

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 February 2012

**Public Authority:** National School of Government  
**Address:** Sunningdale Park  
Larch Avenue  
Ascot  
SL5 0QE

#### Decision (including any steps ordered)

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1. The complainant has requested information concerning the secondment to another organisation of an employee of the National School of Government (NSG). NSG refused this request, citing the exemption provided by section 40(2) of the FOIA.
2. The Commissioner's decision is that NSG has applied the exemption provided by section 40(2) correctly and so it is not required to disclose this information.

#### Request and response

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3. On 25 March 2011, the complainant wrote to NSG and requested information in the following terms:

*"It has been revealed that [named individual] is now on secondment to Common Purpose.*

*Would you please provide a copy of original documents detailing all of the arrangements regarding [named individual]'s secondment to Common Purpose.*

*A copy of any agreement / contract made between the school and Common Purpose.*

*A copy of all letters, emails etc between [named individual] and Common Purpose before secondment started and a copy of all emails,*

*letters between Nat School of Govt and Common Purpose regarding secondment.*

*A copy of all internal emails between [named individual] and other staff members relating to secondment.*

*Please provide a copy of any invoices received from Common Purpose since January 2009.*

*How long is the secondment and when did it start?*

*Who is paying [named individual]'s wages?"*

4. NSG responded on 15 April 2011. It provided an answer to the question concerning invoices. In response to the remainder of the requests, NSG refused to disclose this information and cited the exemptions provided by section 40(2) of the FOIA.
5. Following an internal review NSG wrote to the complainant on 19 May 2011. It stated that the refusal under section 40(2) was upheld, but it was also confirmed at this stage that NSG would continue to pay the salary of the individual named in the request during the period of their secondment.

## **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant argued that the information requested should be disclosed.
7. As an answer was provided to the requests for information concerning invoices and the payment of salary, those requests are not covered further in this notice.

## **Reasons for decision**

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8. Section 40(2) of the FOIA states that information is exempt if it is the personal data of an individual aside from the requester and if the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is, therefore, a two-stage process. First, the information must constitute the personal data of an individual aside from the requester. Secondly, the disclosure

of that personal data must be in breach of at least one of the data protection principles listed in the Data Protection Act 1998 (DPA).

9. Covering first whether the information constitutes the personal data of an individual aside from the requester, section 1 of the DPA states that for information to be personal data it must relate to an individual and that individual must be identifiable from that information. The position of NSG is that the requested information is the personal data of the individual named in the request.
10. The view of the Commissioner is that it is clear that the information requested does relate to the individual named in the request in that it concerns that individual's secondment to another employer. As to whether that individual would be identifiable from that information, the Commissioner considers it highly likely that this individual would be named within any information falling within the scope of the request. As the information in question both relates to the individual named in the request and this individual would be identifiable from that information, the Commissioner finds that this information would be their personal data.
11. Moving to whether disclosure of this personal data would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle, which states that personal data shall be processed fairly and lawfully. In particular the focus here is on whether disclosure would be in general fair to the data subject. In forming a conclusion on this point the Commissioner has taken into account the consequences of disclosure upon this individual, their reasonable expectations as to whether this information would be disclosed, and any legitimate interests of the public in this information.
12. Covering first consequences to the data subject, NSG has stated that the consent of the subject of this information was sought to disclosure. This individual declined to consent to this and stated that disclosure would cause distress. However, the view of the Commissioner is that it is not clear why the disclosure of this information would result in distress to the subject. The information relates to this individual solely in their professional capacity and it is not clear from the wording of the requests why this information would be considered to be of particular sensitivity. In the absence of any description as to why disclosure of this information would cause distress to the subject, the view of the Commissioner is that, despite representations to the contrary from the subject, disclosure of this information should not be likely to result in any particular negative consequence to the subject.

13. The representations from the subject of this information are again relevant when considering their expectations about disclosure. Clearly, as NSG sought the views of the subject about disclosure and the response to this was that they did not consent to disclosure, that individual would hold a strong and justified expectation that this information would not be disclosed.
14. The complainant has argued that the data subject has already posted information online about their secondment and thus any reasonable expectation that they may have held about privacy has been waived. In response to this, the Commissioner would note that if the argument of NSG was that it did not wish to reveal the mere fact that this secondment had taken place then the subject having posted information online about this would be highly relevant. In the event, however, the information in question has not been posted online. In the view of the Commissioner that means that these posts do not amount to a waiver of the reasonable expectation of privacy.
15. Turning to whether there is any legitimate public interest in this information, the Commissioner notes that the secondment to which this information relates is from a public body to a private company. However, in the internal review response NSG confirmed that it continued to pay the wages of the subject during the period of the secondment. The Commissioner recognises that there is, therefore, a public interest in disclosure on the grounds of improving public knowledge about why public funds continued to be spent on the salary of this individual throughout the period of their secondment.
16. The Commissioner does not, however, believe that this public interest is of significant weight. The sum of public money in question here is, in public spending terms, very minor. Also the secondment was for a short period, approximately three months, and the Commissioner is aware of no particularly controversy or public interest attached to this secondment. Of further note is that some information was disclosed by NSG in response to the requests, which would have served to satisfy to some extent this limited public interest.
17. The Commissioner has found that disclosure would be unlikely to result in negative consequences to the data subject and has found that there is a legitimate public interest in the disclosure of this information. However, he has also found that the subject of this information would hold a legitimate expectation that this information would be held in confidence. Given that the weight of the public interest in disclosure is not great, the Commissioner finds that this is not sufficient to outweigh the reasonable expectation of the subject of this information. For these

reasons, the Commissioner finds that disclosure would be unfair and in breach of the first data protection principle.

18. The Commissioner has found that the requested information is the personal data of an individual aside from the requester and that the disclosure of this personal data would be in breach of one of the data protection principles. His conclusion is therefore that the exemption provided by section 40(2) of the FOIA is engaged and NSG is not required to disclose this information.

## Right of appeal

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19. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

20. 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.
21. 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** .....

**Gerrard Tracey**  
**Principal Policy Advisor**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**