

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2024

Public Authority: Financial Conduct Authority
Address: 12 Endeavour Square
London
E20 1JN

Decision (including any steps ordered)

1. The complainant has requested information about recruitment for a particular role. The Financial Conduct Authority ("FCA") relied on section 40(2) (third party personal information) of FOIA to withhold some of the requested information.
2. The Commissioner's decision is that the FCA has correctly relied on section 40(2) of FOIA to withhold the information.
3. The Commissioner does not require the FCA to take any further steps.

Request and response

4. On 2 April 2024, the complainant wrote to the FCA and requested information in the following terms:

"Sometime in or around Feb 2024 or March 2024, a Lead Associate Supervisor role in Payments & Digital Assets Department was created and awarded to an internal employee.

Please can you provide the following information in relation to that specific role:

- (1) the Job Requisition ID

- (2) the full Job Description
 - (3) the name of the FCA hiring manager
 - (4) how many applications was submitted for the role
 - (5) how many were internal candidates
 - (6) how many were external candidates
 - (7) how many people were interviewed for the role (internal and external)
 - (8) how long was the role advertised for
 - (9) where was the role advertised e.g. FCA internal careers page and/or external careers page and/or LinkedIn and/or other third-party recruitment websites, etc.
 - (10) salary range"
5. The FCA responded on 26 April 2024. It disclosed the information for all parts of the request apart from part 3 - the name of the FCA hiring manager, which it withheld in accordance with section 40(2) of FOIA.
 6. Following an internal review the FCA wrote to the complainant on 11 June 2024. It maintained its reliance on section 40(2) of FOIA for part 3 of the request.

Reasons for decision

Section 40 – personal information

7. Section 40(2) of FOIA provides that information is exempt from disclosure if it is their 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.
8. 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').
9. 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.

10. 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?

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

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

12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. An identifiable living individual is one who can 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.
14. 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.
15. In this case, the Commissioner is satisfied that the name of the data subject quite obviously is information that both relates to and identifies them. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
16. 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.
17. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

18. 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".

19. 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.

20. 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

21. 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”¹.

22. 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.

23. 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

24. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that

¹ 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”.

such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

25. 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. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
26. The complainant argued that the public has a legitimate interest in ensuring transparency and accountability in the FCA's recruitment processes. Recent media coverage about recruitment practices underscores the need for public confidence in the FCA's hiring processes. More generally, the public interest in transparency and accountability in public sector recruitment practices can be a compelling reason for disclosure.
27. The complainant also argued that the FCA has previously published names of managers within each division, which they assert sets a precedent. Therefore, disclosing the hiring manager's name would be consistent with this practice and support transparency, and would be a proportionate action to serve the public interest.
28. The complainant further argued that those involved in recruitment decision-making processes should reasonably expect their professional activities to be subject to a higher level of public scrutiny and accountability.
29. The FCA agreed with the complainant in terms of the importance of transparency about its recruitment processes.

Is disclosure necessary?

30. '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.
31. The complainant asserts that, given the recent media coverage and public concerns about potential unfair recruitment practices, disclosing the hiring manager's name is necessary to address the legitimate interests and enhance public trust in the FCA.
32. The FCA confirmed that it had previously published lists of names of managers within each FCA division. However, those lists did not identify individuals as managers of specific teams within those divisions.

Therefore, the information previously published by the FCA did not provide the level of detail that would be revealed about the data subject in this case, should their name be disclosed in response to the request.

33. In reference to those previously published lists of managers, the FCA clarified that, whilst it may disclose the names of managers in response to requests under FOIA in some cases, it does not have a policy whereby the names of all staff at manager level or above are always disclosed, either in response to requests under FOIA or otherwise by proactive publication. Therefore, it does not set a precedent which makes it necessary to disclose the hiring manager's name in this case.
34. The FCA concluded that there are less intrusive ways to achieve the legitimate aims in this case, asserting that the public interest in transparency surrounding its recruitment processes has already been served by the information already disclosed about this particular recruitment campaign.
35. The Commissioner has carefully considered the arguments put forward by both the complainant and the FCA. Whilst he acknowledges that there is a greater expectation of scrutiny and accountability the more senior the role of the data subject, he is satisfied that the FCA's approach of considering the particular circumstances applicable to each case is correct, rather than adopting a blanket position.
36. The Commissioner considers it important to note that if concerns arise regarding the recruitment for a particular role or a particular individual responsible for recruitment, those concerns should be raised as formal complaints and investigated in a private capacity through the appropriate channels, alleviating the risk of reputational damage or personal harm before any wrong-doing is proven.
37. Whilst the Commissioner acknowledges the need for transparency in public sector recruitment, he does not consider that the disclosure of one individual's name in relation to the recruitment for one role would reveal a true picture of the FCA's recruitment and decision-making practices as a whole. Nor would it be indicative of the practices of the wider public sector.
38. The Commissioner does not agree that the disclosure of the hiring manager's name to the world at large would demonstrate how decision-making was carried out throughout the recruitment process, or that the FCA has a robust recruitment policy with measures in place to ensure that the policy is adhered to. The Commissioner considers these to be just some examples of less intrusive means of satisfying the legitimate aims identified in this case. Therefore, he is satisfied that it is not necessary to disclose the hiring manager's name.

39. As the Commissioner is satisfied that disclosure is not necessary, there is no lawful basis for disclosure and therefore the FCA was entitled to rely on section 40(2) of FOIA to withhold the information.

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.

Michael Lea
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