

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2024

Public Authority: Lift Schools
Address: 163 Eversholt Street
London NW1 1BU

Decision (including any steps ordered)

1. The complainant has requested information about a recruitment exercise. Lift Schools (formerly 'Academies Enterprise Trust') disclosed the majority of the requested information and applied section 40(2) of FOIA to the remainder. Section 40(2) concerns personal data.
2. The Commissioner's decision is that Lift Schools correctly applied section 40(2) of FOIA to the information it has withheld. The information is other individuals' personal data and disclosing it wouldn't be lawful.
3. It's not necessary for Lift Schools to take any corrective steps.

Request and response

4. On 10 April 2024, the complainant wrote to Lift Schools and requested information in the following terms:

"[Redacted]" Data required:

1. Number of applicants Male Female Other
2. Number of applicants by age in categories above
3. Experience level by education ie degree, qualifications,
4. Work / job experience which qualifies each candidate
5. Identify which candidates were shortlisted.
6. Identify which candidates already work at the school
7. Identify which candidates work at other Trust schools
8. Identify successful candidate if interviews have taken place"

5. Lift Schools responded on 26 April 2024. It disclosed the information requested in six parts of the request and applied section 40(2) to the information requested in parts 5 and 8.
6. On 27 April 2024, the complainant submitted the following supplementary request:
 - "A) For the 11 applicants please say how many were male, how many were female and how many identified as "other"
 - B) For all 11 applicants please give the year in which each started full time employment – this is just the list of years by which no individual can be identified and can be provided under the legislation."
7. In this correspondence the complainant also disputed that section 40(2) applied to the two questions in their 10 April 2024 request.
8. On 3 May 2024, Lift Schools provided a response to the supplementary questions. It advised how many candidates were male or female and confirmed the years in which the candidates started full time employment. The Trust also reiterated its decision with respect to identifying candidates ie confirmed that section 40(2) was engaged in respect of parts of the 10 April 2024 request.
9. On 5 May 2024, the complainant requested that Lift Schools "put a star" next to the candidates' year of full time employment to indicate whether they had been shortlisted.
10. On 13 May 2024, Lift Schools responded to the complainant advising that that it wouldn't be able to identify the shortlisted candidate(s) for the reasons it had previously provided.

Reasons for decision

11. This reasoning is focussed on Lift School's application of section 40(2) of FOIA to information the complainant has requested; that is the two questions in the request of 10 April 2024, and their request of 5 May 2024.
12. 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 disclosure would contravene any of the principles relating to the processing of personal data that are set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).

13. The most relevant principle is Article 5(1)(a). This states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
14. The Commissioner has first considered whether the information Lift Schools is withholding under section 40(2) can be categorised as other individuals’ personal data.
15. Personal data is defined as information that relates to a living individual and from which the individual can be identified.
16. The Commissioner is satisfied that the information requested in parts 5 and 8 of the complainant’s first request can be categorised as personal data. The complainant has asked for shortlisted and successful candidates to be identified. Identifying those candidates – by name – would, of course identify them. Whether or not they were shortlisted or successful in the recruitment exercise is also information that relates to those individuals.
17. In addition, Lift Schools provided the complainant with the dates on which the candidates had started full time employment. The complainant then asked Lift Schools to put a star against the dates of those candidates who’d been shortlisted.
18. In its submission to the Commissioner, Lift Schools has explained that the role that was being recruited to in this case is unique in the school in question and there were only 11 applicants in a small geographical location. Lift Schools considers that, in the circumstances, the requested information could be pieced together with other information already known by the complainant in order to identify the successful and shortlisted candidates.
19. In the case of this particular information, the Commissioner has considered the ‘motivated intruder’ test. That is, whether someone reasonably motivated to do so, could piece together the withheld information with other information they may already know or would be prepared to find out, in order to identify a specific individual.
20. That the complainant has asked Lift Schools to mark up the candidates that were shortlisted against the dates that all the candidates started full time employment suggests to the Commissioner that the complaint already has certain knowledge about some or all of the candidates and is attempting to identify them. The Commissioner considers that most people wouldn’t want or need this level of detail about candidates to a job role.

21. The Commissioner has taken account of the relatively small number of candidates involved, the small geographic location, the information that's already been released, and knowledge that the complainant, or other people, may already have about the candidates. He's satisfied that it would be possible for someone sufficiently motivated to do so to identify specific individuals if Lift Schools were to mark up the full time employment dates as requested.
22. The Commissioner considers that this information can also be categorised as personal data – it relates to specific individuals, and they can be identified from it.
23. He's satisfied that all the information to which Lift Schools has applied section 40(2) meets the definition at paragraph 15 and is the personal data of other individuals – the 'data subjects.'
24. The Commissioner has gone on to consider whether disclosing that data would breach Article 5(1)(a) which, as above, states that personal data must be processed lawfully.
25. Personal data is processed when it's disclosed in response to a FOIA request. In order to be lawful under Article 5(1)(a), the lawful basis under Article 6(1)(f) of the UK GDPR must apply to the processing. It must also be generally lawful.
26. Article 6(1)(f) 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."
27. In order to determine whether disclosing the personal data would be lawful the Commissioner considers three 'tests': the legitimate interest test, the necessity test, and the balancing test.
28. For what are likely to be personal reasons, the complainant has an interest in the candidates involved in a particular recruitment exercise. That's a legitimate interest for them to have but there's little wider interest in the information, save for disclosure demonstrating that Lift Schools is open and transparent.
29. The Commissioner has next considered whether disclosing the withheld information would be necessary to address the legitimate interests that have been identified. This test is one of reasonable necessity and involves considering alternative measures which may make disclosing the requested information unnecessary. Disclosure under FOIA must

therefore be the least intrusive means of achieving the legitimate aim in question

30. The Commissioner isn't aware of any other way that the complainant could obtain the specific information they've requested. Disclosing the information under FOIA would therefore be necessary to meet the complainant's legitimate interests. The Commissioner considers that the general interest in transparency has been adequately addressed through the information Lift Schools has disclosed.
31. Because he's found that disclosure would be necessary, the Commissioner has moved on to the third test and balanced the complainant's legitimate interests against the data subjects' rights and freedoms.
32. In doing so, it's necessary to consider the impact of disclosure. For example, if the data subjects wouldn't 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.
33. In considering this balancing test, the Commissioner takes into account: 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 individuals expressed concern to the disclosure; and the reasonable expectations of the individuals.
34. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information won't be disclosed. These expectations can be shaped by factors such as the individuals' general expectation of privacy, whether the information relates to employees in their professional role or to them as individuals, and the purpose for which they provided their personal data.
35. It's also important to consider whether disclosure would be likely to result in unwarranted damage or distress to those individuals.
36. The Commissioner has considered the circumstances of the request. He understands that, at the time of the request, the name of any successful candidate hadn't been put in the public domain (if it had been in the public domain, the complainant wouldn't have needed to request it).

37. He's satisfied that the data subjects in this case would reasonably expect that their personal data – whether they'd been shortlisted to a role and whether they'd been successful - wouldn't be disclosed to the world at large under FOIA. They haven't consented to disclosure and disclosure would therefore be likely to cause them harm and distress. The complainant is pursuing a purely private concern and unrestricted disclosure of the data subjects' personal data to the general public isn't proportionate.
38. 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 Commissioner therefore considers that there's no Article 6 basis for processing and so disclosing the information wouldn't be lawful.
39. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he doesn't need to go on to consider separately whether disclosure would be fair or transparent. The Commissioner has therefore decided that Lift Schools was entitled to withhold the information under section 40(2) of FOIA.

Right of appeal

40. 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

41. 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.
42. 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