

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 June 2024

**Public Authority:** Acas (Advisory, Conciliation and Arbitration Service)

**Address:** Windsor House  
50 Victoria Street  
Westminster  
London SW10 0TL

#### Decision (including any steps ordered)

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1. The Commissioner's decision is that, at the time of the request, Acas correctly applied section 40(2) of FOIA to requested information about a job evaluation and grading support exercise. The information is personal data, and it would have been unlawful to disclose it.
2. Acas doesn't need to take any steps.

#### Request and response

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3. On 11 January 2024, the complainant wrote to Acas and requested information in the following terms:

"[1] The number of grade 7 roles subject to a Beamans Management Consultants job evaluation (i.e. JEGS) from 1 January 2023 to 11 January 2024 inclusive.

[2] From the above how many grade 7 roles were upgraded to grade 6.

[3] How many JEGS appeals have there been across grades 11 to grade 6 from 1 January 2023 to 11 January 2024 inclusive?

- How many of these have been successful?
- How many of these have been unsuccessful?

- Please provide a breakdown of the race and gender for the successful JEGS appeals by grade for grades 11 to grade 6 from 1 January 2023 to 11 January 2024 inclusive.
- Please provide a breakdown of the race and gender for the unsuccessful JEGS appeals by grade for grades 11 to grade 6 from 1 January 2023 to 11 January 2024 inclusive

[8] How many grade 6 roles have been downgraded to a grade 7 following a Beamans Management Consultants job evaluation (i.e. JEGS) from 1 January 2023 to 11 January 2024 inclusive.

[9] Please provide a breakdown of the race and gender for all posts downgraded from grade 6 to grade 7 from 1 January 2023 to 11 January 2024 inclusive.”

4. In its response of 22 January 2024, Acas provided the information for the first part of the request – the figure “19”. It withheld the remaining information under section 40(2) of FOIA. It maintained that position following its internal review of 20 February 2024.
5. In its submission to the Commissioner, Acas advised him that, through a different route, it has now provided the complainant with the information they’ve requested.
6. The Commissioner suggested to the complainant that this case could therefore be closed; it appeared they now had the information, and, in addition, he was satisfied that Acas is entitled to rely on section 40 to withhold the information under FOIA.
7. The complainant advised that they hadn’t received all the information they’d requested and preferred to conclude their complaint through a decision notice.

### **Reasons for decision**

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8. This reasoning focusses on Acas’s application of section 40 of FOIA to parts of the complainant’s request.
9. Disclosing information under the FOIA legislation means, in effect, that the information is being disclosed to the world at large.
10. When asked to clarify its position, Acas told the Commissioner that it relied on section 40(2) only, ie not on any other subsection of section 40 instead or as well, because of the circumstances at the time of the request, which it has explained to him.

11. Under section 40(2) of FOIA information is exempt from disclosure if it's the personal data of an individual other than the applicant and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
12. In most cases the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where disclosing 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 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's not personal data, then section 40 of FOIA can't apply.
14. Second, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosing 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. Although the request is for numbers, when small numbers are involved, five and less, it can be possible to identify specific people from those numbers.
18. Acas advised the complainant that 19 Grade 7 roles had been evaluated. It has provided the Commissioner with the remaining numbers, which are less than five.
19. In the circumstances of this case, the Commissioner is satisfied that the withheld information relates to those in Grades 11 to 6 whose roles were evaluated – the 'data subjects.' He's satisfied that this information both relates to and identifies the data subjects concerned. When pieced together with other information that's likely to be known already by

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

others in the organisation, disclosing the information would indicate who had or hadn't appealed an evaluation and who'd been successful or unsuccessful in their appeal. It could also reveal information about their race and gender; this is special category personal data which has special status. The withheld information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

20. The Commissioner has gone on to consider the second element of the test, namely whether disclosure would contravene any of the data protection principles.

### **Would disclosure contravene a data protection principle?**

21. The most relevant DP principle in this case is that under Article 5(1)(a) of the UK General Data Protection Regulation (GDPR), 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 an FOIA request, the personal data is processed when it's 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 he considers whether disclosing personal data would be lawful, the Commissioner considers the legitimate interest(s) in disclosure and whether disclosing the information is necessary to address those interests. If necessary, he then balances those legitimate interests against the data subject's interests, or rights and freedoms.
24. The Commissioner appreciates that, at the time of the request, the complainant had a legitimate interest in the information they requested that would only have been met through disclosing the information.
25. The Commissioner considers that the complainant's legitimate interest, and the general interest in public authorities being transparent, has been met to an adequate degree through the information that Acas disclosed to them. And he's noted that Acas has now provided the complainant with further relevant information outside of FOIA.
26. The Commissioner asked Acas whether it wouldn't be the case that, with regard to questions 2 and 8 (and 9), it would be generally known across the organisation whether a role had been upgraded or downgraded following the evaluation process. Acas explained that it might be possible but that, at the time of the request, the reorganisation process wasn't complete. Since the reorganisation was still ongoing it wouldn't have been known what grades, if any, had been up or downgraded.

27. The Commissioner appreciates the complainant's interest in the information they've requested but considers that interest is limited to them or a limited number of individuals, and that the information has little wider public interest. But based on the above factors, the Commissioner has determined that there's insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The data subjects would reasonably expect that their personal data wouldn't be disclosed to the world at large under FOIA and so disclosing it would cause them harm and distress. This is particularly the case with any special category personal data, where either the data subject's consent is necessary, or the data subject had manifestly made the information public.
28. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene Article 5(1)(a) of the UK GDPR. As such, the Commissioner's decision is that Acas was entitled to withhold the information under section 40(2) of FOIA.

## **Right of appeal**

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29. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**