

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 October 2024

**Public Authority:** Queen's University Belfast

**Address:** University Road  
Belfast  
BT7 1NN

#### **Decision (including any steps ordered)**

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1. The complainant has requested anonymised candidate interview information for a vacant position of a Visitor Services Manager. Queen's University Belfast (QUB) relied on section 40(2) of FOIA (third party personal information) to withhold the information.
2. The Commissioner's decision is that QUB has correctly relied on section 40(2) of FOIA to withhold the information. However, in failing to provide its refusal within the statutory timeframe QUB breached section 17 (refusal notice) of FOIA.
3. The Commissioner does not require further steps to be taken.

#### **Request and response**

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4. On 3 November 2024, the complainant wrote to the public authority and requested information in the following terms:

"This is a Freedom of Information request regarding position of Visitor Services Manager - Ref: 24/111585.

Please provide me with the following information:

The scores for each candidate interviewed with any personal data redacted.

The date and times for each interview with any personal data redacted.

The interview notes for each candidate interviewed with any personal data redacted."

5. The public authority responded on 16 February 2024 and stated:

"Under Section 40(2) of the Freedom of Information Act 2000, a public authority is exempt from disclosing personal information where it may breach any of the data protection principles.

In determining whether the processing of personal data is fair, the University must consider the expectations of the data subjects. It is necessary to consider whether they would expect personal information to be disclosed to you by the University. The University is satisfied that they would not, and that the disclosure of personal information about them to you would, therefore, be unfair. Therefore, the requested information is withheld."

6. On the 9 April 2024, the complainant requested an internal review stating:

"I asked for **the scores for each candidate interviewed with any personal data redacted**. The answers to this question are all numbers. It is self-evidently impossible to identify people from only the scores they achieved at interview. The response from QUB is identical to other similar first responses to FOI requests and displays a clear disrespect for the FOI process. The response is a pre-prepared 'copy and paste' response designed to make the requestor go away.

I asked for **the date and times for each interview with any personal data redacted**. The answers to this question are only dates and times. It is self-evidently impossible to identify people from this information. The response from QUB is identical to other similar first responses to FOI requests and displays a clear disrespect for the FOI process. The response is a pre-prepared 'copy and paste' response designed to make the requestor go away.

I asked for the **interview notes for each candidate interviewed with any personal data redacted**. Given that QUB have already supplied personal data of other candidates redacted within their first response, they would be able to provide notes, similarly redacted. They have chosen to not provide this.

I direct you to the following case; [Information Commissioner's ruling could open doors to claims from failed job candidates - Personnel Today](#).

Job candidates may be allowed to see other applicants' details, including interview notes, following a decision by the Information Commissioner (IC) against Leicester City Council.

The IC ruled that a council employee, who had applied for two internal vacancies, had the right, under the Freedom of Information (FoI) Act, to see various details of other candidates as long as their identities were kept secret. The complainant had his request for information about the recruitment process and other candidates turned down by the council.

I ask again for the University to provide the above information and will be pursuing this with the ICO in the event that this is not provided. It is incumbent upon public bodies, including universities, to be seen to be fair and transparent and to be fair and transparent."

7. Following an internal review the public authority wrote to the complainant on 7 May 2024. It stated that

"The University has reviewed the withheld information and reaffirms its original opinion that information provided during the recruitment interview is by its very nature the personal data of the candidates. The information is either personal data, in its own right or for example in the specific scenarios described by a candidate when combined with other information about the individual"

### **Scope of the case**

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8. The complainant contacted the Commissioner on 20 May 2024 to complain about the way his request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to establish whether the public authority is entitled to withhold the requested information under section 40(2) of FOIA

### **Reasons for decision**

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### **Section 40 - personal information**

10. 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.
11. 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').
12. 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.
13. 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?**

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

"any information relating to an identified or identifiable living individual".
15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. 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.
17. 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.
18. In the circumstances of this case, having considered the withheld information and QUB's responses to the complainant, the Commissioner is satisfied that the information, regardless of whether names or personal information are redacted, relates to disclosure of personal information of the individuals interviewed for the position at QUB; which along with details of the circumstances associated to the interview procedures, would enable someone with a knowledge of QUB and the staff employed by them at that time, to identify some if not all of the individuals concerned.

19. When considering the possibility of identification, the Commissioner applies the "Motivated Intruder Test" which starts with a hypothesis that there exists a person who wishes to identify the individuals covered by the disputed information, and who is willing to devote a considerable amount of time and resources to the process of identification. They may have some inside knowledge of QUB, the vacancy advertised and of potential applicants (i.e. information not already in the public domain).
20. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
21. The Commissioner has gone on to consider whether disclosing that data would breach Article 5(1)(a) which states that personal data must be processed lawfully.
22. 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.
23. The most relevant DP principle in this case is principle (a).

#### **Would disclosure contravene principle (a)?**

24. 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".

25. In the case of an 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.
26. 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.

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

27. 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"<sup>1</sup>.

28. 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.
29. 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**

30. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
31. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits, 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.

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<sup>1</sup> 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".

32. The complainant stated that "It is incumbent upon public bodies, including universities, to be seen to be fair and transparent and to be fair and transparent."
33. QUB acknowledged the legitimate interests in being open and transparent, which informs the public that it has a fair and equitable recruitment process, however, "this must be balanced against an individual's rights to privacy."
34. QUB also acknowledged the legitimate interests of any interviewees "in being able to understand how they performed against other candidates via how they scored against the successful applicant and how the successful applicant answered the interview questions. However, there is no wider public interest for this type of information."
35. The Commissioner is satisfied that there would be a legitimate interest from disclosure of the information as it would show QUB followed its own recruitment policies and procedures in the selection of the best and most suitable applicant. He has therefore gone on to consider the necessity test.

### **Is disclosure necessary?**

36. '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.
37. The Commissioner appreciates that there is a legitimate interest from the point of view of transparency and accountability as to how interview panel members scored interviewees, to determine suitability and the best applicant for a position, especially if more than one interviewee had the same score or the top applicant and scorer was not offered the position. However, he does not consider that this legitimate interest extends to the request for the dates and times of the interviews for each candidate and that there would be little wider public interest in disclosure of this information.
38. As it is not apparent to the Commissioner how knowing the dates and times of when candidates were interviewed is necessary to increase the transparency of the interview decision making processes, he will therefore consider the balancing test in relation to the scores and notes only.

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



39. 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.

40. 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.

41. In its responses to the complainant, QUB explained

"Answers provided during an interview contain personal data in that they detail a person's previous work and employment history. This is equally relevant to the date and times of interviews and the scores they received at each question.

It has been indicated by the applicant that they would accept a redacted version of the information. However, the University considers that an individual could still be linked to the information even where direct identifiers, such as names are removed. The interview notes will detail the candidate's responses to questions and coupled with other information that a motivated third party could find out; disclosure could still provide sufficient information that could be used to identify candidates. Equally information on interview times may be useful in identifying individuals."

42. In its submissions to the Commissioner, QUB explained that the vacancy was advertised to both internal and external applicants and that interviews took place over one day with a small number of individuals (which included the complainant) interviewed for the position.

43. QUB considered that given the small numbers of interviewees along with information already disclosed to the complainant via a Subject Access Request, that by connecting scores to the successful candidate and through a process of elimination of other factors such as QUB's small catchment area and details of work experience and answers detailed in



the interview notes, that there was a high possibility that individuals could be identified.

44. QUB further explained that

“Redaction to names would not anonymise the information, in fact it would be impossible to release any information contained within interview notes without releasing personal information of third parties.”

45. Additionally, the Commissioner considers that disclosing this information for each applicant extends into the individuals’ private and personal lives and is their personal data and that a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed and would expect a level of confidentiality to be applied by QUB in the recruitment process and any subsequent employment.

46. The Commissioner is not aware that the data subjects have consented to this data being disclosed to the world in response to a FOIA request or, that they have deliberately made this data public.

47. QUB stated that their staff applicant privacy notice<sup>2</sup> provides applicants with QUB’s commitment to the confidentiality of personal information collected and details the legal basis for collecting and using personal data in relation to staff recruitment. QUB stated

“The University’s position is that candidates would have a strong expectation that the information supplied would be held in Queen's University Belfast - Controlled document confidence and would only be used in connection with the recruitment process. Candidates were not notified about processing for any purpose other than for the job application.”

48. Additionally, disclosure under FOIA is disclosure to the world at large and not just the requestor and is equivalent to QUB publishing personal data of the applicants on all media platforms and websites.

49. The complainant in his request for a review referred the QUB to an article published in 2009 which related to a Decision Notice issued on 12 January 2009 with reference FS5018488<sup>3</sup>. The Commissioner had ruled

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<sup>2</sup> 1. [Applicant Privacy Notice | Privacy Notices | Queen's University Belfast \(qub.ac.uk\)](https://www.qub.ac.uk/privacy-notice/)

<sup>3</sup> [FS 50184888.pdf \(ic https://ico.org.uk/media/action-weve-taken/decision-notices/2009/456904/FS\\_50184888.pdf.org.uk\)](https://www.ico.org.uk/media/action-weve-taken/decision-notices/2009/456904/FS_50184888.pdf)

that "Some of the information about applicants' experience and qualifications could be provided in an anonymised form, without breaching their rights under the Data Protection Act 1998." however, the Commissioner 's decision in this case was to release very basic "pen picture biographies" or summaries of an applicants redacted application form after consideration of other factors.

50. The Commissioner has a well-established position in cases such as this and a full explanation of the exemption can be found in previous decision notices setting out the correct response from a public authority faced with such a request and explaining why they can withhold the requested information<sup>4</sup>.
51. Having considered the explanations by QUB that the vacancy was advertised both internally and externally and that some individuals who successfully obtained an interview were internal applicants, the Commissioner considers that in disclosure of the interview dates, times, interview notes and scores, that QUB would be unable to avoid making personal data disclosures of the applicants, allowing those motivated to do so to identify the individuals interviewed for the position and obtain personal information about them.
52. As the complainant would know their own score, and the identity of the successful applicant, they would also be in a position to compare their own scores and notes with the other applicants and any other applicants known to them.

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<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025237/ic-224832-q9m1.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4026283/ic-247197-y0n0.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4019788/ic-121943-h5c2.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4029345/ic-269849-g1v8.pdf>

53. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms.
54. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
55. 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.
56. The Commissioner's decision is that QUB is entitled to rely on section 40(2) of the FOIA to refuse to provide the requested information. The Commissioner requires no further action to be taken by QUB in relation to this request.

### **Procedural matters**

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57. Under section 17(1) a public authority that is relying upon an exemption to withhold information, must issue a refusal notice within 20 working days.
58. As QUB did not provide a refusal notice specifying the exemption it ultimately came to rely upon to withhold information, within 20 working days, it breached section 17(1) of FOIA.

## Right of appeal

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59. 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)

60. 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.
61. 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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