

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 June 2017

Public Authority: Environment Agency
Address: Horizon House
Deanery Road
Bristol
BS1 5AH

Decision (including any steps ordered)

1. The complainant has requested the Environment Agency (EA) to disclose the name of the successful candidate for a position he applied for. The EA refused to disclose this information citing section 40 of the FOIA.
2. The Commissioner's decision is that the EA has acted appropriately by refusing to disclose the requested information under section 40 of the FOIA. As a result the Commissioner does not require any further action to be taken.

Request and response

3. On 23 March 2017, the complainant wrote to the EA and requested it to disclose the name of the successful candidate for a position he had applied for.
4. The EA responded on 31 March 2017 advising the complainant that it was unable to disclose this information, citing section 40 of the FOIA.
5. The complainant requested an internal review on 11 May 2017.
6. The EA carried out an internal review and notified the complainant of its findings on 19 May 2017. It confirmed again that it was unable to disclose this information, as it considered it was exempt from disclosure under section 40 of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 31 May 2017 to complain about the way his request for information had been handled. Specifically, the complainant disagreed that section 40 of the FOIA applies and confirmed that he required access to this information so he can establish more precisely exactly what experience and expertise the EA requires for such positions.
8. The Commissioner's investigation has therefore focused on the EA's application of section 40 of the FOIA to the requested information.

Reasons for decision

9. Section 40 of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure would breach any of the data protection principles outlined in the Data Protection Act (DPA).
10. Personal data is defined 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 that individual and any indication of the intentions of the data controller or any other person in respect of the individual..."
11. The Commissioner considers the first data protection principle is most relevant in this case. The first data protection principle states -

"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."
12. The Commissioner must first consider whether the requested information is personal data. If she is satisfied that it is, she then needs to consider whether disclosure of this information would be unfair and

unlawful. If she finds that disclosure would be unfair and unlawful the information should not be disclosed and the consideration of section 40 of the FOIA ends here. However, if she decides that disclosure would be fair and lawful on the data subject(s) concerned, the Commissioner then needs to go on to consider whether any of the conditions listed in schedule 2 and 3, (sensitive personal data) if appropriate, of the DPA are also met.

Is the requested information personal data?

13. The requested information in this case is the name of the successful candidate of a position advertised by the EA. An individual's name is quite obviously personal data – it is information from which an individual can be easily identified.

Would disclosure be unfair?

14. The EA confirmed that the successful candidate was not in post at the time of the request. They had received an offer of employment but this was still subject to various internal checks and security clearance. It confirmed that it felt disclosure would be unfair on this individual, as they had not commenced employment and would have no expectation that their personal data would be disclosed into the public domain.
15. The Commissioner is of the view that disclosure would be unfair and unlawful. She notes the circumstances at the time of the request. The successful candidate had only been notified at the time of the request that they had been successful and the EA wished to offer the position to them. They were not in post at the time of the request. They were therefore not carrying out tasks and duties on behalf of a public authority at this time, which dependent upon their level of seniority, may have warranted public scrutiny and transparency.
16. The Commissioner considers at the time of the request no definite appointment had been made. It was therefore still possible that the employment offer could fall through, for example if internal checks failed, or that the successful candidate may decline the offer, if for example they decided to accept an employment offer from elsewhere. At this stage the successful candidate would hold the reasonable expectation that their offer of employment would remain private and confidential until they are in actual post. Disclosure prior to an individual being in post or prior to formal acceptance once the necessary checks and clearance had been obtained would be an unwarranted intrusion into the private life of that individual. It could also cause them distress and upset.

17. For the above reasons the Commissioner is satisfied that disclosure would be unfair and unlawful.
18. In terms of any legitimate public interest in the disclosure of this information, the Commissioner considers any public interest in this case is very limited. The Commissioner understands the complainant's concerns and frustrations as a result of being unsuccessful during the recruitment process but she considers these are more private interests rather than legitimate interests for the wider public. The Commissioner does not consider there is any overwhelming public interest in the disclosure of this information which would warrant or outweigh the unfairness, distress and upset it would cause to the successful candidate.
19. The Commissioner is therefore satisfied that disclosure in this case would breach the first data protection principle outlined in the DPA and that section 40 of the FOIA is engaged.

Other matters

20. The Commissioner notes that the successful candidate may be in post now. But she has informed the complainant that she can only consider the circumstances at the time of the request. The Commissioner has advised the complainant that he would have to make a fresh request to the EA for this information if he wished for disclosure to be considered based on current circumstances. She has however pointed out that just because the candidate may be in post now does not automatically mean that it will be fair and lawful to disclose the candidate's name under the FOIA. This would require a new determination on the application of section 40 and be dependent on other factors such as the seniority of the individual and whether they have a public facing role.

Right of appeal

21. 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

22. 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.
23. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF