

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2012

Public Authority: London Borough of Camden Council

Address: Camden Town Hall
Judd Street
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant requested the position title for each person employed by the London Borough of Camden ("the council") in 2009. Alongside each employee's position title, the complainant requested their: (1) pay grade; (2) total overtime payments, rate of overtime and basis for any overtime; (3) bonus payments; (4) hours worked in each month; and (5) their gender. The Commissioner's decision is that the council has correctly withheld the following information: total overtime payments, the basis for any overtime and the number of hours worked in each month under section 40(2) of the Act (personal data belonging to a third party). However, the Commissioner is of the view that the council is not entitled to withhold each post holders': salary band, overtime rate and gender under section 40(2).
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the gender, salary band and overtime rate of each person employed by the council in 2009 alongside their post title.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 16 October 2011, the complainant submitted a request for information to the council in the following terms:

"I would like to know the following information, regarding every person directly employed by Camden Council in 2009:

- 1. Their position title*
- 2. Their rate of pay throughout the year*
- 3. Overtime rate of pay, and how much was received*
- 4. Any bonuses received during the year*
- 4. How many hours they worked, for every month*
- 5. Whether they are male or female.*

Please include people who are unpaid (by camden council) (sic)."

5. On 18 October 2011, the council sought to clarify the request by asking the following:

- "1. Please confirm if you wish for a list of all position titles used by Camden in the period.*
- 2. Please confirm if you wish for the pay grade for each job title used by Camden in the period and if so by position title or person.*
- 3. Please confirm if you wish for all overtime payments made by Camden in the period and if so by position title or as a total or whether you wish to have the basis the overtime is paid on.*
- 4. Please confirm if you wish to have all hours worked in the month in the period by position or as a total."*

6. 7. On the same day, the complainant responded to the questions as follows:

- "1. Yes.*
- 2. Yes, but broken down by each individual person, NOT title.*
- 3. I would like to have the overtime broken down by *person*, and the basis for the overtime.*
- 4. I wish to have the number of hours worked in the month by *person*."*

7. Following its request for clarification, and the complainant's affirmative response, the council has interpreted point 2 of the request as being for the salary band of each employee. The Commissioner agrees this is an objective reading of the request following the request for clarification.

8. The information being sought in respect of each person employed by the council in 2009 can therefore be summarised as follows:

"Employee A: Post title, Pay grade, Overtime amount/rate/basis, Bonus amount, Hours worked each month, Gender;

Employee B: Post title, Pay grade, Overtime amount/rate/basis, Bonus amount, Hours worked each month, Gender;

Employee C: Post title, Pay grade, Overtime amount/rate/basis, Bonus amount, Hours worked each month, Gender... etc"

9. The public authority responded to the request on 21 November 2011. It provided what it stated to be a list of each position within the council in 2009, rather than a list for each employee's position, a total figure for male/female employees and details of 26 bonus payments made within 2009. The council refused to supply the remainder of the information covered by the request arguing it to be exempt from disclosure under section 40(2).
10. On 14 February 2012, the council advised the complainant that it was maintaining its original position following an internal review.

Scope of the case

11. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the council's application of section 40(2) in withholding the pay grade, overtime amount/rate/basis, hours worked each month and gender for each employee in 2009.
12. The Commissioner also sought to clarify that the 26 payments constituted all bonus payments made by the council to its employees in 2009. The council has confirmed that these are all of the bonus payments made by the council in the relevant period. The Commissioner is satisfied the council complied with this aspect of the complainant's request on 21 November 2011 and does not propose to address this issue any further in this decision notice.
13. In the disclosure provided to the complainant on 21 November 2011, the council stated that in 2009 it had 3395 female employees and 2529 male employees; leading to a total of 5924. However, the list of position titles disclosed only contained 1616 entries. Moreover, a figure of 1913 positions was referred to in the council's internal review. The Commissioner has highlighted to the council that the complainant's request is for the position title for *each employee* in 2009.

14. In the course of his investigation, the Commissioner also explained to the council his view that it was not entitled to withhold each employee's pay grade under section 40(2). This is on the basis that, although due to the format of the request each employee's pay grade is likely to be personal data, its disclosure would not breach any of the data protection principles.
15. Following the Commissioner's correspondence on these two points, on 4 October 2011 the council agreed with the Commissioner to disclose "*[a] list of all position titles for every position used by Camden in the period, [and] the pay grade for each position title used by Camden in the period by person*".
16. Owing to the difference in opinion between the Commissioner and council with regards to the issue of gender under section 40(2), the council has not yet disclosed the information referred to above. Instead, it has advised the Commissioner that it will consider disclosure in light of the conclusions of this decision notice. Therefore, despite the stated willingness of the council to disclose the salary band of each employee, as this information has not yet been disclosed the Commissioner has analysed this aspect of the request in this notice and ordered the disclosure of salary bands as a formal step to be taken.
17. In addition, this decision notice will also address the aspects of the request which the council has indicated it will not be fulfilling. Namely, in respect of each of the council's employees in 2009, their: total overtime payments; rate of overtime and basis for any overtime; number of hours worked per month; and gender.

Reasons for decision

18. Section 40(2) of the Act states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles of Schedule 1 of the Data Protection Act 1998 ('the DPA').
19. The Commissioner must first consider whether salary bands, total overtime payments, rate of overtime, the basis for any overtime, hours worked per month and gender constitute personal data in the context of the request. Personal data is defined in section 1 of the DPA as follows:

“personal data’ means 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 intentions of the data controller or any other person in respect of the individual."

20. Having considered section 1 of the DPA, the Commissioner is satisfied that, in the context of the request, all of the information sought constitutes personal data.
21. Although the complainant is not seeking the names of any employees, the information is nevertheless being sought linked to specific employees. Consequently, each piece of information "relates" to an individual. Therefore the key issue is whether the complainant is requesting information which is likely to lead to individuals being "identifiable"; either from that information or combined with other information in the possession, or likely to come into the possession of, the data controller. The Commissioner notes the High Court's judgment in [*R \(on the application of the Department of Health\) v Information Commissioner \[2011\] EWHC 1430 \(Admin\)*](#) which indicated that the relevant issue is "*whether any living individuals can be identified by the public following the disclosure of the information*" (paragraph 52).
22. The complainant has questioned the council's argument that individuals would be identifiable from the information being sought. The council has advised the complainant that 1183 of 5924 posts are held by a single occupant. The claimant has therefore noted that the vast majority of the posts are held by more than one person, and argued that the risk of identifiability is thereby significantly reduced in the case of these particular posts.
23. The Commissioner would agree with the complainant to the extent that truly anonymised data is not personal data because no individual can be identified from that information, or from that information together with other available information. In such circumstances, the information cannot be exempt under section 40(2) because a disclosure of the information would not be a disclosure of personal data.
24. For the 1183 individuals who in 2009 held single occupancy posts, the mere disclosure of a post title will lead to them being identifiable. For employees in multi-occupancy posts the position is less straightforward because individuals can be identified in a number of different ways. This is compounded by the fact that different members of the public may have different degrees of access to the "other information", referred to at section 1(1)(b) of the DPA, needed for re-identification to take place.

25. The Commissioner considers that it may be possible for members of the public, who have some personal knowledge of an employee, to identify them through a combination of the information disclosed linked to their post title. Some of the information being sought, such as overtime details and hours worked in a month, are likely to be unique to individual employees. This, combined with the fact that six different pieces of information are being sought, may lead to a profile of particular employees being created. Such profiles would create a risk that employees occupying the same post could be distinguished, and therefore identified, by members of the public. The risk of such distinctions being made would be even greater amongst the council's employees as they are likely to have prior knowledge of individual working patterns prior to disclosure.

26. The Commissioner has also considered the comments he made in his decision notice in [FS50429375](#) with regards to 'motivated defenders':

"19. The Commissioner considers that, in general, it is likely that close friends and family members would not divulge the identity of the individual more widely. They may be able to identify the individual from their personal knowledge of their post title, salary, gender or work pattern; but would be likely to defend that person's identity from further disclosure. Such scenarios would not amount to a disclosure of personal data.

20. However, where work colleagues or former work colleagues could identify the individuals they would have far less motivation to protect the identity of the individual concerned. Some work colleagues who could identify the individuals would be more likely to be neutral about the identification involved and could discuss the identity of the individual more openly and in a less restricted way than direct family or friends might. The result would be a far wider identification of the individual and a much less protected disclosure. In such cases the Commissioner considers that a disclosure of the information would amount to a disclosure of personal data."

27. The Commissioner feels these considerations are equally relevant to the request being considered in this decision notice. There is a possibility that certain elements of the information requested would, in the context of certain posts, not lead to identification. However, the Commissioner considers that the council could not know which factors linked to which posts would allow individual employees to be identified by friends, family, colleagues or any other member of the public. It is on that basis which the Commissioner considers it reasonable for the council to consider each piece of information requested, when linked to a post title, to be personal data.

28. Having satisfied himself that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes that the council has argued that disclosure of each piece of information withheld would, linked to each employee's position title as per the request, breach the first data protection principle which states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

29. The Commissioner considers that the primary issue is whether disclosure of each category of information would breach the first data protection principle by being unfair/unlawful.

Details of overtime and hours worked per month

30. The Commissioner has chosen to consider the disclosure, for each employee in 2009, of total overtime payments, basis for any overtime and the number of hours worked each month together. This is for the sake of clarity as he views the considerations relevant to both to be substantially similar. In his view, disclosure of this information would breach the first data protection principle and is therefore exempt from disclosure by virtue of section 40(2) of the Act.

31. In considering whether disclosure of overtime payments and hours worked would contravene the requirements of the first data protection principle, the Commissioner has taken into consideration the following factors:

- The reasonable expectations of the employees;
- The consequences of disclosure; and
- The balance between any legitimate public interest in disclosure and the rights and freedoms of the employees concerned.

32. The council has argued that disclosure of overtime payments and hours worked would be outside the reasonable expectations of the individuals concerned. Employees were not told at the time they commenced employment that details of any overtime worked and hours worked might be disclosed in response to a request made under the Act. Consequently, it is difficult to come to the conclusion that employees would have a reasonable expectation that details of their monthly hours worked and overtime would be disclosed to the world at large. Page 43

of the ICO's ['Guide to Data Protection'](#) makes clear that a key aspect of processing personal data fairly lies in *"only handling people's personal data in ways they would reasonably expect"*. The absence of an expectation that details of overtime and hours worked in each month would be disclosed in response to a request under the Act would suggest that to do so would be unfair within the meaning of the first data protection principle.

33. However, the fact that an individual has an expectation that information held about them will not be disclosed does not necessarily mean that this expectation is a reasonable one. The Commissioner's guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to a third party's public or private life.
34. The total amount earned through overtime, the basis for the overtime and the number of hours an employee works within a given month pertains to both their public and private life. Both topics relate to employees' public lives in the sense that they relate to activities which the employee conducts at work. However, examining the details of overtime and the number of hours worked a little deeper it becomes clear that both have a keen bearing on an individual's private life; relating as they do to their work-life balance and financial position. In essence, details of overtime payments and hours worked per month constitute personal information about them fulfilling a particular role. The Commissioner's view is that the personal information disclosed through overtime details and hours worked may relate to a person's work life balance, financial standing and potentially their domestic/family arrangements.
35. The council has argued that disclosure of information pertaining to overtime and hours worked would cause worry and distress to the staff involved. As has been noted above, disclosure would create a possibility of identification; though it is not possible to definitively establish each instance in which identification would be likely to take place. As it is not possible to state with certainty who would be able to identify which individuals, it follows that it is also not possible to state categorically the use to which details of overtime payments and the number of hours an employee has worked in a particular month may be put to. The Commissioner has already commented that many of the people capable of identification would not necessarily be 'motivated defenders'. This means the consequences of placing information pertaining to an employee's work-life balance and financial standing into the public domain are far more uncertain. The Commissioner agrees with the council that this uncertainty would potentially cause worry and distress.

36. In [FS50092819](#), the Commissioner considered that information relating to the amount of overtime worked by public sector employees could lead “*unsubstantiated and adverse conclusions*” being drawn in relation to particular employees. In particular, it was noted that the release of such information may lead people to erroneously conclude that certain individuals work harder than others. The Commissioner considers this an additional, albeit it not decisive, factor in suggesting that the disclosure of information relating to overtime and hours worked would be unfair.
37. As to whether there is a legitimate interest in the public knowing this information, the Commissioner has considered that the public has a right of access to information about the efficient and proper use of public money. There is also a legitimate public interest in openness and transparency in public bodies in relation to the amount of money spent on overtime and the manner in which it is done so. The Commissioner can also see the potential public interest in scrutinising the number of hours worked and salary of people working in the same post. Given the complainant is also requesting this information on overtime be linked to the gender of particular employees, it is arguable that the information may be useful in considering any differences in the council’s treatment of male and female members of staff.
38. When considering the application of section 40(2) of the Act, Commissioner must balance any potential legitimate interests against the individual’s reasonable expectations concerning information relating to their private lives. In this case, the private nature of the information being requested, combined with the reasonable expectations which the council’s employees will have formed regarding disclosure, outweighs the any legitimate public interest in disclosure in this case. Accordingly, the Commissioner is of the view that disclosure of the information relating to overtime payments would be unfair.
39. The Commissioner therefore believes that disclosure of total overtime payments, the basis for any overtime and the number of hours worked each month for each person employed by the council in 2009 would breach the first data protection principle and that the information is exempt under section 40(2) of the Act by virtue of section 40(3)(a)(i).

Salary band and overtime rate

40. The Commissioner has, however, reached the view that disclosing the salary band and overtime rate for each post holder in 2009 would not breach the first data protection principle. In reaching this conclusion, the Commissioner has considered a number of factors including the following:
- The reasonable expectations of employees;
 - What information is already in the public domain;

- The amount of personal data which would be disclosed by the information sought.
 - Any distinction between senior and junior members of staff; and
 - The consequences of disclosure.
41. As has been noted above, a key aspect of assessing the fairness of particular information being disclosed lies in considering the reasonable expectations of the relevant data subjects. The Commissioner's general approach is that employees will have a greater expectation of privacy over information relating to their personal, rather than professional, lives. In this respect, there is a key difference between specific overtime details/hours worked each month and a post's salary band/overtime rate. The Commissioner has described the former categories of information as "*personal information about [individuals] fulfilling a particular role*" (paragraph 34 above). Conversely, the salary band/overtime rate of each post merely concern roles which the data subjects happen to be fulfilling. As this information relates predominately to the employees' professional roles, the Commissioner considers that they will have a greater expectation of this information being disclosed under the Act.
42. A particular consideration in respect of salary bands is that these will already be in the public domain. This is because an advisement for a position will always include details of the salary band pertaining to that position. In this respect, the request is therefore not seeking any more information than has already been placed into the public domain at some point in time. The Commissioner is of the view that this will further shape a reasonable expectation of employees that disclosure of their salary bands would be considered fair under the Act.
43. As has already been explained in this notice, all of the information being requested is personal data. However, personal data is best thought of as a continuum; some data will be more personal than others. For example, the issue surrounding the number of hours each post holder works a month and details of their overtime is that these pieces of information will be unique to individuals. Not only does this increase the risk of identifiability, but it also involves a more acute disclosure of personal data. In contrast, salary bands and overtime rates do not reveal any personal aspect of the role to which they pertain. A salary band does not provide specific information regarding an individual's financial situation. Similarly, the rate of overtime does not reveal information relating to an employees' financial situation or work/life balance. This is because the rate of overtime merely states what is potentially available to an individual; not whether that option was taken up or indeed whether there was even an opportunity to work overtime. Rather than being unique, salary bands/over rates will be uniform.

Consequently, the Commissioner considers that salary bands and overtime rates can be considered to fall at the lowest end of the personal data continuum. The Commissioner feels this supports his view that these elements of the request can be disclosed.

44. The Commissioner's general position is that senior employees should expect a greater degree of information about them to be discloseable under the Act than more junior employees. This is because senior employees should anticipate their posts will carry a greater level of accountability; since they are likely to be responsible for major policy decisions and the expenditure of public funds. However, the Commissioner has made clear that all public sector employees should, regardless of their seniority, expect some disclosure of personal data: *"There is a legitimate public interest in knowing how public money is apportioned across an organisation, which includes salaries at lower levels..."* (paragraph 46, of the Commissioner's guidance ['Requests for personal data about public authority employees'](#)). Having regard to this public interest, along with the relatively impersonal nature of generic salary bands and rates of overtime, the Commissioner does not consider that there is a need to make any distinction between employees based on their seniority.
45. In assessing the fairness of disclosing personal data, the Commissioner will also consider the consequences of that disclosure. The Commissioner's has had regard to paragraph 14 of his guidance ['Requests for personal data about public authority employees'](#) which states:

"Although employees may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life. If an authority wishes to claim that disclosure would be unfair because of the adverse consequences on the employees concerned, it must be able to put forward some justification for this claim."

The council has not expressed any specific concerns that the disclosure of overtime rates/salary bands would have adverse consequences for the employees concerned. Nor, given the generic nature of this information, does the Commissioner consider there would be any. The Commissioner does not therefore consider that any of the consequences of disclosure would render disclosure unfair.

46. The Commissioner's view is that each of the five factors identified in paragraph 40 above, point towards disclosure of salary bands and each position's overtime rate. Employees will have a reasonable expectation of this information being disclosed under the Act; in part shaped by

information which is already in the public domain. Having regard to the unobtrusive nature of this personal data, and the lack of adverse consequences of disclosure, the Commissioner is of the view that there is no reason why each post holder's pay scale and overtime rate cannot be disclosed.

Gender

47. The Commissioner has also reached the view that disclosing the gender of each post holder in 2009 would not breach the first data protection principle. In reaching this conclusion, the Commissioner has considered a number of factors including the following:

- Whether it is sensitive personal data for the purposes of the DPA;
- The consequences of disclosure;
- The reasonable expectations of the employees;
- What information is already in the public domain; and
- The balance between any legitimate public interest in disclosure and the rights and freedoms of the employees concerned.

48. Gender is not identified in section 2 of the DPA as being a category of sensitive personal data. Nevertheless, the Commissioner acknowledges that in certain contexts gender could constitute sensitive personal data. (See, for example, [FS50349593](#).) In this case, the Commissioner does not consider that information about the gender of post holders would be considered sensitive personal data. Accordingly, the Commissioner does not consider that a condition in Schedule 3 of the DPA is required to be met in order to facilitate disclosure.

49. In the council's initial correspondence to the Commissioner, it explained that it had not sought the views of the data subjects on disclosure. With this in mind, the Commissioner would not expect the data subjects to have strong concerns about the disclosure of their gender on the grounds of any possible detriment this may cause to them. As explained at paragraph 45 of this notice, if an authority wishes to claim that disclosure would be unfair because of the adverse consequences to the employees concerned, it must be able to put forward some justification for this claim. In the Commissioner's view, a clear link in specific cases has not been demonstrated between disclosure of the information and harm or distress being caused to any council employees.

50. With regards to the reasonable expectations of the council's employees, the Commissioner does not feel that disclosing their gender would involve putting an unfair level of information into the public domain. As has been noted above, information concerning overtime and hours worked is not in the public domain and, partly for this reason, individuals have a reasonable expectation of privacy with regards to that

information. This is in contrast to gender, whereby the Commissioner feels that most individuals would regard their gender in 2009 as already being in the public domain. As such, it does not appear likely that employees occupying particular posts would have a reasonable expectation of privacy with regards to their gender.

51. The Commissioner's guidance on section 40(2) suggests that it may be advisable, when considering the "fairness" of disclosure, to make distinctions on the basis of seniority and whether a role is public facing. However, due to the Commissioner's consideration that gender will already be in the public domain, there does not appear to be any rationale for making a distinction between employees on the basis of their seniority or whether their role is public facing. Accordingly, the Commissioner's view is that it is fair to disclose the gender for each post-holder employed by the council in 2009.

Legitimate interests and lawfulness

52. Having decided that the disclosure of each post holder's gender, salary band and overtime rate would not be unfair in the terms expressed by the first data protection principle, the Commissioner has gone on to consider whether the information should be disclosed. This requires an 'enabling' condition from Schedule 2 of the DPA to be met. The applicable condition is the sixth:

Condition 6(1) provides that:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason for prejudice to the rights and freedoms or legitimate interests of the data subject."

53. In order for the condition to be met, the Commissioner considers that disclosure must satisfy a three part test:
- (i) There must be a legitimate interest in disclosing the information;
 - (ii) The disclosure must be necessary for that legitimate interest; and
 - (iii) Even where the disclosure is necessary it must not cause unwarranted harm to the rights, freedoms and legitimate interests of the data subjects.
54. The council has noted to the ICO that it does not see any public interest in disclosing post titles for each employee along with their salary band/overtime rate and gender. The Commissioner does not agree. Scrutiny of differences in pay between genders is an appropriate matter of public concern. It is legitimate that a fair evaluation of pay

differentials will involve consideration of people of different genders in the same or similar roles; hence the need to link post title, salary band, overtime rate and gender. Consequently, the Commissioner considers that there is a legitimate interest in disclosure of the information sought by the complainant.

55. On the basis of the representations put to him, the Commissioner's view is that disclosure of this information would not cause an unfair degree of intrusion into individuals' privacy and that there is a legitimate public interest in such disclosure. He considers that disclosure of the information is necessary for these legitimate interests and would not cause unwarranted harm to the rights of the data subjects.
56. It is also necessary, when considering disclosure of personal data, to be satisfied that the disclosure would not be unlawful. The Commissioner's guidance indicates that disclosure would be unlawful if it would involve a breach of confidence, of an enforceable contractual agreement or of a statutory bar to disclosure (or, indeed, if disclosure would amount to a criminal offence). The Commissioner has not received arguments to suggest that disclosure would lead to a breach of confidence, contract or a statute. Nor has the Commissioner been advised that disclosure would amount to a criminal offence. He therefore has no reason to think that disclosure would be unlawful.
57. Having already established that the processing is fair, the Commissioner is also satisfied that the release of the information would not cause any unnecessary interference with the rights, freedoms and legitimate interests of the data subjects. He is therefore satisfied that the schedule 2 condition is met. In addition, he does not believe that disclosure would be unlawful.

Right of appeal

58. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

59. 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.
60. 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

Andrew White
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