

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 August 2023

**Public Authority:** The Board of Governors of Oxford Brookes University

**Address:** Gipsy Lane  
Headington  
Oxford  
OX3 0BP

#### **Decision (including any steps ordered)**

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1. The complainant has requested details of candidates who applied for a particular position. The above public authority ("the public authority") provided some information, but relied on section 40(2) of FOIA (third party personal data) to withhold the remainder.
2. The Commissioner's decision is that the public authority was entitled to rely on section 40(2) of FOIA to withhold the information. However it breached sections 10 and 17 of FOIA in its handling of the request.
3. The Commissioner does not require further steps to be taken.

#### **Request and response**

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4. On 6 April 2023, the complainant wrote to the public authority and, referring to correspondence she had received from a recruitment firm, requested information in the following terms:

"[1] I am contacting you to request the written record of the review of the applications received, and the verbatim record of the Oxford Brookes staff responsible for this shortlisting process. I do understand that personally identifiable information, such as names and employers of the shortlisted candidates, would not be

appropriate under FOI and/or Data Protection. However, the objective information recorded concerning the qualifications, experience, objective criterion of the job description and equal opportunity provisions, as they were applied to this process and the applicants, is appropriate.

"[2] The amount the University paid to this firm for this search."

5. The public authority responded on 11 May 2023. It provided the information within the scope of element [2], but withheld the information it held within the scope of element [1]. It relied on section 40(2) of FOIA to withhold this information.
6. The complainant requested an internal review on the same day. The public authority had failed to complete its internal review at the date of this notice.

### **Reasons for decision**

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7. Section 40(2) of FOIA allows a public authority to withhold information if it is the personal information of someone other than the requester and if its publication would breach data protection law.
8. Data protection law requires that personal information cannot be processed without a specific lawful basis for the processing. Therefore if the public authority would not have had a lawful basis to publish the information, section 40(2) of FOIA will apply.
9. The complainant argued that the information in question was not personal data because "identifying information" could be removed.
10. The Commissioner disagrees. Even if the name of each applicant were removed, they would still be identifiable from other parts of their application.
11. Some positions require particular qualifications. But that does not mean that each applicant will have identical qualifications. Some candidates may be overqualified (they may have a master's degree when the position only requires a bachelor's degree) some may not have the precise qualification but have an equivalent one or substantial relevant work experience. Even where two candidates have the same qualification, they may have obtained it from different institutions.
12. Therefore each application will contain a unique educational profile with a large number of data points about each applicant, which, in the Commissioner's view, will make them identifiable to their friends and

family. Furthermore, if friends and family are able to identify an applicant by their educational profile, they may also be able to learn new information about the applicant such as what they might have entered under the "equal opportunity provisions" – which the Commissioner takes to mean information such as the applicant's ethnicity, gender and disability status.

13. The Commissioner is thus satisfied that the information is the personal data of the candidates concerned.
14. The Commissioner is not aware that the data subjects have either placed this information in the public domain themselves or given consent for the public authority to do so.
15. To the extent that the information relates to any applicant's ethnicity, gender and disability status, this is special category personal data – which receives special protection. There would be no lawful basis for processing this information and so section 40(2) of FOIA would apply.
16. For the remaining information, the only remaining lawful basis for publishing this information would be if it were necessary to do so in order to satisfy a legitimate interest.
17. The complainant has not identified any particular legitimate interest that publication would serve. The Commissioner recognises that there is a general legitimate interest in public authorities conducting fair and transparent recruitment processes. There is also an interest in ensuring that the public authority is recruiting people who are suitably qualified for the role.
18. However, in the circumstances of this case, the Commissioner is not persuaded that publication is necessary to satisfy either of the interests identified above – as the interests can be achieved by less-intrusive means.
19. The public authority will have its own internal processes in place to ensure that only suitably-qualified applicants are appointed. Each applicant will also have the opportunity to raise a complaint if they feel they have not been treated fairly during the recruitment process.
20. The Commissioner is not aware of any wider public concern about the public authority's recruitment practices. Whilst he recognises that the role in question is one that is relatively senior, he is not convinced that disclosure of information relating to this single recruitment round would allow for any meaningful scrutiny of the public authority's recruitment processes more generally.

21. As publication is not necessary, it follows that there is no lawful basis on which this information could be disclosed and therefore the information is exempt under section 40(2) of FOIA.

### **Procedural matters**

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22. Where a public authority receives a request for information it must communicate any non-exempt information to the requester (section 10) and provide a refusal notice specifying any exemptions being relied upon to withhold information (section 17), within 20 working days.
23. Allowing for the four bank holidays, the public authority provided its response on the 21<sup>st</sup> working day. It therefore breached both section 10 and section 17 of FOIA.

### **Other matters**

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24. Whilst there is no statutory requirement to carry out an internal review on request, both the Commissioner and the section 45 FOIA Code of Practice consider that an internal review should be offered in circumstances where the requester is clearly dissatisfied with the response to their request.
25. Where an internal review is requested, this should be completed within 40 working days and, ideally, sooner.
26. At the date of this notice, the public authority had not completed an internal review – despite having had more than three months to do so. The Commissioner considers this to be poor practice.

## Right of appeal

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27. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**