the 'qualified person' exemption was used or specific links to them under your disclosure programme. A link to your disclosure log is not enough. I specifically seek those requests where the JAC used sec 36.[...]

c) Please state whether there is any policy in force about how requests for information are answered where the qualified person exemption is engaged. If there were a written policy, please provide the document. If you do not have a written policy please provide full details of the individuals at the JAC who are aware of its details. [...]

d) Please state whether any of these individual have formal legal qualifications or are solicitors or barristers or members of the judiciary.

2. Head of corporate services

1. Please confirm that you ran an open competition for the current head of corporate services. If not, why didn't you?

2. Please state when and where you advertised the position.

3. Please provide the job advert, job specification and job competencies when you advertised the position.

4. Please provide details of the current job specification for the head of corporate services.

5. Please provide details of his or her current terms and conditions of employment."

8. The JAC responded on 26 May 2023. In response to 1a, it provided some information, but withheld the remainder citing section 42(1) (legal professional privilege). It provided the information in scope of 1b, redacted to avoid disclosure of personal information. It stated that it does not hold information in scope of 1c, and provided the information in scope of 1d.

9. With reference to part 2 of the request, the JAC stated that it does not hold information in scope of 2.1-2.3, it provided information in scope of 2.4 and refused to provide the information in scope of 2.5, citing section 40(2) (personal information).
10. Following an internal review, the JAC wrote to the complainant on 1 August 2023. It maintained its application of section 42(1) and clarified its application of section 40(2) to some of the information in scope of the request.

Request 2 information relating to claims, complaints and appeals

11. On 5 June 2023, in a multi-point request, the complainant requested information about 'Claims, complaints and Appeals'. The parts within the request were numbered 1-11. Of relevance to this DN, are the requests for information numbered 7, 8 and 10:

"7. Please provide copies of all situational and other questions and specimen answers for the following exercises:

a) deputy High Court selection exercises for 2021, 2022 and 2023.

b) specialist CJ selection exercises held in 2021, 2022 and 2023.

8. Please provide the scoring framework to mark candidates in respect of the above selection exercises.

10. Please provide information about how many individuals from a BAME background or identifying as lesbian, gay or bisexual [LGB] in respect of the selection exercises referred to above:

a) applied to be appointed to the positions specified in respect of the above selection exercises

b) were appointed to those positions".

12. The JAC responded on 27 June 2023, referring, in its response to part 8 of the request, to parts 8a and 8b. The Commissioner notes that part 8 of the request refers back to part 7 which is split into parts 7a and 7b.
13. With respect to those parts of the request that are the subject of this DN, the JAC provided some information in scope of parts 7a and 8a, but refused to provide the remainder, citing section 36(2)(c). Similarly, the JAC provided some information in scope of parts 7b and 8b, but refused to provide the remainder, citing section 36(2)(c). With respect to part 10, the JAC variously cited sections 21 (information accessible to

applicant by other means), 22 (information intended for future publication) and 40(2) of FOIA.

14. The complainant requested an internal review on 5 July 2023, including of the JAC's handling of the information in scope of 7a, 7b, 8a, 8b and 10.
15. Following an internal review, the JAC responded on 24 July 2023. It advised that most of the points made within the request for an internal review were, in fact, new requests for information and would be responded to as such. It maintained its application of section 36 in relation to parts 7a, 7b, 8a and 8. With respect to part 10, it confirmed how the information provided satisfies those parts of the request.

Request 3 - information about the circumstances relating to, and arising from, a named individual having ended their employment with the JAC

16. On 5 July 2023, the complainant made a further multi-point request. Of relevance to this DN are the following requests for information:

"(3) Points 7a and 7b and 8a and 8b

[...]

d) Please let me know if [name redacted] resigned or retired as CEO in June 2023. Please provide all communication leading to his resignation or retirement, including his letter of resignation or retirement.

e) Did [name redacted] retire or resign before his term as CEO had ended?

f) Does he continue to be employed or otherwise engaged or continue to have any association (direct or indirect) with the JAC?"

17. The JAC responded on 26 July 2023, noting that it considered 3e and 3f were questions rather than requests for information. It provided information in scope of 3d, 3e and 3f. It denied holding further information in scope of 3d, including any letter of resignation or retirement.
18. The complainant requested an internal review on 9 August 2023, including the JAC's handling of 3d and 3e. They also revised their request for information relating to 3d:

"Please supply any documents pertaining to discussion of the retirement, either via email, HR records or texts".

19. In the absence of a response, on 28 September 2023 the complainant wrote to the JAC asking when they could expect to receive its reply. In that correspondence, the complainant also made a further multi-part request for information.
20. Following an internal review, the JAC responded on 3 October 2023. The JAC refused to provide the additional information relating to the refined wording of the request 3d and 3e, citing section 40(2). It maintained its position in relation to the other parts of the original Request 3.
21. While the response addressed the points raised in the correspondence of 9 August 2023 relating to Request 3, it did not address the new requests for information made on 28 September 2023.

Scope of the case

22. The complainant provided the Commissioner with a substantial amount of information in support of their complaint. In addition to copies of the correspondence between themselves and the JAC regarding the three multi-part requests above, the complainant also provided the Commissioner with their 'observations' on the JAC's handling of those requests for information. In those observations the complainant did not take issue with the citing of section 22 and so the Commissioner has not considered its application further.
23. While the correspondence provided by the complainant included correspondence relating to the multi-part request made on 28 September 2023, the JAC's handling of that request for information has been addressed separately and is outside of the scope of this DN.
24. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part I of FOIA.
25. As is his practice, the Commissioner wrote to the JAC, giving it the opportunity to justify its position. On the basis of the observations received from the complainant, he asked the JAC to address its handling of specific aspects of Request 1, Request 2 and Request 3.
26. Having revisited its handling of those aspects of the requests, the JAC confirmed its application of sections 40(2) and 42(1) to the withheld information in scope of Request 1. It also confirmed its application of section 40(2) to the disputed information in scope of Request 3.
27. It revisited its response to part 10 of Request 2, disclosing some information and continuing to withhold some by virtue of section 22. It also continued to withhold the remaining small amount of information, namely information relating to the number of applicants identifying as

LGB for one of the stated exercises and the number of recommendations for each exercise, under section 40(2).

28. The JAC wrote to the complainant, disclosing the information within the scope of part 10 of Request 2 that could be provided and confirming its application of section 22 to the remaining disputed information.
29. The complainant remained dissatisfied, expressing concern to the Commissioner that the revisiting of the request, and disclosure of further information, meant that the initial information the JAC provided was "materially inaccurate". They consider that the JAC's revised position "has to call into question" their position in relation to withholding the remaining information in scope of the request.
30. In light of the complainant's 'observations' that are within the Commissioner's remit, and their continued dissatisfaction with the JAC's handling of the requests, the analysis below considers the JAC's application of exemptions to the withheld information in scope of the following:
 - Request 1 - the application of section 42 to refuse to provide the information requested at 1(a), and the application of section 40(2) to withhold the information requested at 2.5, the terms and conditions of employment;
 - Request 2 - the application of section 36(2)(c) to refuse to provide the information in scope of parts 7a, 7b, 8a and 8b and of section 40(2) to the small amount of withheld information in scope of part 10(b);
 - Request 3 – the application of section 40(2) to the revised request for information relating to the retirement (part 3(d)).

Reasons for decision

Section 42 legal professional privilege

31. Section 42(1) of FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege (LPP) and this claim to privilege could be maintained in legal proceedings. LPP protects the confidentiality of communications between a lawyer and client.
32. Section 42 is a qualified exemption: in other words, the requested information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

33. Part 1(a) of Request 1 in this case is for "communication passing between the JAC (or any person on its behalf) leading to the granting of the authorisation on 10 October 2022".
34. That request is similar to a request for information from another individual which the Commissioner has previously considered. The decision notice in that case (IC-263967-T7V8) was issued on 29 April 2024 and will be published on the Commissioner's website in due course.
35. In that case, the Commissioner found that section 42 was engaged and that the balance of the public interest favoured maintaining the exemption.
36. Having considered the factors applicable to this case, the Commissioner is satisfied that the similarity between this case and IC-263967-T7V8 is such that he is able to reach the same decision without the need for further analysis.
37. He finds, in this case, that the public interest in maintaining the exemption outweighs the public interest in favour of disclosure.
38. The Commissioner has next considered the JAC's application of section 36(2)(c) to the withheld information in scope of parts 7 and 8 of Request 2. That information comprises information relating to selection exercises for specified judicial positions.

Section 36 prejudice to effective conduct of public affairs

39. Section 36(2)(c) provides that information is exempt information if, in the reasonable opinion of a qualified person, disclosure would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
40. The JAC confirmed to the complainant that Alex McMurtie, JAC Chief Executive, reviewed the request in their capacity as qualified person, and gave their opinion that section 36 was engaged.
41. Explaining why it considered that section 36(2)(c) applies in this case, the JAC told the complainant that there was a good likelihood that the requested information, namely the situational questions, specimen answers and scoring framework, may be used or referred to, in part or full, in future judicial appointment exercises. It argued that disclosure of the information would not allow that to happen.
42. The Commissioner is satisfied that the JAC sought the opinion of the qualified person on 11 June 2023. He is also satisfied that the qualified person gave their reasonable opinion, that the exemption was engaged, on 13 June 2023.

The public interest test

43. The Commissioner considers that the public interest considerations are similar to those relating to a request for information from another individual which the Commissioner has previously considered. The decision notice¹ in that case (IC-268295-K8Q1) was issued on 28 March 2024.
44. In that case, having found that section 36(2)(c) was engaged, the Commissioner was satisfied that the balance of the public interest favoured maintaining the exemption.
45. Having considered the arguments put forward by the parties in this case, the Commissioner considers that the public interest arguments in the two cases are sufficiently similar that he is able to reach the same decision about the balance of the public interest without the need for further analysis.
46. Accordingly he finds that the JAC was entitled to rely on section 36(2)(c) to refuse to disclose the requested information within the scope of parts 7 and 8 of Request 2.

Section 40 - personal information

47. The Commissioner has next considered the JAC's application of section 40(2) to the information requested at:
 - 2.5 of Request 1 - information relating to the terms and conditions of employment of the then Head of Corporate Services;
 - 10(b) of Request 2 - information relating to individuals from a BAME background identifying as LGB in respect of the specified selection exercises; and
 - 3(d), as revised, of Request 3 - information relating to any documents relating to discussion of the retirement.
48. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4029336/ic-268295-k8q1.pdf>

49. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
50. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
51. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

52. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

53. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
54. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
55. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
56. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information does relate to the data subjects for the following reasons.
57. In the case of Request 1, the request for information specifies the terms and conditions for a third party role, namely the role of the Head of Corporate Services at the time of the request.

58. The Commissioner addresses the topic of job descriptions in his guidance 'Requests for personal data about public authority employees'². He acknowledges:

"The job description for a post does not in itself constitute personal data about anyone who may happen to hold that post. However, if the post holder is identifiable from that job description, or from the job description and other available data, then this is personal data".

59. In the circumstances of this case, the Commissioner considers that the job holder is identifiable. The terms and conditions of their job is clearly information which relates to the individual concerned.

60. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

61. In the case of Request 2, the information comprises diversity information about the individuals who were recommended for appointment by the JAC to specific positions.

62. The complainant disputes that providing the information will identify an individual. In their view, there is no prospect of a candidate being identified.

63. The Commissioner acknowledges that the JAC considers that, given the low numbers involved, there is a strong possibility an individual would be identified.

64. However, while the fact that low numbers are involved provides a starting point to protecting information, decisions about withholding information need to be made on a case by case basis, considering all relevant circumstances.

65. The Commissioner is mindful that the issue to be considered is whether disclosure to a member of the public would breach the data protection principles, because an individual is capable of being identified from apparently anonymised information.

² https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

66. He accepts that different members of the public may have different degrees of access to the 'other information' needed for re-identification to take place.
67. A test used by both the Commissioner and the First-tier Tribunal in cases such as this is to assess whether a 'motivated intruder' would be able to recognise an individual if they were intent on doing so. The 'motivated intruder' is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test highlights the potential risks of reidentification of an individual from information which, on the face of it, appears truly anonymised.
68. In this case, having considered the wording of the request and viewed the withheld numerical information, the Commissioner considers that the information relates to the individual(s) who meet the criteria specified in the request.
69. He has reached that conclusion on the basis that the focus of the information is those individuals and that such information is clearly linked to them.
70. The Commissioner is further satisfied that the individuals concerned would be reasonably likely to be identifiable from a combination of the requested information and other information which is likely to be in, or come into, the possession of others, such as those with knowledge of the judicial community and of the pool of potential applicants with the relevant skills and experience required for the positions.
71. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
72. In the case of Request 3, the individual is named in the request. A name clearly relates to, and identifies, an individual. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
73. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
74. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

75. Article 5(1)(a) of the UK GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

76. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
77. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
78. In addition, if the requested data is special category data, in order for disclosure to be lawful and compliant with principle (a), it also requires an Article 9 condition for processing.

Is the information special category data?

79. Information relating to special category data is given special status in the UK GDPR.
80. Article 9 of the UK GDPR defines 'special category' as being personal data which reveals racial, political, religious or philosophical beliefs, or trade union membership, and the genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
81. Having considered the wording of part 10(b) of Request 2, and viewed the withheld information, the Commissioner finds that the requested information does include special category data. He has reached this conclusion on the basis that the requested information relates to individuals from a BAME background or identifying as LGB.
82. Special category data is particularly sensitive and therefore warrants special protection. As stated above, it can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Article 9 can be met.
83. The Commissioner considers that the only conditions that could be relevant to a disclosure under the FOIA are conditions (a) (explicit consent from the data subject) or (e) (data made manifestly public by the data subject) in Article 9.
84. The Commissioner has seen no evidence or indication that the individual/s concerned have specifically consented to this data being disclosed to the world in response to the FOIA request or that they have deliberately made this data public.
85. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this special category data would therefore breach principle (a) and so this information - information relating to part 10(b) of Request 2 - is exempt under section 40(2) of FOIA.

86. He has gone on to consider whether disclosure of the remaining personal information – information in scope of Request 1 and Request 3 - would contravene principle (a).

Lawful processing: Article 6(1)(f) of the UK GDPR

87. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”³.

88. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
89. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

90. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester’s own interests or the interests of third parties, and

³ Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

91. The Commissioner recognises that there is a general legitimate interest in the public having confidence in the accountability and transparency of public authorities.

Is disclosure necessary?

92. Necessary means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
93. The Commissioner is prepared to accept that disclosure of the withheld information is necessary to meet the interests identified above as there is no alternative access route other than via FOIA by which the requested information could be obtained.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

94. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
95. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.

96. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
97. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

Information about the then Head of Corporate Services

98. The complainant told the Commissioner:

"... the JAC refused to provide details of the terms and conditions of employment of the then Head of Corporate Services, [name redacted]...it is unacceptable that the public should not know the package of remuneration and terms of conditions of employment of the Head of Corporate Services".

99. In support of that view, they pointed out that the remuneration band and other employment details relating to the then Chief Executive were published in the relevant annual report and accounts. They told the Commissioner it is 'difficult to understand' why the Head of Corporate Services should be in a different position.
100. They argued that, as the individual is no longer in post, no possible prejudice could arise if the information was disclosed.
101. In contrast, the JAC considered that the individual concerned has a reasonable expectation that the information within the scope of the request would be kept private and not provided to the wider public. They considered that disclosure would be likely to cause both damage and distress to the individual concerned.
102. The JAC acknowledged that details relating to its Chief Executive are published. However, it explained that the Chief Executive of the JAC would have been aware, when entering into the role, that these details would be published in the JAC Annual Report.
103. The JAC told the Commissioner that, as there is no such precedent within the JAC for releasing the requested information about the role specified in the request, that individual would have had no such expectation that details of their employment would be provided to the public. They also considered that there is no wider public interest in disclosure.

Information about the retirement of the named individual

104. Similarly, with regard to the information about the retirement of the named individual, the complainant considers that the public is entitled to know about the circumstances of the named individual's departure. They argued that the public is entitled to assess the reasons for their retirement.
105. In contrast, the JAC considered that the individual who is the subject of the request has a reasonable expectation that the information within the scope of the request would be kept private and not provided to the wider public.
106. The JAC told the Commissioner that disclosure of the information would likely cause both damage and distress to the individual concerned and outweighs any legitimate interests in disclosure.

The Commissioner's view

107. The Commissioner accepts that, under FOIA, there is a general social need for transparency about the policies, decisions and actions of public bodies. This particularly applies to issues of interest to the wider public and where disclosure demonstrates accountability. However any interference in the data protection rights of employees must be proportionate.
108. The Commissioner recognises that government departments and other public bodies routinely publish information about the pay of senior public officials. Even so, the balance between transparency and privacy concerns is usually achieved through the publication of salary increments, or of lower and upper limits.
109. In his guidance on requests for information about personal data about public authority employees, the Commissioner states:
- "In the FOI public interest test, there is an assumption in favour of disclosure because you must disclose the information unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
- In the case of section 40(2), the interaction with the DPA means the assumption is reversed and a justification is needed for disclosure".
110. The Commissioner has taken into account that the requested information in Request 1 relates to the terms and conditions of employment of the specific individual concerned.
111. He is mindful that the arguments put forward by the complainant in favour of disclosure variously refer to 'the terms and conditions of employment', 'remuneration and other employment details' and 'their

package of remuneration as well as their terms and conditions of employment'.

112. In this case he has taken into account the explanation put forward by the JAC as to why the individual concerned would have no expectation that the requested information would be published.

113. He has considered whether disclosure could constitute a disproportionate and unwarranted level of interference with the data subject's rights and freedoms.

114. Although the information relates to the data subject in their professional capacity, the Commissioner is satisfied that they will have a general expectation of privacy as regards their terms and conditions of employment and that they would reasonably expect that it would not be disclosed to the wider world.

115. In his published guidance on this matter, the Commissioner states that "exceptional circumstances" are needed to justify the disclosure of exact salaries when they are not routinely published. In this instance, the public interest would need to clearly outweigh the detriment to the individual concerned.

116. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.

117. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.

118. With respect to the information requested at 2.5 of Request 1, the Commissioner has therefore decided that the JAC was entitled to withhold the information under section 40(2) by way of section 40(3A)(a).

119. Turning next to the information relating to the retirement of the named individual, the Commissioner recognises that the complainant believes that the public is entitled to have the information requested.

120. He similarly notes that the JAC considers that the individual concerned would have no reasonable expectation that their information would be disclosed to the public under FOIA.

121. The Commissioner accepts that there is a legitimate interest in transparency and accountability in this case.

122. The Commissioner also accepts that the individual concerned will have a general expectation of privacy as regards their retirement and that they would reasonably expect that such information would not be disclosed to the wider world.
123. The data protection exercise of balancing the rights and freedoms of employees against the legitimate interest in disclosure is different to the public interest test that is required for the qualified exemptions listed in section 2(3) of FOIA. Any interference in the data protection rights of a public authority's employees must be proportionate.
124. Taking all the above into account, the Commissioner considers that the general interest in transparency, while legitimate, is not sufficient to outweigh the data subject's fundamental rights and freedoms in this case. The fact that they are retired has been confirmed and the Commissioner finds that this is sufficient to meet any public interest. The circumstances of that retirement are unnecessarily intrusive.
125. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
126. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.
127. With respect to the Request 3 information under consideration, the Commissioner has therefore decided that the JAC was entitled to withhold the information under section 40(2) by way of section 40(3A)(a).

Right of appeal

128. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

129. 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.

130. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF