

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2014

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Beverley
East Riding of Yorkshire
HU17 9BA

Decision (including any steps ordered)

1. The complainant has requested the salary details for all staff employed by East Riding of Yorkshire Council. As the Council only holds exact salaries and not pay scales for each employee it withheld the information on the basis of section 40(2). The Commissioner accepts that the information constitutes personal data and that disclosing this information would breach the first principle of the Data Protection Act 1998.
2. The Commissioner's decision is therefore that the section 40(2) exemption has been correctly applied to withhold this information.

Request and response

3. On 16 October 2013, the complainant wrote to East Riding of Yorkshire Council ("the Council") and requested information in the following terms:

"I wish to obtain under the FOI Act request the following:

- *The total number of employees*
- *A full list of every position of employment together with the number of employees in that position within the Council and their current salaries.*

- *The total amount of funds banked by the Council in the current year, together with the Banks that hold that deposit and the rates of interest on that deposit.*
 - *The total expenditure on Salaries and also their Pensions.*
 - *The Pension Contributions of staff and the contributions by the tax payer (percentage rates)*
 - *A full list of bonuses of financial rewards given to Council employees 2012-13 and for the current."*
4. The Council responded on 7 November 2013. It stated that the information was held by the Council but it would exceed the appropriate cost limit of £450 to make the information available. The Council considered it would exceed the cost limit just to respond to the second bullet point as it would require manual cross-referencing to ensure accuracy of any compiled figures.
 5. Following an internal review the Council wrote to the complainant on 28 January 2014 and upheld its position that responding to the request would exceed the appropriate cost limit set out in section 12 of the FOIA. The Council subsequently provided the majority of the information but continued to maintain that it could not provide a full list of positions of employment with number of employees in each position without exceeding the cost limit.
 6. The Commissioner was asked to make a decision on the application of section 12 by the Council and concluded in his decision notice¹ that the Council has incorrectly applied section 12. The Commissioner therefore required the Council to either provide the requested information or issue a new refusal notice explaining why the information could not be provided with clear reference to specific exemptions under the FOIA.
 7. The Council subsequently provided the complainant with a list of every position of employment at the Council with the number of employees in each position. Alongside this the Council also issued a new refusal notice on 3 October 2014. This refusal notice stated that the information on salaries could not be provided as it was exempt under section 40(2) of the FOIA.

¹ FS50541431

Scope of the case

8. The complainant contacted the Commissioner on 16 October to complain about the way his request for information had been handled. In particular he stated he was unhappy that the Council was still refusing to provide salary details for each position.
9. The Commissioner considers the scope of his investigation to be to determine if the Council has correctly applied section 40(2) to withhold all salary information relating to the posts within the Council.

Reasons for decision

Section 40(2)

10. Section 40(2) states that a public authority is not obliged to disclose information if to do so would constitute a disclosure of personal data and if this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA).
11. The Commissioner has gone on to consider whether or not the Council has correctly applied section 40(2) to withhold the salary details for each position at the Council.
12. The DPA defines personal data as:

"...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual."
13. The Council has stated throughout the handling of this request that it does not hold salary bands or pay scales for posts; it only holds precise salary details for each position. It is therefore these exact salaries which the Council considers exempt under section 40(2).
14. The Commissioner did enquire with the Council whether it was possible to create bandings by taking a lowest and highest salary for each role but the Council has explained that in some cases there is no difference in the salaries, each employee within a role is paid the same. As such it is not possible to provide a banding. The Commissioner accepts this

position and has focused on determining whether the exact salary details are personal data and if so, whether there is a legitimate public interest in disclosure.

15. Although the withheld information itself does not contain staff names the Commissioner accepts that it is personal data as the individuals could be identified from their exact salary details and other information. An individual's salary is their personal data because it is specific to them, even if another individual earns an identical salary. The salary information in isolation may be unlikely to identify an individual but combined with other information such as job titles and names (which can be easily located for those staff in public facing roles), individuals could be identified.
16. As the Commissioner has accepted that the information does constitute personal data he has now gone on to consider whether disclosure of this information would breach any of the data protection principles.
17. The Council has argued that disclosure of the exact salaries would breach the first data protection principle in that it would be unfair. The first data protection principles states that personal data should be processed fairly and lawfully and must satisfy one of the conditions listed in schedule 2 of the DPA.
18. The Commissioner has firstly considered whether disclosure would be fair and in assessing fairness he has taken into account the reasonable expectations of the individuals concerned and the consequences of disclosure to the individuals. Balanced against this he has also considered the legitimate public interest in disclosure.
19. The Council has explained that most of its employees would not expect that information relating to their salary would be disclosed. The Council has stated that salary information is not published on a routine basis. The only exception to this being the salaries of senior employees as the Council is required to publish this information pursuant to the accounts and audit regulations.
20. The Commissioner has produced guidance on information relating to public authority employees². This guidance recognises that public

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https://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx

authority employees should expect that some information about them may be published as there is a legitimate public interest in accountability and transparency. However, for the majority of the job roles listed by the Council the employees are not in senior positions and are unlikely to have financial or managerial responsibilities which would provide an expectation of disclosure or a legitimate interest in disclosure.

21. The Commissioner's guidance notes that disclosure of an individual's exact salary would be more intrusive than disclosing a salary band or pay scale. Therefore the Commissioner accepts that such disclosure would be likely to cause distress to an individual and this will be unfair unless exceptional circumstances apply. The Commissioner has addressed this issue in previous decision notices³.
22. However, the Commissioner's guidance also states that salary bands or pay scales should be considered for routine or proactive publications. This is because there is a legitimate public interest in the public being informed as to how public posts are remunerated. Public authorities are expected to demonstrate accountability and transparency by informing the public how it spends money.
23. The Commissioner recognises that it is an unusual situation for a public authority to not hold pay scales or salary bands and to only have specific salaries for all individuals employed at each band. However, as the Council has repeatedly stated that this is the case, the Commissioner accepts that bandings and pay scales are not held and can only make a decision on whether the exact salaries should be disclosed.
24. As disclosing exact salaries is considered far more intrusive than disclosing pay scales and there was unlikely to be any reasonable expectation of this information being disclosed, any legitimate public interest in disclosing information that increases accountability will not outweigh the unwarranted distress that may be caused to individuals by disclosing this information. The Commissioner therefore finds that disclosure of the withheld information would be unfair and would thus contravene the first data protection principle. As such, he finds that the exemption at section 40(2) is engaged in respect of all the withheld information.

³ FS50307784 and FS50464100

Right of appeal

25. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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