

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 June 2024

Public Authority: Council for the Curriculum, Examinations & Assessment

Address: 29 Clarendon Dock
Clarendon Road
Belfast
BT1 3BG

Decision (including any steps ordered)

1. The complainant has requested information regarding the recruitment for a specific role and copies of various managers' meeting diaries from the Council for the Curriculum, Examinations & Assessment (CCEA). CCEA relied on section 40(2) of FOIA (third party personal information) to withhold the information.
2. The Commissioner's decision is that the CCEA has relied correctly on section 40(2) of FOIA to withhold some of the requested information. He finds, however, that some of the information should be disclosed.
3. The Commissioner requires the CCEA to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information, subject to appropriate redactions as outlined by the Commissioner in paragraphs 39-42.
4. The CCEA must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 18 December 2023, the complainant wrote to the CCEA and requested information in the following terms:
 - “1. Expression of interests recruitment form and job description for the temporary Business Manager Standards post from 2020.
 2. Business case for the temporary Programme Manager Science post. 2021
 3. Copy of the Temporary Chief executives Maragaret Faraghers meetings diary for 2021-22 . Copy of Temporary Director Amanda Swans meeting diary May 2021 to 2023 Copy of temporary business managers John Trueman and Michael McAuleys meetings diary for April 2021 to 2023.

I am only looking a print copy of the outlook view and do not require any further details of the specifics of the meetings other than the entries recorded when the entries were made.”
6. The CCEA requested clarification from the complainant on 19 December 2023. They did so in the following terms:
 - “In order to start processing your request, we seek clarity on the request below as we are unclear what is being asked for:
 - ‘I am only looking a print copy of the outlook view and do not require any further details of the specifics of the meetings other than the entries recorded when the entries were made.’”
7. The complainant responded on 19 December 2023, in the following terms:
 - “It just means that the diaries on a long view with basic details of the meeting details visible would be fine at this stage. Does that make sense? I just thought that might be less work to do.”
8. The CCEA responded on 15 January 2024. It provided the information in response to point 2 of the request, advised that no information was held for point 1 of the request and explained that the remaining information (the meeting diaries requested at point 3) was exempt under section 40(2). It upheld this position in its internal review.

Scope of the case

9. The complainant contacted the Commissioner on 9 February 2024 to complain about the way his request for information had been handled. Specifically, he challenged what he considered to be the blanket application of section 40 to withhold the diary entries requested at point 3.
10. The Commissioner considers that the scope of his investigation is to establish whether the public authority is entitled to withhold the requested information (the diary entries) under section 40(2) of FOIA.

Reasons for decision

Section 40 - personal information

11. 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.
12. 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').
13. 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.
14. 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?

15. Section 3(2) of the DPA defines personal data as:
"any information relating to an identified or identifiable living individual".
16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

17. 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.
18. 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.
19. In the circumstances of this case, the CCEA has withheld the dairies of four named individuals. The Commissioner is satisfied that as the individuals are named in the request and in the withheld information, the requested information not only relates to them, but also identifies them.
20. The Commissioner also notes that some of the withheld information contains information about third parties and junior members of staff at CCEA. As these individuals are also named in the withheld information, the Commissioner is also satisfied that the requested information not only relates to them, but also identifies them. The Commissioner therefore considers the withheld information to be personal data.
21. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
22. 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.
23. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.

The complainant's position

24. The complainant advised that they felt section 40(2) had been misapplied, due to the fact that a request for the release of a professional diary which includes CCEA employees, is a reasonable request. The complainant explained they were not asking for private details of meetings, only the dairies themselves. They advised that this

information would allow members of the public to identify whether certain meetings between CCEA staff were appropriate.

25. The complainant explained that by releasing the requested information, the CCEA would be showing the public that it is operating in an open and transparent manner. The complainant informed the Commissioner that he is satisfied that any third party (non CCEA) details could be redacted by CCEA.

The Commissioner's view

26. The Commissioner recognises that the public has a legitimate interest in the roles and functions of senior members of staff. He also notes that it is likely that the named individuals have acted as decision makers in their senior roles within CCEA, by setting and prioritising the functions of CCEA in regard to the roles they were in.
27. The Commissioner notes that the complainant does not seek diary entries which would identify home or private issues relating to the individuals in question. He is only seeking the entries which relate to the specified roles which the senior named individuals had at CCEA.
28. The Commissioner therefore considers that the complainant is pursuing a legitimate interest in transparency, albeit that their motivation is largely a private one.
29. The Commissioner is satisfied that disclosure of the requested information is necessary to meet the legitimate interest because that interest could not be met by less intrusive means.

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

30. 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. The Commissioner will also take into account their seniority within the organisation.
31. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
32. As noted, the complainant has accepted that private information can be redacted.

33. The Commissioner considers that the majority of the entries within the diaries do not highlight the private lives of the members of staff, nor the personal data of other parties beyond the named staff members. The entries relate to the named individuals carrying out their roles. The public has a legitimate interest in understanding how the named individuals carry out their roles and the sort of meetings and tasks they are required to undertake.
34. When considering the level of seniority the individuals in the request had at the time of the request, CCEA confirmed that its senior management structure consisted of a CEO, directors and business managers. CCEA confirmed that the directors are considered to be second tier senior management and form part of the executive team that report to the CEO directly. There are then business managers, who are considered the third tier of the senior management structure and report directly to the directors.
35. CCEA confirmed that the individuals named in the request would have been listed on CCEA website at the time of the request. CCEA advised that these individuals would have been listed as Key contacts on their website.
36. CCEA concluded that the individuals named in the request would not have only been named contacts on their website, but would have also represented CCEA at events. CCEA advised that this meant their roles were public facing to a degree, but on a day to day basis, public tasks would be handled by operational staff and only escalated where necessary.
37. Having considered the above information, the Commissioner is satisfied that individuals named in the request held senior roles at CCEA. The Commissioner considers that there is a strong expectation that such roles are subjected to a much higher degree of scrutiny than more junior roles. Senior officials should expect that more information is likely to be disclosed about them than about their subordinates.
38. The Commissioner is satisfied that publication would have a minimal effect on the private lives of the individuals concerned. Given their roles, they are also likely to be able to deal with any media interest that might result from making this information available.
39. The Commissioner has determined that where any of the withheld entries relate to and identify junior members of staff, members of the public, or representatives of other organisations, this information should be redacted by CCEA inline with section 40(2) of FOIA. Third parties and junior members of staff would have no expectation that their information would be published under FOIA.

40. In regard to any information within the diaries which is the special category information of the named individuals, this information should also be redacted under section 40(2). This information can only be released where the relevant data subject has consented to be released or has manifestly made the information public themselves. The Commissioner has seen no evidence that the data subjects have consented to the disclosure of the information, nor has the Commissioner seen any evidence that the information has been made manifestly public by the data subjects.
41. For the remainder of the entries, based on the above factors, and other than where highlighted above, the Commissioner has determined that the legitimate interests identified outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is an Article 6 basis for processing and so the disclosure of the information would be lawful.
42. Other than where highlighted above, the Commissioner's decision is that CCEA is not entitled to rely on section 40(2) of FOIA to withhold the requested information.

Right of appeal

43. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

44. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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